

NYSCEF DOC. NO. 71

RECEIVED NYSCEF: 10/02/2017

INDEX NO. 150210/2017

NYSCEF DOC. NO. 70

RECEIVED NYSCEF: 10/02/2017

At Part 43 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at ~~66~~ Centre Street, New York, New York on the 28th day of September, 2017.

PRESENT:

HON. ROBERT R. REED  
~~J.S.C.~~ J.S.C.

M.S.# 2  
VAC

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

-----X  
TOWER INSURANCE COMPANY OF NEW YORK,

Index No.: 150210/2017

Plaintiff,

- against -

TYPHYNE JOHNSON and YVETTE BRANTLEY,

Defendants.  
-----X

TYPHYNE JOHNSON,

Third-Party Plaintiff,

- against -

HSBC MORTGAGE CORPORATION (USA),  
NORTHEAST AGENCIES, INC., and  
LESTER DAVIS,

Third-Party Defendants.  
-----X

Upon the reading and filing of the affirmation of Michael A. McGarry, Jr., Esq., dated August 18, 2017, the exhibits annexed thereto, the affidavit of William Hitselberger sworn to on August 18, 2017, and upon all prior pleadings and proceedings, and good cause being shown therein,

NOW, upon the motion of Plaintiff, Tower Insurance Company of New York, it is hereby:

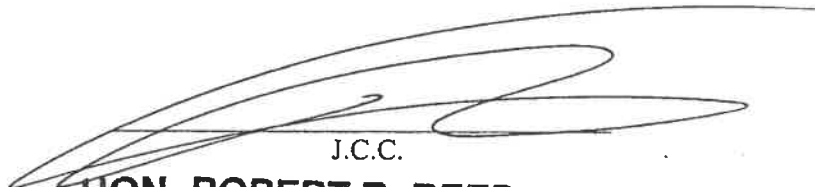
ORDERED, that Defendants appear and show cause at Part 43 of this Court to be held at the Courthouse located at ~~33~~ <sup>111</sup> Centre Street, New York, New York on the 16<sup>th</sup> day of November, 2017, at 10:15 a.m., or as soon thereafter as counsel can be heard, why an Order should not be entered:

- a) Pursuant to CPLR 2201 vacating the "stayed" marking of this matter; and
- b) For such other and further relief as this Court deems just, proper and equitable.

ORDERED, that a confirmed copy of this order to show cause and the papers annexed thereto shall be served upon all parties, via E-Filing, on or before the 6<sup>th</sup> day of October, 2017, and said service shall be deemed good and sufficient.

No prior application has been made for the relief sought herein.

ENTER:

  
J.C.C.  
HON. ROBERT R. REED  
J.S.C. 9/28/17

Opposition papers shall be served by November 14, 2017.  
All papers shall be served, so received, by the above dates and shall be e-filed, if applicable. ORAL ARGUMENT IS REQUIRED.

The following are the parties to be served:

To: **VIA E-FILING**

Zachary G. Meyer, Esq.  
ZG Meyer, PLLC  
Attorneys for Defendant; Typhyne Johnson  
14 Penn Plaza, Suite 1315  
New York, NY 10122  
(212) 265-8280

Alan S. Friedman, Esq.  
Attorney for Defendant, Yvette Brantley  
875 Avenue of the Americas, Suite 1802  
New York, NY 10001  
(212) 244-5424

Heather, H. Kidera, Esq.  
Attorneys for Third-Party Defendant, HSBC  
Phillips Lytle LLP  
340 Madison Avenue, 17th Floor  
New York, NY 10173-1922  
(212) 508 0479

Hillary J. Raimondi, Esq.  
Attorneys for Third-Party Defendant, Northeast Agencies  
Traub Lieberman Straus & Shrewsberry LLP  
Seven Skyline Drive  
Hawthorne, NY 10532

Nancy Q. Koba, Esq.  
Attorneys for Third-Party Defendant, Lester Davis  
Wood Smith Henning & Berman LLP  
685 Third Avenue, 18<sup>th</sup> Fl.  
New York, NY 10017

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

-----X  
TOWER INSURANCE COMPANY OF NEW YORK,

Index No.: 150210/2017

Plaintiff,

- against -

TYPHYNE JOHNSON and YVETTE BRANTLEY,

Defendants.  
-----X

**AFFIRMATION  
IN SUPPORT OF  
ORDER TO SHOW  
CAUSE**

TYPHYNE JOHNSON,

Third-Party Plaintiff,

- against -

HSBC MORTGAGE CORPORATION (USA),  
NORTHEAST AGENCIES, INC., and  
LESTER DAVIS,

Third-Party Defendants.  
-----X

Michael A. McGarry, Jr., an attorney duly admitted to practice law in the courts of the State of New York, affirms the following under penalty of perjury, as follows:

1. I am an attorney associated with the Law Office of James J. Croteau, attorneys of record for Plaintiff, Tower Insurance Company of New York ("Plaintiff"), and I have personal knowledge of the matters set forth below by reviewing the file maintained in this office.
2. I submit this affirmation in support of Plaintiff's motion by Order To Show Cause seeking an order: (a) pursuant to CPLR 2201 vacating the "stayed" marking of the instant action; and (b) for such other and further relief as this Court deems just, proper and equitable.

### PROCEDURAL HISTORY

3. This declaratory judgment action arises from an alleged slip and fall incident involving Defendant, Yvette Brantley that occurred on January 26, 2015 at a premises owned by Defendant, Typhyne Johnson and located at 3553 Boller Ave., Bronx NY 10466.

4. On January 9, 2017, Plaintiff filed a Summons and Complaint for Declaratory Judgment in this matter. (A true and accurate copy, excluding the exhibits, is annexed hereto as **Exhibit "A"**.)

5. On January 29, 2017, Defendant, Typhyne Johnson filed an Answer and Counterclaim. (A true and accurate copy is annexed hereto as **Exhibit "B"**.)

6. On February 1, 2017, Defendant, Yvette Brantley filed an Answer. (A true and accurate copy is annexed hereto as **Exhibit "C"**.)

7. On February 6, 2017, Plaintiff filed a Reply to the Counterclaims filed by Defendant, Typhyne Johnson. (A true and accurate copy is annexed hereto as **Exhibit "D"**.)

8. On February 8, 2017, Defendant, Typhyne Johnson filed a Third-Party Summons and Complaint against Third-Party Defendants, HSBC MORTGAGE CORPORATION (USA), NORTHEAST AGENCIES, INC., and LESTER DAVIS. (A true and accurate copy, without exhibits, is annexed hereto as **Exhibit "E"**.)

9. On March 6, 2017, Third-Party Defendant, Lester Davis filed an Answer to the Third Party Complaint. (A true and accurate copy is annexed hereto as **Exhibit "F"**.)

10. On March 6, 2017, Third-Party Defendant, HSBC MORTGAGE CORPORATION (USA) filed a Pre-Answer Motion to Dismiss the Third Party Complaint. (A true and accurate copy, without the supporting documents, is annexed hereto as **Exhibit "G"**.)

# 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.