

SUPREME COURT - STATE OF NEW YORK

Present:

HON. VITO M. DESTEFANO,

Justice

TRIAL/IAS, PART 15
NASSAU COUNTY

BORN TO BUILD LLC,

Plaintiff,

-against-

**IBRAHIM SALEH, a/k/a Abraham Saleh,
a/k/a Kamel Saleh, a/k/a Kamel Y. Saleh,
a/k/a Kamel Youssef Saleh, a/k/a Yaakoub
Saleh, a/k/a Yaakoub Y. Saleh, a/k/a
Yaakoub Youssef Saleh, 1141 REALTY
LLC, KARIM BIN TALEB, a/k/a Karim Bentelab,
BORN TO BUILD CONSTRUCTION CORP.,
SARITA VASWANI, BANCO POPULAR OF
NORTH AMERICA, EDMUND A. NAHAS,
ZRAICK NAHAS & RICH, and JOHN DOES
1 through 10 (such parties being persons of
entities who have possession of plaintiff's tools
and equipment, or who own or control the places
where such tools and equipment are stored),**

Defendants.

Decision and Order

MOTION SUBMITTED:

April 29, 2013

MOTION SEQUENCE: 15

INDEX NO.: 002345-11

The following papers and the attachments and exhibits thereto have been read on this motion:

Notice of Motion	1
Affirmation in Opposition	2
Reply Affirmation	3

It is hereby ordered that the motion by the Plaintiff for an order pursuant to CPLR 3124 compelling Defendant 1141 Realty, LLC to produce Jagdish Vaswani for a deposition to be held

at the office of Plaintiff's attorneys is denied, without prejudice. The court notes that the Defendant "has the right to determine which of its officers or employees with knowledge of the facts may appear for an examination before trial" (*see* *McNeill v City of New York*, 40 AD3d 823, 825 [2d Dept 2007]; CPLR 3106[d]). Of course, the Plaintiff "may demand the production of additional witnesses, upon a showing that the representative already deposed had insufficient knowledge or was otherwise inadequate" (*McNeill v City of New York, supra*, at 825) and seek appropriate relief in accordance with CPLR Article 31 in the event of non-compliance.

This constitutes the decision and order of the court.

Dated: May 14, 2013


Hon. Vito M. DeStefano