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50th St HDFC v. Abdur Rahim

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50th St. HDFC v Abdur-Rahim
2021 NY Slip Op 50693(U) [72 Misc 3d 1210(A)]
Decided on July 26, 2021
Civil Court Of The City Of New York, Kings County
Weisberg, J.
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected in part through July 27, 2021; it will not be published in the printed Official Reports.

Decided on July 26, 2021

Civil Court of the City of New York, Kings County

<p>50th Street HDFC, Petitioner,</p> <p>against</p> <p>Jacqueline Abdur-Rahim, et al., Respondents.</p>
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309170/20

Michael Weisberg, J.

The following e-filed documents listed by NYSCEF document number 14-17; 19-20; 22-23 were read on Respondent's motion for leave to conduct discovery (seq. no. 1).

This is a holdover summary eviction proceeding premised on allegations of nuisance-type conduct. The allegations roughly fall into two main types: loud noises caused by arguing and screaming or by children banging walls and making noise; and spitting/loitering/littering. None of the allegations concern conduct by the tenant-of-record herself, Respondent Jacqueline Abdur-Rahim. Abdur-Rahim has moved for leave to conduct discovery in the form of the production of documents (i.e. documentary or recorded evidence of each alleged incident) and a deposition of an agent of Petitioner "having personal knowledge of and responsible for all aspects of management of the subject residential premises."

In a special proceeding, of which summary eviction proceedings are one type, court permission is required for discovery (CPLR § 408; *McQueen v Grinker*, 158 AD2d 355, 359 [1st Dept 1990]). Often lost in the disputes over whether the court should allow discovery is the rationale for requiring permission in the first place: the recognition that special proceedings are designed for "speed and economy," which discovery can impede (Siegel, NY Prac § 555 at 984 [5th ed 2011]; *see also Lev v Lader*, 115 AD2d 522, 522 [2d Dept 1985] ["The brief period provided for discovery herein does not run afoul of the policies of CPLR Article 4 favoring swift adjudication of special proceedings"]). It is not uncommon for parties to spend more time litigating the issue of discovery than it would have taken to complete discovery, especially where discovery comprises merely the production of documents.

"The purpose of litigation is to achieve a just result and not to spring surprise on one's adversary" (*Zayas v Morales*, 45 AD2d 610, 613 [2d Dept 1974]). In general, discovery facilitates that purpose; it "advance[s] the function of a trial to ascertain truth and to accelerate the disposition of suits" (*Rios v Donovan*, 21 AD2d 409, 411 [1st Dept 1964]). Retaining evidence, rather than disclosing it, not only may impede efficient resolution of disputes, but may provide a party with an unfair advantage (*see Eagle-Picher Lead Co. v Mansfield Paint Co., Inc.*, [*2]203 AD 9, 12 [3d Dept 1922] ["the court has no interest in assisting the party to conceal the grounds of his prosecution or his defense, in the hope that surprise at the trial may give him advantage"]).

Though summary eviction proceedings were created for the purpose of "speed [and] promptness" in the recovery of possession of real property (*Dubowksy v Goldsmith*, 202 AD 818 [2d Dept 1922] ["if such had not been the purpose of the law, the action of ejectment would have been sufficient"]), "[it should not] be forgotten that a summary proceeding, despite its name, is nonetheless a judicial proceeding, and the ends of justice ought not be sacrificed to speed" (*42 West 15th St. Corp. v Friedman*, 208 Misc 123, 125 [App Term, 1st Dept 1955]). The intended summary nature of the proceeding notwithstanding, gaining advantage by withholding evidence should be no more sanctioned than it is in regular civil actions. Additionally, as recognized by Judge David Saxe almost four decades ago, rarely are summary eviction proceedings "'simple' cases of holding over after a term . . . housing matters have become more complex" (*New York Univ. v Farkas* (121 Misc 2d, 643, 646 [Civ Ct, NY County 1983]). There may be the potential for discovery to unjustifiably delay a summary proceeding, but just as in regular civil actions, "discovery may be beneficial to both parties and the efficiency of the system in general" (*id.*).

The court may grant permission for discovery in a summary eviction proceeding upon a

showing of "ample need" (*Hartsdale Realty Co. v Santos*, 170 AD2d 260 [1st Dept 1991]). In considering whether movant has demonstrated ample need for discovery, courts typically consider the various factors set forth in *Farkas* (121 Misc 2d at 647), "*not all of which need to be present in every case*" ([Mautner-Glick Corp. v Higgins](#), 64 Misc 3d 16, 2019 NY Slip Op 29129 [App Term, 1st 2019] [emphasis added]). Here, where Petitioner does not allege that Abdur-Rahim was involved in any of the alleged incidents, and Abdur-Rahim denies any specific knowledge of those incidents, there is ample need for limited discovery (the production of documents and recordings).

It is significant that Petitioner has failed to identify any prejudice it would suffer by responding to Abdur-Rahim's document demand. There is no reason to conclude that Petitioner could not provide the requested documents and recordings expeditiously, nor is there any reason why responding to the demand would cause any more than minimal delay to the proceeding, if at all. Had Petitioner wished to prosecute its case expeditiously—the very concern for which CPLR § 408 was enacted—it would have proven more efficacious to provide most of the discovery sought by Abdur-Rahim rather than opposing, or even requiring the need for, her motion. A full eight weeks passed between the time Abdur-Rahim first notified Petitioner on the record that she would be moving for leave to conduct discovery and completion of the motion's briefing. There is little reason why discovery could not have been completed in well less than eight weeks. Doing so would have both resulted in less delay and obviated the need to spend attorney hours writing motion papers. And providing this discovery will aid in a more efficient resolution of the dispute.

In contrast to the demand for the provision of documents and recordings, Abdur-Rahim has not shown ample need to depose Petitioner's agent. She has failed to assert what evidence might be obtained from the agent, how it would aid in her defense, and how it could not be obtained in a less intrusive and time-consuming manner. Also, unlike responding to the limited document demand, permitting a deposition is more likely to cause undue delay and to result in Petitioner (the property management wing of the non-profit entity Fifth Avenue Committee) incurring additional legal fees.

Accordingly, it is

ORDERED that Respondent's motion is GRANTED to the extent set forth below, and otherwise DENIED;

ORDERED that Respondent is granted leave to conduct discovery in the form of its proposed document demand annexed to its motion;

ORDERED that the demand is deemed served upon the filing via NYSCEF of a copy of this decision/order with notice of its entry;

ORDERED that Petitioner shall respond to the demand in accordance with the procedures set forth in Article 31 of the CPLR; and

ORDERED that this proceeding shall be calendared for a remote appearance at 11:00 AM on August 25, 2021.

This is the court's decision/order.

Dated: July 26, 2021
Michael L. Weisberg, JHC

[Return to Decision List](#)