

Harrison v Empire State Elec. Maintenance & Data Corp.

2021 NY Slip Op 32232(U)

November 9, 2021

Supreme Court, New York County

Docket Number: Index No. 153641/2021

Judge: Frank P. Nervo

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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. FRANK NERVO PART 04

Justice

-----X

JAMES HARRISON,

Plaintiff,

- v -

EMPIRE STATE ELECTRIC MAINTENANCE & DATA
CORP., NY ELECTRIC MAINTENANCE & DATA CORP, NY
ELECTRIC & DATACOM LLC, ERIC ROJAS

Defendant.

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INDEX NO. 153641/2021

MOTION DATE 07/28/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21

were read on this motion to/for DISCOVERY.

Plaintiff moves this Court for an order, inter alia, striking defendants first, fourth, fifth and sixth affirmative defenses.¹ Defendants oppose contending that plaintiff's motion fails to set forth the requisite factual support to establish the defenses are without merit as a matter of law.

As an initial matter, the Court notes that plaintiff's and defendants' papers fail to comply with the Court's Uniform Rule 202.8-b, requiring an attorney certify the number of words in their motion papers does not exceed 7,000 (22 NYCRR § 202.8-b). "Page limits on submissions are appropriate, as is the rejection of papers that fail to comply with those limits" (*Macias v. City of*

¹ Plaintiff withdrew that portion of his motion seeking to compel discovery responses (NYSCEF Doc. No. 19).

Yonkers, 65 AD3d 1298 [2d Dept 2009]). Plaintiff and defendants fail to provide the requisite certification.

The current Uniform Rules had been in effect for nearly six months prior to the instant filings, public comment on these rules was sought in August 2020, and the rules were published, via Administrative Order 270/20, in December 2020. Additionally, the Uniform Rules are available on the Court's website. This is not a situation where counsel can reasonably argue they were caught unawares of the Uniform Rules. The Court therefore rejects the motion papers in their entirety, and denies the motion.

As an alternative holding and assuming, *arguendo*, that the Court were to address the motion on the merits, plaintiff's motion is denied. It is beyond cavil that on a motion to dismiss an affirmative defense pursuant to CPLR § 3211(b), "the plaintiff bears the heavy burden of showing that the defense is without merit as a matter of law" (*Granite State Ins. Co. v. Transatlantic Reins Co.*, 132 AD3d 479 [1st Dept 2015]). Additionally, "[t]he defendant is entitled to the benefit of every reasonable intendment of the pleading, which is to be liberally construed" (*534 East 11th St. Hous. Dev. Fund Corp. v. Hendrick*, 90 AD3d 541 [1st Dept 2011]).

Here, plaintiff's motion is entirely conclusory, comprising approximately two pages of substantive argument directed to the four affirmative defenses. Bald assertions, without evidentiary support, are insufficient to establish a defense is without merit as a matter of law. Furthermore, this matter is at its infancy, no conferences have been held, no discovery orders have been issued, and the record indicates very little discovery has been exchanged. Accordingly, dismissal of the affirmative defenses is, at best, premature.

Accordingly, it is

ORDERED that the motion is denied for failure to comply with the Uniform Rules; and it is further

ORDERED that the motion is further denied on the merits as wholly conclusory; and it is further

ORDERED that the impasse identified in counsels' joint letter (NYSCEF Doc. No. 20), the pendency of this motion, having been removed, counsel shall confer and file, via NYSCEF and in accordance with the Part Rules, a proposed preliminary conference order and joint letter, if applicable, within 10 days of this order. Failure to timely submit a proposed order shall

constitute waiver of same and may result in the Court issuing an order *sua sponte*, in its sole discretion.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

11/9/2021
DATE


FRANK NERVO, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER
 FIDUCIARY APPOINTMENT REFERENCE