

<b>Walker v 650 Madison Owner LLC</b>
2021 NY Slip Op 30047(U)
January 7, 2021
Supreme Court, New York County
Docket Number: 161111/2015
Judge: J. Mabelle Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62**

*Justice*

-----X

PAULA WALKER,

Plaintiff,

- v -

650 MADISON OWNER LLC, VORNADO REALTY L.P.,  
BOTTEGA VENETA INC., CEI CONTRACTORS INC.,

Defendant.

-----X

650 MADISON OWNER LLC

Plaintiff,

-against-

BOTTEGA VANETA INC, CEI CONTRACTORS INC.,

Defendant.

-----X

**DECISION + ORDER ON  
MOTION**

**INDEX NO.** 161111/2015

**MOTION DATE** 10/02/2019,  
10/02/2019

**MOTION SEQ. NO.** 003 003

Third-Party  
Index No. 595633/2016

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92

were read on this motion to/for MODIFY ORDER/JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Pending before the court is motion sequence #003, where defendant City of New York (the “City”) seeks to reverse, modify and/or vacate Paragraph 2 of the Compliance/Status Conference Order of September 12, 2019. Plaintiff filed a cross-motion seeking an order granting the following relief: A. Striking the Answer of the defendant, the City of New York (“the City”) pursuant to CPLR § 3126 for failure to comply with the Orders of this Court, dated May 4, 2017,

December 21, 2017, May 3, 2018, August 9, 2018, October 18, 2018, January 10, 2019, and May 16, 2019, and more particularly, for failing to provide records for the removal, replacement and/or repair of City street signs for the accident location; or, in the alternative, ordering that all liability issues be resolved in plaintiff's favor against the City and precluding the City from offering any evidence or defenses to liability issues at trial and setting this matter down for trial on the sole issue of plaintiff's damages as against said defendant and; in the alternative, directing the City to comply with the above outstanding discovery directives and to provide the outstanding discovery sought herein and to produce a witness from the Borough Engineer's Office with knowledge for a deposition on a date certain.

Upon the foregoing documents, and upon oral arguments heard by the court on December 16, 2020, these motions are decided as follows:

In Paragraph 2 of an order issued on September 12, 2019 by Judge Julio Rodriguez, the court directed that “[...] to the extent the City fails to comply with this directive, the court will entertain an application to preclude City and for sanctions, the nature of which will be decided upon a showing [illegible] . . . .”


In Motion #003, the City sought an order to reverse, modify and/or vacate paragraph 2 (quoted above). The City argued that “Every Party still owes discovery from the May 16, 2019 Compliance Conference. Requiring the City - and only the City - to provide all discovery sought in a demand rather than simply provide a response, which may include objections to some of the sought discovery, is prejudicial and manifestly unfair. Likewise, entertaining an application to preclude the City - and only the City - for not providing discovery is prejudicial and manifestly unfair.”

By letter application dated July 24, 2020, Plaintiff's counsel requested an order enforcing the September order and imposing sanctions on the City. Subsequently, in an order dated August 11, 2020, Judge Larry Love directed the defendant City to "conduct a further search for sign records for the subject block for the period September 28, 2015 to September 2016 as there is a question of maintenance or control of a sign post. The City shall use its best efforts to produce said records in advance of the October 14, 2020 deposition of DOT witness. To the extent that the City fails to produce said records for use at the deposition, the issue will be addressed by the court at the next compliance conference."

At a conference held before the court on December 16, 2020, Plaintiff maintained that the sign records for the period one year subsequent to the date of the subject incident had not been produced prior to the date of the DOT deposition, and had not yet been produced to date. Plaintiff also reported that at the deposition of the DOT witness, defendant's counsel objected and did not permit counsel to conduct any inquiry about the subsequent records that were to be produced. In response, the City initially stated that it was "awaiting the results" for the records to be produced, but then re-asserted its position that the records were not produced based on the City's belief that it did not have to produce them. This position is in contravention of the court's directive. Notwithstanding the City's objections to the same, the court had previously ordered, upon the threat of sanctions and preclusion, that the records were to be produced.

Accordingly, it is **HEREBY ORDERED** that the City defendant shall produce no later than 5 p.m. on December 30, 2020, the sign records for the one-year period after the subject incident. Plaintiff is hereby granted leave, upon receipt of the records, to conduct further discovery, including the recall of DOT witnesses for deposition testimony and examination upon receipt of the records.

The terms and conditions of this order were memorialized on the record on December 16, 2020 and are further set forth herein. This is the order of the court.

<u>1/7/2021</u> DATE	 _____ J. MACHEYLE SWEETING, 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"/>		<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE