

Palacios v HSRE-EB YORK, LLC

2025 NY Slip Op 32699(U)

July 24, 2025

Supreme Court, New York County

Docket Number: Index No. 152167/2021

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

GENESIS PALACIOS,

Plaintiff,

- v -

HSRE-EB YORK, LLC, and EB CONSTRUCTION GROUP,
LLC.,

Defendants.

-----X

HSRE-EB YORK, LLC, EB CONSTRUCTION GROUP, LLC.

Third Party Plaintiff,

-against-

UPMOST, INC.,

Third- Party Defendant.

-----X

INDEX NO. 152167/2021

MOTION DATE 07/24/25

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595647/2021

The following e-filed documents, listed by NYSCEF document number (Motion 003) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 101

were read on this motion to/for STRIKE PLEADINGS.

ORDER

Upon the foregoing documents, it is

ORDERED that motion, pursuant to CPLR § 3126, of third party defendant to strike plaintiff's complaint for failing to produce discovery, or alternatively, to compel plaintiff to appear for a fourth further deposition, or to preclude plaintiff from offering evidence with respect to questions propounded outside the scope of the supplemental bill of

particulars, which added only damages claims and which constituted the scope of inquiry for such third examination before trial, as directed in the Decision and Order dated November 29, 2024 (Headley, J.), is denied; and it is further

ORDERED that the cross motion, pursuant to 2 NYCRR § 130-1.1., of plaintiff to sanction third party defendant for frivolous motion practice is denied; and it is further

ORDERED to the extent it seeks a protective order with respect to any further deposition of plaintiff, the motion, pursuant to CPLR § 3103, is granted, and it is further

ORDERED that, as in contravention of the Order dated November 29, 2024 (NYSCEF Doc No 88), third party defendant propounded beyond the scope of new matter that plaintiff alleged in his supplemental bill of particulars and that such third deposition proceeded for a total of more than five hours, plaintiff shall not and need not appear for a fourth deposition; and it is further

ORDERED that to the extent it seeks a protective order as to discovery of medical loans and litigation financing, the cross motion for a protective order, pursuant to CPLR § 3103 is granted, and plaintiff need not and shall not produce such discovery; and it is further

ORDERED that, except as exhibits to motions or for demands for bills of particulars and responses thereto (as latter

constitute an amplification of the pleadings), counsel shall refrain from posting on NYSCEF discovery demands or responses thereto, as same unnecessarily and improperly clutters the docket, and should be exchanged among counsel only (see In Re Westchester Rockland Newspapers, Inc., 66 AD2d 335, 338 [2nd Dept 1979]); and it is further

ORDERED that counsel shall post on NYSCEF a joint proposed Discovery Compliance Order or dueling proposed Discovery Compliance Order(s) (using fillable form) at least two days before August 19, 2025, on which date counsel shall appear via Microsoft Teams, unless, by joint request to the Clerk of IAS Part 59 (SFC-Part59-Clerk@nycourts.gov), such appearance be waived by the court.

DECISION

With respect to the decretal paragraph "ORDERED . . .that plaintiff Genesis Palacios. . .appear for a continued examination before trial" of the Decision and Order dated November 29, 2024 (Headley, J.) (NYSCEF Doc No 70), this court agrees with plaintiff that such directive is qualified by the language in that Decision that "defendants shall be granted an additional five hours to depose the plaintiff **as it pertains to the information served in the supplemental bill of particulars**" (emphasis supplied), reflecting the intention of Headley, J. that the scope of the deposition of her directive be so limited.

With respect to plaintiff's cross motion for a protective order for discovery of medical loans and financing arrangements, as there has been no demonstration that such records are material to the issues joined by the parties, such protective order is granted. See Board of Managers of Fishkill Woods Condominium v Gottlieb, 184 AD3d 792, 795 (2d Dept 2019) (owners were not entitled to discovery of letter of engagement or retainer agreement, as same were immaterial to dispute).

Finally, plaintiff has not demonstrated that any sanctions against third party defendant with respect to the discovery disputes and motion practice thereon are warranted. Barber v Ford Motor Co, 250 AD2d 552 (1st Dept 1998).

Debra A. James

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<u>7/24/2025</u>				<u>DEBRA A. JAMES, J.S.C.</u>	
DATE					
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	REFERENCE