

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**CA 19-01912**

PRESENT: WHALEN, P.J., CENTRA, CURRAN, WINSLOW, AND BANNISTER, JJ.

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CHRISTA CONSTRUCTION, LLC, PLAINTIFF-RESPONDENT,

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MEMORANDUM AND ORDER

VANGUARD LIGHT GAUGE STEEL BUILDINGS, A DIVISION  
OR SUBSIDIARY OF SHELTER2HOME, LLC,  
DEFENDANT-APPELLANT.  
(APPEAL NO. 3.)

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KUSHNICK PALLACI PLLC, BOHEMIA (JEFFREY A. LHUILLIER OF COUNSEL), FOR  
DEFENDANT-APPELLANT.

ERNSTROM & DRESTE, LLP, ROCHESTER (TIMOTHY D. BOLDT OF COUNSEL), FOR  
PLAINTIFF-RESPONDENT.

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Appeal from a judgment of the Supreme Court, Ontario County  
(Frederick G. Reed, A.J.), entered March 19, 2019. The judgment  
awarded plaintiff the sum of \$114,468.11.

It is hereby ORDERED that said appeal is unanimously dismissed  
without costs.

Memorandum: Defendant appeals from a judgment entered following  
an inquest on damages, which was held after Supreme Court granted  
plaintiff's motion to strike defendant's answer and counterclaims  
based on its failure to comply with discovery demands. On appeal,  
defendant contends that the court erred in striking its answer and  
counterclaims. We conclude that the appeal must be dismissed. "It is  
incumbent upon an appellant to assemble a proper record, including the  
relevant documents that were before the lower court, and appeals will  
be dismissed when the record is incomplete" (*Matter of Pratt v  
Anthony*, 30 AD3d 708, 708 [3d Dept 2006]; see *Fink v Al-Sar Realty  
Corp.*, 175 AD3d 1820, 1820-1821 [4th Dept 2019]; *Mergl v Mergl*, 19  
AD3d 1146, 1147 [4th Dept 2005]). Specifically, "[t]he record on  
appeal 'must include any relevant transcripts of proceedings before  
the [court]' " (*Kai Lin v Strong Health* [appeal No. 1], 82 AD3d 1585,  
1586 [4th Dept 2011], *lv dismissed in part and denied in part* 17 NY3d  
899 [2011], *rearg denied* 18 NY3d 878 [2012]). Here, defendant failed  
to include in the record transcripts of several court appearances  
during which counsel for the parties discussed, inter alia, whether  
defendant complied with a conditional order to strike and, if not,  
whether it demonstrated a reasonable excuse for that failure and the  
existence of a meritorious defense to the action (see generally  
*Legarreta v Neal*, 108 AD3d 1067, 1070 [4th Dept 2013]). Without those

transcripts, this Court cannot undertake meaningful review of defendant's contentions on appeal (*see Vanyo v Vanyo*, 120 AD3d 1536, 1537 [4th Dept 2014]), and we thus dismiss the appeal (*see Mergl*, 19 AD3d at 1147).

Entered: March 20, 2020

Mark W. Bennett  
Clerk of the Court