

# **EXHIBIT B**

At a(n) IAS Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse thereof, at 360 Adams Street, Brooklyn, NY 11201, on the 19 day of April, 2019.

PRESENT:

HON. JOHNNY L. BAYNES,

JSC.

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Index No.:  
512988/2016

LEONARDO GONZALEZ,

Plaintiff,

-against-

RED HOOK CONTAINER TERMINAL, LLC,

Defendants.

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Defendant has submitted an October 18, 2018 motion to dismiss the complaint pursuant to CPLR§ 3212. The motion is accompanied by an October 1, 2018 affirmation which essentially merely shepherds in a transcript of plaintiff's deposition and various discovery documents, with no memorandum of law or narrative articulating theories for dismissal. Plaintiff interposed what appears to be a similarly *pro forma* February 7, 2019 affirmation in opposition, also shepherding in documents with no narrative, and a memorandum of law consisting of little more than a series of non-evidentiary attorney hearsay statements of presumed facts, and legal arguments made without a factual foundation.

Defendant then submitted a February 12, 2019 reply affirmation which, instead of properly limiting itself of "replies" to arguments already made, shepherds in additional

documents while objecting to one of Plaintiff's expert witnesses, and a prior attorney affirmation in support an earlier motion to strike

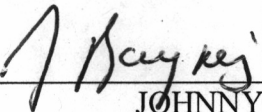
The parties are both referred to CPLR § 3212(b) for guidance with respect to, *inter alia*, the affidavit requirement for summary judgment motions. The parties are further referred to the lead case, Zuckerman v. City of New York, 49 N.Y.2d 557 (1980), for guidance with respect to parties' shifting burdens of proof, and reliance upon non-evidentiary attorney affirmations for factual allegations, as opposed to affidavits, in admissible form, from persons purporting to have personal knowledge of the facts attested to.

WHEREFORE, it is hereby

ORDERED AND ADJUDGED that Defendants' October 1, 2018 CPLR 3212 motion to dismiss is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER

  
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JOHNNY L. BAYNES, JSC

HON. JOHNNY LEE BAYNES

KINGS COUNTY CLERK  
FILED  
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