

**Garcia v Board of Mgrs. for Edgar House
Condominium**

2025 NY Slip Op 34421(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 156105/2021

Judge: Denis Reo

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 65

-----X

TEODULO JIMENEZ GARCIA,

Plaintiff,

- v -

THE BOARD OF MANAGERS FOR EDGAR HOUSE
CONDOMINIUM, MILAS LLC, THE EDGAR HOUSE
CONDOMINIUM, CANIDO BASONAS CONSTRUCTION
CORP., DVG RESTORATION CORP., AMERICAN
ELEVATOR & MACHINE CORP., CHRISTINE BOALS
A/K/A CHRIS BOALS, YELLOW HOUSE ARCHITECT
PLLC, DVG RESTORATION CORP., DLG INTERIORS
RENOVATIONS, CORP., INSITE DESIGN BUILD
LLC, JOAO ARAUJO A/K/A JOHN ARAUJO,

Defendant.

INDEX NO. 156105/2021

MOTION DATE 07/10/2025

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

-----X

CANIDO BASONAS CONSTRUCTION CORP.

Plaintiff,

-against-

DVG RESTORATION CORP.

Defendant.

Third-Party
Index No. 595200/2022

-----X

THE BOARD OF MANAGERS FOR EDGAR HOUSE
CONDOMINIUM, THE EDGAR HOUSE CONDOMINIUM

Plaintiff,

-against-

AMERICAN ELEVATOR & MACHINE CORP., CHRISTINE
BOALS A/K/A CHRIS BOALS, YELLOW HOUSE ARCHITECT
PLLC, DVG RESTORATION CORP., DLG INTERIORS
RENOVATIONS, CORP., INSITE DESIGN BUILD LLC, JOAO
ARAUJO A/K/A JOHN ARAUJO

Defendant.

Second Third-Party
Index No. 595425/2022

-----X

CHRISTINE BOALS A/K/A CHRIS BOALS

Plaintiff,

Third Third-Party
Index No. 595854/2022

-against-

DVG RESTORATION CORP.

Defendant.

-----X

CHRISTINE BOALS A/K/A CHRIS BOALS

Fourth Third-Party
Index No. 595949/2023

Plaintiff,

-against-

SOUTHWEST MARINE & GENERAL INSURANCE COMPANY

Defendant.

-----X

HON. DENIS M. REO:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 264, 265, 270, 271

were read on this motion to/for

STRIKE PLEADINGS

Plaintiff Teodulo Jimenez Garcia (“Plaintiff”) moves under CPLR §§ 3126 and 3124 to strike American Elevator and Machine Corp.’s (“American Elevator”) answer, or alternatively to preclude evidence and compel compliance because of its failure to produce responses to document requests and to appear for a deposition. For the reasons set forth herein, plaintiff’s motion is GRANTED in part in accordance with the terms of this order.

This personal-injury action arises from a June 8, 2021 elevator accident at the Edgar House Condominium in Manhattan, where Plaintiff alleges he sustained injuries caused by negligent elevator maintenance performed by American Elevator.

On March 29, 2023, Plaintiff served Combined Discovery Demands on American Elevator (“March 29th Demands”). By so-ordered stipulation dated February 2, 2024, the Court directed that all outstanding discovery demands were to be responded to within thirty days (“February 2nd Order”). Additionally, American Elevator’s deposition was scheduled by the court. In response to the February 2nd Order American Elevator provided incomplete responses to the March 29th

Demands but indicated that it would supplement its responses. Thereafter, by so-ordered stipulation dated April 7, 2025, Hon. Shlomo S. Hagler directed that parties respond to outstanding discovery demands and that American Elevator's deposition be held on May 14, 2025 ("April 7th Order"). Again, American Elevator did not provide responses to the discovery requests and failed to appear for a court ordered deposition. On May 22, 2025, the parties appeared for a virtual discovery conference before Hon. Shlomo S. Hagler where they agreed for a third time that American Elevator would provide full responses to the outstanding demands and be deposed on July 12, 2025 ("May 22nd Directive"). Despite receiving the May 22nd Directive from Hon. Hagler, American Elevator neither responded to the discovery request nor appeared for a deposition on July 12, 2025.

In opposition to Plaintiff's motion, American Elevator finally provides maintenance records for the period of February 2020 through August of 2021. Additionally, American Elevator provides an excuse for its delay in proceeding with the deposition stating that it had difficulties locating a witness with knowledge who was still employed by the company. Plaintiff did not submit a reply to American Elevator's opposition and there is no evidence that American Elevator's response to the March 29th Demands was defective. While a response to the March 29th Demands was served and apparently accepted by Plaintiff, there remains no evidence that American Elevator has been deposed in this matter.

Discussion

Under CPLR §3126, a court may strike a pleading or impose lesser sanctions where a party's failure to disclose is willful or contumacious. (See *Kihl v Pfeffer*, 94 NY2d 118 [1999]). "As public policy strongly favors the resolution of actions on the merits whenever possible, the striking of a party's pleading is a drastic remedy which is warranted only where there has been a

clear showing that the failure to comply with discovery is willful and contumacious.” (*Henry v Datson*, 140 AD3d 1120, 1122 [2d Dept 2016]; see also *Rosenfeld v Bower and Gardner*, 161 AD2d 374 [1st Dept 1990] [striking a pleading is an “extreme and drastic penalty, and should not be invoked where the moving affidavit fails to show conclusively that the default was clearly deliberate or contumacious.”]) The court is granted with “wide latitude in determining appropriate sanctions for dilatory conduct.” *Rafael Diamond Jewelry Import, Inc. v Underwriters at Lloyds of London, England*, 189 AD2d 613 [1st Dept. 1993]).

American Elevator has been directed to produce discovery and appear for a deposition on no less than three occasions over a period of one and a half years. While American Elevator has failed to comply with these prior orders regarding the deposition, none of those orders were conditional. Before American Elevator’s pleading is stricken, and in an effort to ensure compliance with the previously ordered discovery, American Elevator shall be provided with a final opportunity to produce a witness for a deposition. If they fail to produce a witness in accordance with this order, their answer shall be struck.

Accordingly it is,

ORDERED, that Plaintiff’s motion is GRANTED to the extent that American Elevator is directed to appear for a deposition within thirty days of the date of this order; and it is further

ORDERED that American Elevator’s failure to appear for a deposition within thirty days of the date of this order will result in its answer being stricken, and Plaintiff will be granted judgment on default. This order will be self-executing.

Denis Reo

11/20/2025
DATE

DENIS REO, A.J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: