

<b>Jones v Riverside Bldrs. Inc.</b>
2020 NY Slip Op 32518(U)
July 31, 2020
Supreme Court, New York County
Docket Number: 150842/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 150842/2019

GRACE JONES,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 001

- v -

RIVERSIDE BUILDERS INC., RIVERBANK APARTMENT
CORP, THE ANDREWS ORGANIZATION, VILLA ART, LLC.

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 37, 38, 39, 40, 41,
42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 64, 65, 66, 67

were read on this motion to/for STRIKE PLEADINGS

The motion by defendant Riverside Builders Inc. ("Riverside") to strike plaintiff's
complaint and to strike co-defendants' answers based on their failure to provide discovery is
denied. The cross-motion by plaintiff to strike Riverside's answer for failure to provide
discovery is also denied.

Background

This action arises out of purported damage to plaintiff's apartment caused by the
construction of a penthouse apartment directly above her apartment. Plaintiff contends that this
construction caused the collapse of the ceilings in two of her bedrooms and in the mechanical
room in her unit.

Riverside claims that it served discovery demands on plaintiff and defendants throughout
2019. It claims that certain outstanding items were identified at a January 28, 2020 preliminary

conference and that neither plaintiff nor the defendants responded. After a single preliminary conference, Riverside demands that the pleadings of these parties be stricken or that they be precluded from introducing evidence at trial against Riverside.

In opposition, defendant Villa Art LLC (“Villa”) contends it has responded to the three notices for discovery and inspection served on it. It attaches copies of its responses to Riverside’s discovery and inspection requests.

In reply to Villa’s opposition, Riverside adjusts its claims and contends that Villa has not complied with a provision contained in the preliminary conference order to *inter alia* exchange names and witnesses.

Plaintiff offers a cross-motion in which she contends that Riverside’s motion was unnecessary. She argues she responded to Riverside’s various discovery demands and insists that the Court should strike Riverside’s answer due to Riverside’s failure to respond to plaintiff’s discovery demands. Specifically, plaintiff contends that Riverside did not provide a single document in response to her notice to produce, and identified 2 witnesses who allegedly observed people entering plaintiff’s apartment through the hole in the ceiling (after it collapsed) but did not provide an address for them or any indication whether they worked for defendant.

She questions how Riverside could fail to produce an incident report, proof of insurance or a project file. Plaintiff also details her contention that defendant failed to provide any sufficient evidence to support its affirmative defenses in response to plaintiff’s request for a bill of particulars.

In opposition to the cross-motion, Riverside claims that plaintiff’s demands “are poorly drafted and insufficient to enable [Riverside] to frame a proper response” (NYSCEF Doc. No. 60, ¶ 4). Riverside requests that the Court void plaintiff’s demand for a Bill of Particulars.

Riverside also insists it is entitled to discovery about the items plaintiff claims were damaged, including proofs of purchase, the age of each allegedly damaged item, consequential damages and estimation as to the present value of these items. It also observes that a site inspection of the apartment and depositions must necessarily wait for the current pandemic to safely permit such activities. It maintains that plaintiff must go first based on priority set forth in CPLR 3106(a).

In reply, plaintiff contends she has provided voluminous responses in support of her damages claims, including photos, invoices and estimates and notes that Riverside admitted this point in its opposition to plaintiff's cross-motion. She points out that she provided a copy of her insurance policy. Plaintiff argues that she is entitled to responses in her demand for a bill of particulars from Riverside because it has the burden of proof on these claims.

The remaining defendants ("Riverbank" and "Andrews") submit opposition to Riverside's motion and claim it is moot because they have complied with the prior court orders. Riverside's reply contends that Riverbank's response was inadequate.

## Discussion

As an initial matter, the Court observes that this case has had **one** conference. This Court will not strike a pleading or issue a preclusion order after a single conference. While parties are certainly entitled to make discovery motions, the instant motion and cross-motion are not focused on specific items. Rather, the parties appear to be incapable of working together and efficiently so the Court must step in.

Therefore, this Court decides as follows:

All prior discovery requests are vacated. Because the parties insist on quickly resorting to making motions, claiming that they have no information in their responses and that these

responses are adequate (as, for instance, Villa does in its responses [NYSCEF Doc. No. 48] and Riverside [NYSCEF Doc. No. 57]), then it's clear that there should be depositions of all parties, starting with plaintiff. These depositions are to be held via video given the current pandemic (and given that plaintiff is apparently outside the United States).

These depositions must be completed on or before October 31, 2020. As with any deposition, the parties may make discovery demands arising out of these EBTs. The Court will then hold a remote discovery conference on November 17, 2020. At this conference and at subsequent conferences, the Court will consider requests for additional depositions as discovery proceeds. The parties will be entitled to continue to serve additional discovery demands after depositions are held.

To the extent that plaintiff is unhappy with Riverside's purported lack of a detailed response to plaintiff's demand for a bill of particulars (NYSCEF Doc. No. 57), if Riverside fails to produce relevant documents before or after the first round of depositions, then plaintiff may move to dismiss these affirmative defenses. After all, a defendant has the burden to prove an affirmative defense.

### **Summary**

Of course, the parties can work together to move this case along and simply exchange discovery by mutual consent. There is no question that parties are absolutely entitled to retain attorneys to zealously represent them and make motions; but the papers here suggest that they'd prefer to seek court intervention rather than attempt to reach agreements about basic discovery issues. They could have had a second conference but chose to make motions to strike pleadings for issues which could have, and should have, been resolved at a conference. And so there may

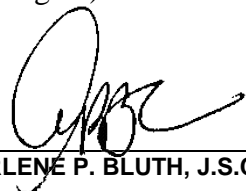
be two rounds of depositions because the parties seem to prefer to litigate rather than cooperate on the most basic issues.

Accordingly, it is hereby

ORDERED that the motion by defendant Riverside Builders Inc and the cross-motion by plaintiff are decided in accordance with the directives issued above. If a party fails to cooperate in scheduling and/or appearing for a deposition, the non-cooperator may be deemed in contempt of this order, unless good cause shown at the next conference (good cause is a documented inability of the deponent to appear, not the inability of the lawyers to agree).

Remote Conference: November 17, 2020.

7/31/2020  
DATE

  
ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	
	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	
CHECK IF APPROPRIATE:	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE	
		<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	OTHER