

NYSCEF DOC. NO. 71

RECEIVED NYSCEF: 10/02/2017

INDEX NO. 150210/2017

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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.

P R E S E N T:

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

**ORDER TO
SHOW CAUSE**

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:

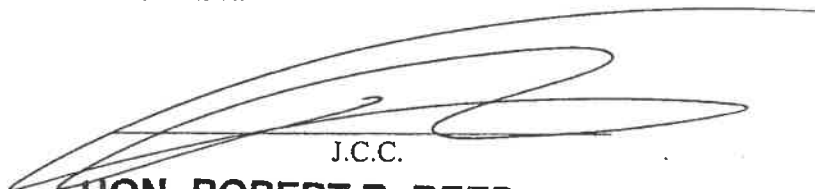
ORDERED, that Defendants appear and show cause at Part 43 of this Court to be held at the Courthouse located at ~~33~~ ¹¹¹ Centre Street, New York, New York on the 16th day of November, 2017, at 10:15 a.m., or as soon thereafter as counsel can be heard, why an Order should not be entered:

- 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 6th 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**

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Attorneys for Defendant; Typhyne Johnson
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Heather, H. Kidera, Esq.
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Hillary J. Raimondi, Esq.
Attorneys for Third-Party Defendant, Northeast Agencies
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Nancy Q. Koba, Esq.
Attorneys for Third-Party Defendant, Lester Davis
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685 Third Avenue, 18th 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"**.)

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