

Cobb v Setzer

2025 NY Slip Op 34944(U)

December 18, 2025

Supreme Court, New York County

Docket Number: Index No. 654150/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

-----X

CRYSTAL COBB,

Plaintiff,

- v -

RIDVAN SETZER, 1A CONSTRUCTION LLC, MKNK
WASTE REMOVAL, INC.

Defendant.

-----X

INDEX NO. 654150/2023

MOTION DATE 12/16/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 55, 56, 57, 58, 59, 60, 61, 62, 63

were read on this motion to/for DISCOVERY.

Defendants' motion for a protective order is granted.

Background

Plaintiff alleges that she hired defendants to perform work on her apartment in Manhattan and brought this breach of contract case against them, alleging that the work was never completed and that the work that was done was performed negligently. Plaintiff further alleges that defendant Rivian Setzer represented himself as being the manager of defendant 1A Construction LLC ("1A"), despite the fact that no such LLC existed. Plaintiff further claims that neither defendant 1A nor MKNK Waste Removal, Inc. were licensed to perform the work for which they were hired.

In this motion, defendants seek a protective order relating to a notice to admit served by plaintiff. They claim that every single issue raised in this notice to admit seeks an admission

about key contested matters in this case. Defendants argue that they allege that plaintiff approved the work plans, requested additional work, caused delays and benefitted from the improvements.

In opposition, plaintiff claims that defendants will suffer no prejudice by having to respond to the notice to admit. She raises issues with defendants' answer and claims that defendants did not include anything from someone with personal knowledge of the facts in this case. Plaintiff also points out that defendants did not certify their affirmation pursuant to 22 NYCRR 202.8-b (a section about word count limits).

In reply, defendants argue that plaintiff's opposition focuses on irrelevant procedural attacks. They contend that plaintiff appears to assert that because she believes certain facts to be true, defendants must be compelled to admit them.

Discussion

This Court's analysis focuses on the merits—the subject notice to admit. The other issues raised by plaintiff, including the purported lack of a verification for a pleading and a complaint about word counts for a 12-page affirmation from defendants, are irrelevant as plaintiff did not cross-move for any relief on these topics.

“A notice to admit is designed to elicit admissions on matters which the requesting party reasonably believes there can be no substantial dispute. A notice to admit may not be utilized to request admission of material issues or ultimate or conclusory facts, or facts within the unique knowledge of other parties. Rather, it is only properly used to eliminate from trial matters which are easily provable and about which there can be no controversy. Further, because a notice to admit is not intended as simply another means for achieving discovery, it may not be used to obtain information in lieu of other disclosure devices” (*Fetahu v New Jersey Tr. Corp.*, 167 AD3d 514, 515, 91 NYS3d 11 [1st Dept 2018] [internal quotations and citations omitted]).

The subject notice to admit clearly runs afoul of these principles and the Court grants defendants' motion. As noted above, this case is about a disputed renovation project in which defendants were hired to fix up an apartment owned by plaintiff. Plaintiff alleges in her amended complaint that defendants failed to complete the services, failed to have the requisite licenses and permits, and that these failures caused plaintiff to hire another contractor to repair and complete the work.

The notice to admit contains requests for admission such as "Admit that Defendants told Plaintiff that Defendants had all of the necessary licenses and/or permits to complete the work at Plaintiffs residence" and "Admit that Defendants did not actually have all of the necessary licenses and/or permits to complete the work at Plaintiffs residence" (NYSCEF Doc. No. 60, ¶¶ 10, 11). It also seeks an admission that "Admit that when Defendants left Plaintiff's apartment/residence, there were no sinks, shower, doors and an unfished bathroom with no toilet, unfinished kitchen and no appliances installed (no refrigerator, dishwasher, oven)" and "Admit that Defendants did not pass final inspection with the City of New York Department of Building (DOB)" (*id.* ¶¶ 16, 17).

Caselaw is clear that a notice to admit should be directed toward undisputed facts or documents as part of an effort to narrow the topics the parties fight about, usually in an effort to streamline the trial. For instance, a notice to admit could request an admission about the date of a car accident in a personal injury action; that way the parties don't have to waste time arguing about the date. Or in a dispute between a landlord and tenant, it could ask to admit that a certain document is the operative lease governing the parties' relationship. Put another way, it is when an experienced trial lawyer would probably stipulate to it rather than fight about it in front of the jury anyway.

It is meant for non-controversial things; a notice to admit is absolutely not intended to get a party to admit the key facts of the case in the other party’s favor. But that is exactly what this notice to admit does here—plaintiff seems to want defendants to make numerous admissions about their alleged lack of a license or permit and poor work. That is plaintiff’s burden to prove.

The Court therefore strikes this notice to admit in its entirety. The Court denies defendants’ request for sanctions as this demand was not included in the notice of motion and, in any event, a single inadequate notice to admit is not a basis for sanctions.

Accordingly, it is hereby

ORDERED that defendants’ motion to strike the subject notice to admit is granted.

See NYSCEF Doc. No. 54 regarding the next conference.



12/18/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE