

Weber v Barnett

2026 NY Slip Op 31527(U)

March 18, 2026

Supreme Court, Kings County

Docket Number: Index No. 508333/2022

Judge: Cenceria P. Edwards

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At an IAS Term, Part Comm2 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 18th day of March, 2026.

P R E S E N T:

HON. CENCERIA P. EDWARDS, CPA,

Justice.

-----X
YOEL WEBER AND YOEL LEONOROVITZ,
INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF
HORSEPOWER ELECTRIC AND MAINTENANCE
CORP.,

PLAINTIFF(S),

- AGAINST -

GARY BARNETT, HP STOCK LLC AND EXTELL
DEVELOPMENT COMPANY,

DEFENDANT(S),

GARY BARNETT,

THIRD PARTY PLAINTIFF,

- AGAINST -

PASCACK GROUP LLC AND PASCACK WL
HOLDINGS LLC,

ADDITIONAL DEFENDANTS ON
THE COUNTERCLAIMS.

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The following e-filed papers read herein:

NYSCEF Doc. Nos.:

Notice of Cross-Motion, Affidavits (Affirmations) and Exhibits ___
Opposing Affidavits (Affirmations) and Exhibits _____
Reply Affidavits (Affirmations) and Exhibits _____

169-192;195-204
205-2019; 220-224
231-236; 227-230

Plaintiffs Yoel Weber and Yoel Leonorovitz, Individually and derivatively on behalf of Horsepower Electric and Maintenance Corp. (collectively the “Plaintiffs”), commenced this commercial action against Defendants Garry Barnett, HP Stock LLC and Extell Development Company (collectively the “Defendants”), to recover approximately \$15 million in fees for

electrical work that Plaintiffs performed on Defendants' projects. Thereafter, Defendants Barnett, HP Stock LLC and Extell Development, on June 10, 2022, filed amended counterclaims alleging that Defendant Barnett, through Defendant HP Stock, held a 33.3% ownership interest in the "Horsepower Joint Venture" and Plaintiffs' entities Pascack Group and Pascack WL Holdings, LLC (the "Pascack Entities") (*NYSCEF* Doc. #9, ¶¶180-184).

DEFENDANTS INSTANT MOTIONS

Motion to Compel (Mot. Seq. #5)

Defendant-Third Party Plaintiff Barnett, Defendants HP Stock LLC ("HP Stock") and Extell Development Company ("Extell"; collectively, "Defendants") now move by motion (mot. seq. #5), inter alia, (i) for an Order: (a) pursuant to CPLR 3126 striking Plaintiffs Weber and Leonorovitz's pleadings; (b) precluding Plaintiffs from offering testimonial and documentary evidence in support of their position in this action at trial; and (c) resolving against the Plaintiffs all issues; or, alternatively (ii) for an Order pursuant to CPLR 3124 compelling Plaintiffs Weber and Leonorovitz to comply with and produce documents responsive to Defendants' demands.

Motion to Quash (Mot. Seq. #6)

Defendant-Third Party Plaintiff Barnett and Defendants HP Stock LLC ("HP Stock") and Extell Development Company ("Extell"; collectively, "Defendants"), moved this Court pursuant to CPLR 2304 inter alia, to quash third-party subpoenas issued by Plaintiffs Weber and Leonorovitz (*NYSCEF* Doc. #202 + #203), and for issuance of a protective order pursuant to CPLR 3103, against disclosure of the information and documents sought-arguing that the subpoenas are "overly broad fishing expedition into irrelevant topics" (*NYSCEF* Doc. #195). This motion was filed on January 21, 2025, over three months after the time to reply extinguished on October 4, 2024.

BACKGROUND

Plaintiffs and Defendants for many years have engaged in a multi-faceted joint venture consisting of a series of affiliated construction companies and real estate entities for use in their venture known as the Horsepower Joint Venture (*NYSCEF* Doc. #192). Horsepower Joint Venture includes each of the parties' 1/3 ownership in the electrical sub-contracting company, Plaintiff Horsepower Electric and Maintenance Corp. ("HPE"). On or about October 28, 2014, Plaintiffs Weber, Leonorovitz and Defendant HP Stock, by its managing member Barnett, entered into a Shareholder Agreement, governing shareholder rights and the management and operation of HPE (*NYSCEF* Doc. #1, ¶41). Plaintiffs' Weber, Leonorovitz, and Defendant HP Stock, each hold a 33.3% interest in HPE (Doc 1, ¶19). Defendant Barnett is the sole owner and shareholder of HP Stock and is the primary owner of Extell (*NYSCEF* ¶24-26).

PROCEDURAL HISTORY-DISCOVERY DISPUTES

Plaintiffs and Defendants have been involved in substantive and contentious litigation since 2022 before Justice Leon Ruchelsman involving ongoing discovery disputes.

Mot. Seq. #1

By decision and order dated September 19, 2022 (*NYSCEF* Doc. #53), the Court (Leon Ruchelsman, J.), denied Plaintiffs/Counterclaim Defendants Yoel Weber and Yoel Leonorovitz, and Horsepower Electric and Maintenance Corp.'s motion compelling Defendant Barnett to respond to Plaintiffs Weber and Leonorovitz, and Horsepower Electric and Maintenance Corp.'s Notice to Admit (*NYSCEF* Doc. #18).

Mot. Seq. #2

By decision and order dated November 9, 2022, the Court (Leon Ruchelsman, J.), denied Plaintiffs Yoel Weber and Yoel Leonorovitz, and Horsepower Electric and Maintenance Corp., injunctive relief, deeming no basis for imposition of an injunction (*NYSCEF* Doc. #84). Thereafter, by stipulation dated December 20, 2022, Defendants effectively withdrew any immediate restraints related to their Order to Show Cause for injunctive relief, in exchange for Plaintiffs' agreement to maintain a certain portion of sale proceeds as of November 30, 2022. (*NYSCEF* Doc. #88).

Mot. Seq. #3

By decision and order dated March 1, 2023, the Court (Leon Ruchelsman, J.), granted Defendants partial injunctive relief, freezing in place Defendants Garry Barnett, HP Stock LLC and Extell Development Company's share of the approximately \$21 million in proceeds for the Rockland County Properties already sold, and directing that for the remainder of the lawsuit one-third of the Rockland County sale proceeds may not be transferred absent consent of all parties. (*NYSCEF* Doc. #131).

Mot. Seq. #4

Defendants again moved by Order to Show Cause for Contempt on October 12, 2023, inter alia, to strike Plaintiffs' counterclaims, and to issue a declaratory judgment that all issues raised by Defendants counterclaims be resolved in Defendants' favor. By decision and order dated December 7, 2023, the Court (Leon Ruchelsman, J.), granted Defendant Barnett's motion for sanctions against Plaintiffs Yoel Weber, Yoel Leonorovitz, and Horsepower Electric and Maintenance Corp., to the extent that it directed \$5,266,896.14 be maintained by the 1031 Exchange and prevented from being disbursed until Defendant Barnett's ownership interest in the Pascack properties was decided (*NYSCEF* Doc. #166).

BACKGROUND

The Pascack Entities (Pascack Group and Pascack WL Holdings, LLC), are in the business of purchasing, developing, and selling real properties that are majority owned and controlled by Plaintiffs' Weber and Leonorovitz. As relevant to this action, Plaintiffs' Weber and Leonorovitz, through the Pascack Entities, purchased six properties in Rockland County, New York (the "Rockland County Properties") in 2016 (*NYSCEF* Doc. #206-Plaintiffs' Opp., ¶5). Plaintiffs Weber and Leonorovitz allege Defendants Barnett, HP Stock LLC and Extell Development Company, failed to pay Plaintiffs more than \$15 million dollars in fees for electrical contracting work performed by Plaintiff Horsepower Electric and Maintenance Corp. in relation to the Horsepower Joint Venture (*NYSCEF* Doc. #206-Plaintiffs' Opp., ¶6).

Motion Seq. #5-(a)(b) CPLR 3126- Movant/Defendant's request:

(a) Pursuant to CPLR 3126 striking Plaintiffs Weber and Leonorovitz's pleadings; (b) precluding Plaintiffs from offering testimonial and documentary evidence in support of their position in this action at trial;

Pursuant to CPLR 3126 Defendants' Barnett, HP Stock LLC and Extell Development Company assert that Plaintiffs' pleadings should be stricken as a consequence of their willful noncompliance with its discovery demands, insisting Plaintiffs be precluded from offering testimonial and documentary evidence in support of their positions at trial-actions that Defendants represent were designed to delay proceedings (*NYSCEF* Doc. #192).

Plaintiffs Weber, Leonorovitz, and Horsepower Electric and Maintenance Corp. in opposition, assert that it is Defendants who have engaged in a pattern of delay and that the instant motion is Defendants second motion (mot. seq. #4), to strike Plaintiffs pleadings. Plaintiffs represent that they are in compliance with their discovery obligations, having produced "hundreds

of thousands” of responsive documents, and that Defendants failure to confer before bringing its motion is fatal to its application (*NYSCEF* Doc. #205). Furthermore, Plaintiffs contend, inter alia, that they have not violated any court orders, and that Defendants have misrepresented that Plaintiffs were previously “held in contempt” for violating a court order (*id.*).

Plaintiffs persist, representing, inter alia, that the parties emailed, met and conferred and sent a letter to Plaintiffs’ counsel outlining the deficiencies in Plaintiffs’ document production (*NYSCEF* Doc. #231, ¶¶4-7), however these instances wholly occurred after the filing of their motion to strike Plaintiffs’ pleadings dated July 2, 2024.

Pursuant to 22 NYCRR 202.7(a), all motions relating to disclosure must include “an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion” (*see Winter v. ESRT Empire State Bldg., LLC*, 201 AD3d 842, 844 [2d Dept 2022]). The affirmation “shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions or shall indicate good cause why no such conferral with counsel for opposing parties was held” (22 NYCRR 202.7[c]; *id.*, at 844). “Failure to provide an affirmation of good faith which substantively complies with 22 NYCRR 202.7(c) warrants denial of the motion” (*id.*, at 844); (*See also Cyngiel v Kringsman*, 224 AD3d 875, 878 [2d Dept 2024]). Moreover, [b]efore a court invokes the drastic remedy of striking a pleading, or even of precluding evidence, there must be a clear showing that the failure to comply with court-ordered discovery was willful and contumacious (*Saint Cloud v Koehler*, --NY3d--, 2026 Slip Op 00810 [2026] [internal quotations omitted]).

Defendants failed to provide an affirmation of good faith with their motion, inter alia, for discovery sanctions or to claim good cause for the failure to confer with Plaintiffs. Defendants’ supporting affirmation for the instant motion does not reference any telephone call, email, or letter

in which their counsel attempted to resolve alleged deficiencies in Plaintiffs' document production prior to its letter dated January 23, 2025 (*NYSCEF* Doc. #219), received over six months after filing of the instant motion.

Here, Defendants failed to provide an affirmation of good faith with their motion, *inter alia*, for discovery sanctions or to claim good cause for the failure to confer with Plaintiffs and failed to make a clear showing of Plaintiffs' willful and contumacious failure to comply with discovery demands. Moreover, the Court has never issued an order in this matter, indicating that failure to comply shall result in sanctions pursuant to CPLR 3126 upon further motion (*see Bayview Loan Servicing v Evanson*, 230 AD3d 1091, 1093 [2d Dept 2024] [The Supreme Court properly denied [the] motion pursuant to CPLR 3126 to strike the complaint insofar as asserted... based on [a] failure to substantively comply with the requirements of 22 NYCRR 202.7]).

Motion Seq. #5-(c)(i-ii) CPLR 3124- Movant/Defendant's request:

“(c) Resolving against the Plaintiffs all issues; or, alternatively (ii) for an Order pursuant to CPLR 3124 compelling Plaintiffs Weber and Leonorovitz to comply with and produce documents responsive to Defendants' demands.”

Pursuant to CPLR 3124 Plaintiffs Weber, Leonorovitz, Horsepower Electric and Maintenance Corp. served their initial written discovery requests of approximately 21 document demands that relate to the sums claimed due, on June 24, 2022 (*NYSCEF* Doc. #206, ¶7). Plaintiffs then served an additional set of 31 document requests to address further developments in the case, including Defendants Barnett, HP Stock LLC and Extell Development Company's counterclaims alleging they held an ownership interest in the Pascack Entities, on July 31, 2024 (*NYSCEF* Doc. #206, ¶8). Of the 52 discovery demands made in June of 2022 and July of 2024, Plaintiffs contend that Defendants produced only 25 documents in response as of January of 2025, which were all

largely recycled subject matter from Plaintiffs themselves and that the documents produced are arguably only responsive to Requests 18 and 19 (*NYSCEF* Doc. #206, ¶¶9-10).

Plaintiffs insist many of these demands are exceedingly broad or duplicative, but that it has been responsive to Defendants three separate sets of document demands (*NYSCEF* Doc. #174+176+186), dated November 1, 2022, December 22, 2022, and September 26, 2023, rendering four separate productions totaling approximately 87,000 documents and 320,000 pages (*NYSCEF* Doc. #206, ¶¶12-15). Moreover, Plaintiffs maintain that despite their extensive compliance, Defendants now claim Plaintiffs' document production is insufficient, despite absence of a court order requiring Plaintiffs to cross-reference each of the thousands of documents to every subpart of Defendants nearly 300 total requests (*NYSCEF* Doc. #206, ¶16). Plaintiffs assert depositions have yet to take place and that Defendants have not indicated how any alleged delay—or the purported lack of detailed cross-referencing—has prejudiced their ability to schedule depositions or prepare their defenses (*NYSCEF* Doc. #206, ¶18).

Defendants Barnett, HP Stock LLC and Extell Development Company, insist the Court (Leon Ruchelsman, J.), held Plaintiffs Weber, Leonorovitz, and Horsepower Electric and Maintenance Corp., in contempt in its prior decision awarding sanctions (*NYSCEF* Doc. #166), and that Plaintiffs responded to their First, Third and Supplemental Document Demands, with “scattershot documents relating to only one of the four projects underlying Plaintiffs' Complaint....absent support for the breakdown for sums claimed due for unpaid work for the other three underlying projects” (*NYSCEF* Doc. #192, pg. 7). Defendants further assert Plaintiff's discovery responses, “consisted of disjointed schedules and other miscellaneous documents,” which were not organized (*NYSCEF* Doc. #192, pg. 9). They further maintain Plaintiffs have engaged in an unmistakable pattern of non-compliance with their discovery obligations, and Court

orders. Defendants assert the “Court can, and should, infer that their conduct has been designed to delay these proceedings and falls squarely within the definition of “willful” conduct, warranting the striking of Plaintiffs’ pleadings (*NYSCEF* Doc. #192, pg. 13).

Plaintiffs insist (*NYSCEF* Doc. #206, ¶¶28-30), that “Defendants’ current motion repeatedly misrepresents Plaintiffs were held in contempt—an assertion refuted by the plain text of Justice Ruchelsman’s decision” (*NYSCEF* Doc. #191), with such contention supported by its responsive email to the Court dated February 7, 2025 (*NYSCEF* Doc. #217, **Exhibit L**). They further argue that Defendants’ motion must be denied for failure to comply with 22 NYCRR 202.7(a)(2).

22 NYCRR 202.7

Pursuant to 22 NYCRR 202.7(a), all motions relating to disclosure must include “an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion” (*see Winter v. ESRT Empire State Bldg., LLC*, 201 AD3d 842, 844 [2d Dept 2022]). The affirmation “shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions or shall indicate good cause why no such conferral with counsel for opposing parties was held” (22 NYCRR 202.7[c]; *id.*, at 844). “Failure to provide an affirmation of good faith which substantively complies with 22 NYCRR 202.7(c) warrants denial of the motion” (*id.*, at 844); (*See also Cyngiel v Krigsman*, 224 AD3d 875, 878 [2d Dept 2024]).

Here, Plaintiffs correctly contend, Defendants failed to provide an affirmation of good faith with their motion, inter alia, for discovery sanctions or to claim good cause for the failure to confer with Plaintiffs. While an attorney affirmation in support of a motion can serve as the affirmation of good faith when it substantively complies with 22 NYCRR 202.7(c) (*Cyngiel v Krigsman*, at 877), Plaintiffs appropriately note Defendants’ supporting affirmation for the instant motion does

not reference any telephone call, email, or letter in which their counsel attempted to resolve alleged deficiencies in Plaintiffs' document production prior to its letter dated January 23, 2025 (*NYSCEF* Doc. #219), received over six months after filing of the instant motion.

Pursuant to CPLR 3126, a court may impose discovery sanctions, including the ... preclusion of evidence, where a party 'refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed, but [b]efore a court invokes the drastic remedy of precluding a party from offering evidence at trial, there must be a clear showing that the failure to comply with court-ordered discovery was willful and contumacious (*Cyngiel v Krigsman*, at 877-878).

Herein, Defendants have failed to make a clear showing of Plaintiffs' willful and contumacious failure to comply with discovery demands. The Court to date, has not issued a discovery order governing the parties' instant dispute. Though Defendants have undoubtedly submitted evidence questioning the responsiveness, form and scope of Plaintiffs submissions (*see NYSCEF* Doc. #231), it is undisputed that Plaintiffs have produced tens of thousands of pages of document-discovery to Defendants during the course of litigation.

Thus, Defendant's motion must be denied (*Cyngiel v Krigsman*, 224 AD3d 875 878 [2d Dept 2024] ([T]he attorney affirmation submitted by [Defendants] did not indicate that any efforts were made to discuss and resolve the dispute over outstanding discovery with the defendants' counsel prior to making the motion); see also *Behar v Wiblishauser*, 219 AD3d 793, 795 [2d Dept 2023]).

Motion to Quash (Mot. Seq. #6) CPLR 2304

Plaintiffs contend, inter alia, that this motion is procedurally improper Defendants failed to submit an affirmation pursuant 22 NYCRR 202.7(a) evidencing that Defendants made a good

faith effort to resolve the discovery dispute, and the motion was untimely, because it was not brought within 20 days of the discovery demand (*see* CPLR 3122[a][1]; 3133[a]).

For the previously mentioned reasons, the Court finds that Defendants Barnett, HP Stock LLC and Extell Development Company, failed to substantively comply with the requirements of 22 NYCRR 202.7, and thus, Defendants' motion is now denied (*see Cyngiel v Krigsman*, at 877-878). In *Cyngiel*, the movant failed to provide an affirmation of good faith with its discovery motion or to claim good cause for its failure to confer with its opponent's counsel. Also, Defendants Barnett, HP Stock LLC and Extell Development Company's motion is untimely (*Santangelo v People*, 38 NY2d 536 [1976]; citing CPLR 2304) [A motion to quash is limited in scope,...and must be made prior to the return date]). Time to reply to both the construction and bank subpoenas (*NYSCEF* Doc. #202 + #203), expired on October 4, 2024, however, Defendants' motion to quash Third-party Plaintiff Barnett's subpoenas was filed on January 21, 2025, over three months later. Furthermore, [a] defendant's failure to make a timely challenge to a plaintiff's document demand ... forecloses inquiry into the propriety of the information sought except with regard to material that is privileged pursuant to CPLR 3101 or requests that are palpably improper (*See Moran v Grand Slam Ventures*, 221 AD3d 994, 997 [2d Dept 2023] [internal quotations and citations omitted]).

MOTION to COMPEL-CPLR 3124

Defendants Barnett, HP Stock LLC and Extell Development Company's request pursuant to CPLR 3124 to compel discovery related to any documents and/or communications between Plaintiffs Weber and Leonorovitz and Defendant Barnett and the related Defendant entities, concerning any actual or possible interest in any of the Rockland properties, were complied with to the extent Plaintiffs were in possession of said relevant documents. Plaintiffs' supplemental

requests for logs of privileged documents relating to general subject matter, dates, authors and addressees, and names of individuals who received the documents in question are not relevant and necessary to defend against the claims made by Plaintiffs in this matter-given that depositions have not been taken and the absence of a violation of any discovery orders (*Espinoza v A S K Standard Transit*, 226 AD3d 564, 566 [1st Dept 2024]).

Here, the Court concurs with Plaintiffs that the disputed subpoenas relating to the construction project at the heart of this matter and its related financing, are typical construction and financing documents that are the kind expected to be relevant, thus, they have properly submitted thousands of documents in an effort to comply with those demands. Additionally, Plaintiffs represent that none of the subpoenaed parties objected to the subpoenas or moved to quash, and actually many of the subpoenas have already been responded to by the non-parties.

Accordingly, it is

ORDERED that the above-referenced motion by Defendants (mot. seq. #5), inter alia, for an Order: (a) pursuant to CPLR 3126 striking Plaintiffs' pleadings is **DENIED**; and it is further

ORDERED that the above-referenced motion by Defendants (mot. seq. #6), inter alia, for an Order pursuant to CPLR 2304 quashing or limiting the subpoenas is **DENIED**.

The foregoing constitutes the Decision and Order of this Court.

E N T E R:



Hon. Cenceria P. Edwards, J.S.C., CPA