

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
JANET BARBASH,

Plaintiff,

-against-

STEPHEN CLARKE, individually and d/b/a
GREENPORT YACHT & SHIPBUILDING
COMPANY,

Defendant.
-----X

STEPHEN CLARKE, individually and d/b/a
GREENPORT YACHT & SHIPBUILDING
COMPANY,

Third-Party Plaintiff,

-against-

ARTHUR FELD,

Third-Party Defendant.
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Index: 601427/2017

REPLY AFFIRMATION

Calendar:
201900136OT

Justice Assigned:
Hon. Paul Baisley

JOHN H. MULVEHILL, being an attorney at law and admitted to practice in all of the courts in the State of New York, affirms under penalty of perjury pursuant to CPLR §2106 that upon information and belief the following facts are true:

1. That he is the attorney for the Plaintiff, JANET BARBASH, and submits this Affirmation in support of the motion:

- a. Order of Preclusion and for a further
- b. Order directing further disclosure and for

c. Such other and further relief as this Court may deem just and proper.

2. I want to see the expert report of JAMES R. CERRUTI and ROY J. SCOTT that they conform to the Defendants Notice of Disclosure.

3. I want to see the affidavits of Susano Jimenez, George Van Etten and Thomas Bernhardt, III that they conform to their statements.

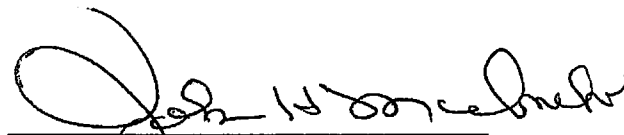
There is no proof that the disclosures can be relied upon.

4. Defendant in his paragraph three claims plaintiff failed to cite any applicable rule or statute. See paragraph eight of my affidavit dated 8/19/2019.

5. The vessel was totally decimated in the explosion. Unavailability of evidence is a special circumstance warranting further disclosure. See Brooklyn Floor Maintenance v. Providence Washington Insurance Co. 296AD 2nd 520 (2nd Department 2002); Rosario v. General Motors 148AB2nd108 (1989).

WHEREFORE I respectfully request an Order of preclusion or in the alternative a further Order directing the defendant/third-party plaintiff to produce a copy of the reports of James R. Cerruti and Roy J. Scott and for a further Order directing the production of the affidavits of Susano Jimenez, George Van Etten and Thomas Bernhardt, III all sworn to on March 7, 2019 and for such other and further relief as this Court may deem just and proper.

Dated: Saint James, New York
September 11, 2019



JOHN H. MULVEHILL

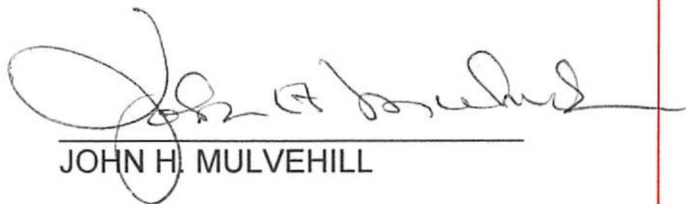
AFFIRMATION OF GOOD FAITH

JOHN H. MULVEHILL, being an attorney at law affirms under penalty of perjury

pursuant to CPLR 2106 that upon information and belief the following facts are true:

1. No good faith conferral was held pursuant to 22NYCR Section 202.7 (c) because the effort would be useless. Defendant has engaged in so much motion practice to date that any effort would be a waste of time.

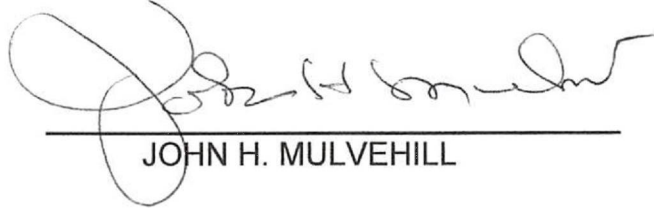
Dated: Saint James, New York
September 11, 2019



JOHN H. MULVEHILL

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on September 11, 2019 I electronically filed the foregoing REPLY AFFIRMATION through the NYS CEF system. I certify that counsel of record for defendants/third-party plaintiffs and third-party defendant are registered as CEF Filer and that they will be served by the NYS CEF system.



JOHN H. MULVEHILL