

(rev. 10/15/15)

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA  
COMMERCIAL DIVISION**

**PRESIDING JUSTICE: HON. ANTHONY J. PARIS**

**Carl Weiss, Ann Weiss**

**PRELIMINARY CONFERENCE  
STIPULATION AND ORDER**

**Commercial Division**

Plaintiff(s),

Index No.: 2016EF993

RJI No.: 33-17-0200

-v-

**Zellar Homes, Ltd, et al**

Defendant(s).

*All items on this form must be completed unless inapplicable.  
Use additional pages, if necessary.*

**(1) Appearances:**

**Counsel for Plaintiff(s):**

Client's Name: Carl Weiss and Anne Weiss

Lead Counsel's Name: Michael J. Balestra, Esq.

Firm Name and Address: Menter, Rudin & Trivelpiece, PC

308 Maltbie Street, Syracuse, New York 13204

Telephone Number: 315.474.7541

Facsimile Number: 315.474.4040

Email Address: mbalestra@menterlaw.com

**Counsel for Defendant(s):**

Client's Name: See Attached list

Lead Counsel's Name: \_\_\_\_\_

Firm Name and Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Counsel for Defendant(s):**

Client's Name: \_\_\_\_\_

Lead Counsel's Name: \_\_\_\_\_

Firm Name and Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

(2) **Pertinent Dates:**

a. Date of Commencement: 3/14/16

b. Date of Joinder: 4/8/16

c. RJJ Date: 1/18/17

(3) **Nature of Case:**

*Pursuant to 22 NYCRR 202.12(c)(1), provide a brief description of the factual and legal issues raised in the pleadings.*

a. The legal theories and salient facts supporting plaintiff's claims are: Breach of contract by Zellar Homes to construct Plaintiffs' residence. Diversion of trust funds by Zellar Homes and David Zellar individually.

Relief Demanded: Damages for breach of contract; accounting and damages on behalf of \*\*

b. Defendant Zellar Homes 's claims. If issue has been joined, the legal

\*\*all trust fund beneficiaries under Lien Law Article 3-A.

theories and salient facts supporting defendant Zellar Homes, Ltd.'s defenses, counterclaims and third-party claims are Failure to state a cause of action upon which relief may be granted, lack of subject matter jurisdiction, lack of capacity to sue, relief is limited by written contract/agreement, contribution, unjust enrichment, and breach of contract.

Relief Demanded: Dismiss Plaintiff's claims, and \$214,711.32 in damages for unjust enrichment or \$253,359.36 in damages for breach of contract, reasonable costs and fees (including atty's fees)

c. Defendant David Zellar's claims. If issue has been joined, the legal theories and salient facts supporting defendant David Zellar's defenses, counterclaims and third-party claims are lack of personal jurisdiction, failure to state a cause of action upon which relief may be granted, lack of subject matter jurisdiction, and lack of capacity to sue.

Relief Demanded: Dismiss Plaintiff's claims with prejudice, grant David Zellar reasonable costs and fees (including attorney's fees).

(4) **Attorneys' Consultation:**

The parties consulted in a good faith effort to reach agreement on the issues identified in Uniform Commercial Division Rule 8.\* Agreement was reached as follows:

ISSUE DISCUSSED	DATE OF CONSULTATION	AGREEMENT REACHED (Y or N)
Resolution of the case		
Fact discovery including methods, timing and scope		
Expert disclosure including designation, timing and scope		
The use of ADR		
Voluntary and informal exchange of information		
Confidentiality and privilege		
The scope, extent, order and form of production		
The anticipated cost and burden of data recovery and proposed initial allocation of such costs		

\* Concerning electronic discovery, see Item (8)d below.

COMMENTS: \_\_\_\_\_

- (5) **Impleader:** Do you anticipate the need to add parties? If so, who and when? \_\_\_\_\_  
Robin Curtis, March 2017

*Note: Impleader must be completed no later than 15 days after the end of the last party deposition.*

(6) **Early Disposition:**

a. This case is appropriate for early disposition by:

- i. \_\_\_\_\_ the accelerated adjudication procedures of the Commercial Division of the Supreme Court as set forth in Uniform Commercial Division Rule 9
- ii. \_\_\_\_\_ ADR (identify type and timing) \_\_\_\_\_
- iii. \_\_\_\_\_ limited issue discovery in aid of an early dispositive motion or settlement (identify type and timing) \_\_\_\_\_
- iv. \_\_\_\_\_ dispositive motion that will be filed on or before \_\_\_\_\_
- v. \_\_\_\_\_ other (identify type and timing) \_\_\_\_\_

b. This case is not appropriate for early disposition because previous settlement negotiations have failed; too many factual issues for a dispositive motion.

(7) **Confidentiality Order:**

The court recognizes that most cases in the Commercial Division involve highly sensitive information. In such cases, the parties may be directed to enter into a Confidentiality Agreement that the court will "So Order." The parties are encouraged to use the model



confidentiality agreement found at: <http://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>.

The parties \_\_\_\_\_ HAVE or X HAVE NOT entered into a Confidentiality Agreement.

The parties \_\_\_\_\_ WILL or X WILL NOT enter into a Confidentiality Agreement.

If so, then state when: \_\_\_\_\_. If not, then state why not: \_\_\_\_\_

(8) **Disclosure** [See generally 22 NYCRR 202.70(g)]:

It is hereby **STIPULATED** and **ORDERED** that disclosure shall proceed as follows pursuant to the CPLR and the Uniform Commercial Division Rules:

a. **Insurance Coverage** shall be furnished on or before n/a

b. **Bill of Particulars:**

i. Demand(s) for a bill of particulars shall be served on or before March 10, 2017

ii. Response(s) to the demand(s) for a bill of particulars shall be served on or before April 14, 2017

c. **Document Production:**

i. Initial demands for discovery and inspection shall be served on or before March 10, 2017

ii. Responses to the demands for discovery and inspection shall be served on or before April 14, 2017

iii. The parties will provide a statement regarding the completeness of document production on or before April 28, 2017

iv. If documents are withheld are grounds of privilege, the parties agree to employ:

X a categorical privilege log

\_\_\_\_\_ a document by document privilege log

\_\_\_\_\_ other (describe) \_\_\_\_\_

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