

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK

PART

IAS MOTION 38EFM

*Justice*

-----X

11 ESSEX STREET CORP.,

Plaintiff,

- v -

7 ESSEX STREET LLC. C/O VESTA DEVELOPMENT  
GROUP, DESIMONE CONSULTING ENGINEERS,  
JEFFREY M. BROWN ASSOCIATES, INC. (THIRD PARTY  
PLAINTIFF), BERZAK GOLD, P.C., BIG APPLE WRECKING  
AND CONSTRUCTION CORP., CASINO DEVELOPMENT  
GROUP, INC. (THIRD PARTY DEFENDANT), CASINO  
DEVELOPMENT CORP. (THIRD PARTY DEFENDANT),  
CASINO DEVELOPMENT CORP. F/K/A DANNA  
CONSTRUCTION COMPANY (THIRD PARTY  
DEFENDANT), WILLIAM CHARON (THIRD PARTY  
DEFENDANT),

Defendant.

-----X

Motion 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, and 019 are decided in accord  
with the annexed transcript.

**DECISION + ORDER ON  
MOTION**

7/30/2019

DATE

CHECK ONE:

☐  
☐  
☐  
☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐

DENIED

☒  
☐  
☐  
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

☐

REFERENCE

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK - CIVIL TERM - PART 38

3 -----X  
4 11 ESSEX STREET CORP.,

5 Plaintiff,

6 -against-

7 Index No. 110019/04

8 JEFFREY M. BROWN ASSOCIATES, INC.,

9 Defendant.

10 -----X  
11 JEFFREY M. BROWN ASSOCIATES, INC.,

12 Third-Party Plaintiff,

13 -against-

14 DANNA CONSTRUCTION CORP., DANNA EQUIPMENT CORP.,  
15 and MICHAEL DANNA,

16 Third-Party Defendants.

17 -----X

18 111 Centre Street  
19 New York, New York  
20 July 9, 2019

21 B E F O R E: HONORABLE LOUIS L. NOCK  
22 Supreme Court Justice

23 A P P E A R A N C E S:

24 WEG & MYERS, PC  
Attorneys for the Plaintiff  
52 Duane Street  
New York, New York 10007

BY: DENNIS T. D'ANTONIO, ESQ.  
BY: JOSHUA L. MALLIN, ESQ.

HARRINGTON, OCKO & MONK, LLP  
Attorneys for the Defendant/  
Third-Party Plaintiff  
JEFFREY M. BROWN ASSOCIATES, INC.  
81 Main Street  
White Plains, New York 10601  
BY: KEVIN J. HARRINGTON, ESQ.  
BY: MICHAEL W. FREUDENBERG, ESQ.

## 1 A P P E A R A N C E S:

2

RUSSO &amp; TONER, LLP

3

Attorneys for the Third-Party Defendants

DANNA CONSTRUCTION CORP., DANNA EQUIPMENT CORP.

4

and MICHAEL DANNA

33 Whitehall Street

5

New York, New York 10004

BY: KEVIN G. HORBATIUK, ESQ.

6

7

8

Diane Kavanaugh, RPR

9

Senior Court Reporter

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## Proceedings

1 THE COURT: Good morning, everyone.

2 We are back on the record. It is a pleasure for me  
3 to have all counsel here again in the matter of 11 Essex  
4 Street Corp. versus 7 Essex Street, LLC. The case bears  
5 Index No. 110019 of 2004.

6 Ladies and gentlemen, thank you for being here.

7 We are all very familiar with this case. This is a  
8 case that will be a jury trial. And this is now the second  
9 pretrial conference in this matter. It is an important  
10 conference, as all of them are. And I thank everybody for  
11 participating.

12 The last time we were on the record together we  
13 were talking about the receipt of papers on the parties'  
14 respective motions in limine.

15 I want to thank everybody for very skilled, very  
16 scholarly, excellent work product on all sides.

17 Thank you, ladies and gentlemen.

18 I have become intimately familiar with your  
19 arguments and your positions because I have read every  
20 single word and have researched every single authority that  
21 you have proffered before me. And I appreciate your hard  
22 work.

23 The purpose of today's conference, as I stated last  
24 time we were together, was for me to issue my determinations

25

## Proceedings

1 I am prepared to do so this morning.

2 So I would ask everyone to listen very carefully as  
3 I go through my determinations. And then when we're  
4 finished with that, we can talk about proceeding forward  
5 with the case.

6 I am going to do this in the order of motion  
7 sequence number. So we will begin with motion sequence 009  
8 and conclude with motion sequence 019.

9 I will begin with motion sequence 009.

10 Motion sequence 009 consists of defendant Jeffrey  
11 M. Brown's motion to preclude evidence that might contravene  
12 the six determinations made in prior administrative and  
13 court proceedings.

14 I will be referring to defendant Jeffrey M. Brown  
15 going forward as JMB, as you all have, to make things  
16 easier.

17 I would like to quote the six determinations that  
18 were made during the prior administrative proceedings, the  
19 Department of Buildings, the Board of Standards and Appeals,  
20 and, of course, we all know there was an Article 78  
21 proceeding that came after that. I would like to quote what  
22 those six determinations were.

23 Here's what they were. I am reading from the  
24 conclusion page of JMB's opposition papers, because it sets

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.