

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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NOUVEAU ELEVATOR INDUSTRIES, INC.

Index No: 504318/2015

Plaintiff,

**AFFIRMATION IN
OPPOSITION**

-against-

ANNIE KWOK

Defendant.

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PETER J. VERDIRAME, an attorney duly admitted to practice before the Courts of the State of New York, affirms the truth of the following under penalty of perjury:

1. I am General Counsel and attorney of record in this lawsuit for the plaintiff, NOUVEAU ELEVATOR INDUSTRIES, INC., ("NOUVEAU.")
2. I make this affirmation on the basis of the file kept, the contents of which your affirmant believes to be true, together with personal knowledge of the facts and circumstances surrounding the litigation of the within matter, the source of my knowledge being that I have been the handling attorney for the plaintiff since the filing of the action on April 13, 2015. The within affirmation is offered in opposition to the motion brought by Order to Show Cause dated July 27, 2018, returnable September 12, 2018, which seeks to strike the jury demand pursuant to CPLR §4101.
3. It should be noted that the instant motion is merely the latest of numerous stalling tactics by the defendant. This is an action brought pursuant to the General Obligations Law sections 7-103 and 7-105, which provide the right to an immediate return of a security deposit when the deposit is commingled with the landlord's personal assets. Prior to this case being placed in suit, the defendant did not return the

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phone calls of the plaintiff, despite their having been a landlord-tenant relationship between the two parties for over twenty four years.

4. The motion should be denied as having been made untimely, after jury selection was completed. It should be noted that the jury demand being sought to be vacated was filed over a year before the motion was made. A motion made by Order to Show Cause is not made until it is signed and served. *See, Siegel, New York Practice, 4th Ed., §248; see, also, Mandala v. Jablonsky, 242 AD2d 271, (2d Dept 1997)* “...[A]n unexecuted order to show cause is of no legal effect.”

5. The within motion was signed by the Hon. Sylvia Ash on July 27, 2018, after a jury was selected and in the box. In fact, the subject Order to Show Cause was not even proposed until after jury selection was underway. The proposed Order to Show Cause was presented to Justice Kenneth Sherman , who refused to sign it, stating that not only was it brought at the eleventh hour, but that it was brought at the fifty-ninth second of the fifty-ninth minute of the eleventh hour. A review of the New York State Unified Court System website shows that jury selection in this matter began on July 16, 2018, and was completed on July 19, 2018. The proposed order was not even submitted to the ex parte clerk until July 17, 2018, and not submitted to Judge Sherman until after the jury was picked. Therefore the motion is untimely, and its true purpose, which is to stall and delay the plaintiff’s day in court is exposed.

6. Counsel for defendant, Joseph Loloï, Esq., misstates the record in the affirmation in support that *voir dire* had not begun on July 16, 2018.

7. New York law provides that a motion to strike a jury demand, in the interest of orderly procedure, be made within a reasonable period prior to trial. *A.J. Fritschy Corp. v. Chase Manhattan Bank, 36 AD2d 600 (1st Dept., 1971.)*

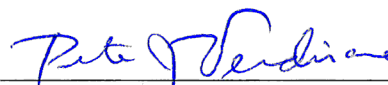
8. By her delay in making the motion, the defendant has waived the waiver of the jury. New York law is clear that the waiver is waived. *See, Siegel, New York Practice, supra, §378. See, also, Import Alley of Mid-Island v Mid-Island Shopping Center 103 AD2d 797 (2d Dept, 1984),* which is precisely on point.

9. Plaintiff is prejudiced by the antics of the defendant in bringing such an untimely motion after jury selection. Three full days of the undersigned's time were wasted selecting a jury, during which numerous rulings had to be obtained. The case has been prepared for trial by jury due to the defendant's incredible counterclaims of damage to the subject premises, which were never brought to the attention of the plaintiff even a year after the plaintiff departed the premises.

WHEREFORE, the motion to strike the jury demand should be denied in its entirety.

Dated: Long Island City, New York

August 8, 2018



PETER J. VERDIRAME

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New York State Unified Court System



WebCivil Supreme - Appearance Detail

Court: **Kings Supreme Court**
 Index Number: **0504318/2015**
 Case Name: **NOUVEAU ELEVATOR INDUSTRIES vs. KWOK, ANNIE**
 Case Type: **E-FILED CONTRACT**
 Track: **Standard**

Appearance Information:

Appearance Date	Time	Court Date Purpose	Outcome Type	Justice Part	Remarks	Motion Seq
09/12/2018		Motion		SYLVIA G. ASH, PT. 71 MOTION TERM 71		8
09/12/2018		Motion		SYLVIA G. ASH, PT. 71 MOTION TERM 71		9
07/27/2018		Supreme Trial	REFERRED TO CHAMBERS	SYLVIA G. ASH, PT. 71 TRIAL TERM 71	TRIAL	
07/19/2018		Supreme Trial	ADJOURNED	TRIAL TERM 71	TRIAL	
07/19/2018		Supreme Trial	OVERRIDE	JURY COORDINATING PART 1 JURY COORDINATING PART 1	PICKED	
07/18/2018		Supreme Trial	ADJOURNED	JURY COORDINATING PART 1 JURY COORDINATING PART 1	PICKED	
07/17/2018		Supreme Trial	ADJOURNED	JURY COORDINATING PART 1 JURY COORDINATING PART 1	PICKING	
07/16/2018		Supreme Trial	ADJOURNED	JURY COORDINATING PART 1 JURY COORDINATING PART 1	PICKING	
06/05/2018		Supreme Trial	ADJOURNED	JURY COORDINATING PART 1 JURY COORDINATING PART 1	1SEL209	
02/09/2018		Supreme Initial (first time on)	ADJOURNED	JURY COORDINATING PART 1 JURY COORDINATING PART 1	PRE-TRIAL	
08/11/2017		Supreme Trial	REMAND	LANDICINO, PT 81 NOTE OF ISSUE/NO APPEARANCE	BY MOTION	
03/17/2017		Supreme Trial	ADJOURNED	LANDICINO, PT 81 NOTE OF ISSUE/NO APPEARANCE	MOTION	
03/03/2017		Motion	MOTION DECIDED-OPEN APPEARANCE	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	GEXT	6
03/03/2017		Motion	MOTION DECIDED-OPEN APPEARANCE	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	GEXT	7
12/16/2016		Motion	ADJOURNED	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	I/O	6
12/16/2016		Motion	ADJOURNED	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	I/O	7
10/17/2016		Motion	ADJOURNED	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	I/O	6
10/17/2016		Motion	ADJOURNED	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	I/O	7
10/14/2016		Supreme Trial	ADJOURNED	LANDICINO, PT 81 NOTE OF ISSUE/NO APPEARANCE	BY MOTION	
07/22/2016		Supreme Trial	ADJOURNED	LANDICINO, PT 81 NOTE OF ISSUE/NO APPEARANCE		
07/06/2016		Motion	MOTION DECIDED-OPEN APPEARANCE	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	GEXT	4
07/06/2016		Motion	MOTION DECIDED-OPEN APPEARANCE	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	GEXT	5

04/11/2016	Supreme Trial	COMPLIANCE CONFERENCE HELD	LANDICINO, PT 81 CENTRAL COMPLIANCE PART		
03/02/2016	Motion	MOTION WITHDRAWN	LANDICINO, PT 81 MOTION TERM 81	STIP ADM ADJ	2
03/01/2016	Motion	MOTION WITHDRAWN	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION	STIP	1
01/21/2016	Motion	ADJOURNED	CENTRAL COMPLIANCE PART CENTRAL COMPLIANCE PART MOTION		1
01/21/2016	Motion	ADJOURNED	MARK I. PARTNOW (PT. 43) SUBSEQUENT MOTION PART		2
09/24/2015	Supreme Trial	PRELIMINARY CONFERENCE HELD	MARK I. PARTNOW (PT. 43) INTAKE PART		
08/11/2015	Supreme Initial (first time on)	ADJOURNED	MARK I. PARTNOW (PT. 43) INTAKE PART		

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