2022-04-07

Freeman v. Harmonia Holdings LLC

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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BENJAMIN FREEMAN,

Plaintiff,

- v -

HARMONIA HOLDINGS LLC,TODD SCHUSTER

Defendant.

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INDEX NO. 161866/2019

MOTION DATE 04/07/2022

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 were read on this motion to/for Protective Order.

The motion by defendants for a protective order striking plaintiff's second notice of discovery and inspection is granted. The cross-motion by plaintiff to strike defendant's answer and for sanctions is denied.

Background

This action arises out of the lease of an apartment located in Manhattan. Plaintiff owns the apartment, defendant Harmonia Holdings, LLC was the tenant and defendant Schuster was the guarantor. Defendant Todd Schuster and his wife, Lauren Schuster (a non-party), apparently lived in the apartment. Plaintiff alleges that this lease was for twelve months starting on August 1, 2019 and ending on July 31, 2020. He contends that soon after the lease term began, the tenant's attorney informed plaintiff that the tenant was no longer living in the apartment and that the tenant intended to surrender the apartment on September 30, 2019. Plaintiff seeks to recover under the terms of the lease.

Defendants claim that they rented this apartment with the impression that it would be furnished but when the lease began, they discovered that many of the items present when they initially viewed the apartment were gone. They also complain about severe noise and vibrations from construction in other apartments in the building. Defendants insist the noise was so bad that they had to stay in hotels and now bring counterclaims for breach of warranty of habitability, breach of the covenant of quiet enjoyment, fraud in the inducement, fraud in the concealment, constructive eviction, declaratory judgment and for legal fees.

In this motion, defendants complain about a recent discovery demand from plaintiff. They point out that plaintiff's initial counsel sent a discovery demand on March 13, 2020 and that the parties agreed, in a stipulation dated June 10, 2021, that they had substantially complied with document discovery but depositions remained outstanding. Defendants point out that plaintiff hired a new attorney in January 2022 and this new attorney served a new discovery demand that contained 89 requests. They claim this demand is overbroad, seeks irrelevant information and is unduly burdensome.

In opposition and in support of its cross-motion, plaintiff insists that defendant did not make a good faith effort to resolve this issue before seeking a protective order. He insists that the discovery demands are not overbroad and are, in fact, relevant to the issues in this case. Plaintiff argues the demand does not contain 89 categories of items but instead seeks 25 categories of documents. He demands the Court strike defendants' answer based on their failure to respond to this demand.

In reply, defendants emphasize that this demand came eight months after the parties agreed that paper discovery was essentially done. They point out that plaintiff failed to indicate how the requested information is relevant to plaintiff's claims or defendants' counterclaims.

Defendants maintain that they did not have to seek a non-judicial resolution before seeking a protective order because it would have been futile. They claim that sanctions are clearly not warranted.

In reply to their cross-motion,[1] plaintiff argues that defendants have engaged in frivolous conduct by moving for a protective order without first complying with 22 NYCRR 202.7 and that there was no good faith effort to resolve this issue.

Discussion

"For a protective order to be issued, the party seeking such an order must make a factual showing of 'unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice. Trial courts are vested with broad discretion to issue appropriate protective orders to limit discovery.... This discretion is to be exercised with the competing interests of the parties and the truth-finding goal of the discovery process in mind" (*Cascardo v Cascardo*, 136 AD3d 729, 729-30, 24 NYS3d 742 [2d Dept 2016] [internal quotations and citations omitted]).

The Court grants the motion by defendants for a protective order and denies the cross-motion by plaintiff. As an initial matter, the subject demand is, on its face, overly burdensome. That is putting it mildly. It contains *89* separate paragraphs of document demands in a breach of lease case (NYSCEF Doc. No. 39). The Court does not understand how plaintiff can claim it only sought 25 categories of documents when there are 89 separate requests.

Moreover, these demands seek information that clearly has absolutely nothing to do with the claims or counterclaims. For instance, plaintiff has three demands for landscaping bills from January 1, 2019 through the present for defendants and the Lauren Schuster (the guarantor's wife who also lived in the apartment) (*id*. at 13). That broad demand would include landscaping bills

[1] The Court recognizes that defendants objected to the filing of a reply to plaintiff's cross-motion but the Court will consider it.

for the Schusters' residences from both before and after they lived at the apartment owned by plaintiff (the lease was from August 2019 to July 2020). The Court has no idea how a gardening bill from 2022 for the Schusters' residence in Florida has anything to do with this case. And the subject residence was an apartment—was there even an area big enough or outside to justify hiring a landscaper? Even if there were, these requests are not relevant.

But the overly broad scope does not stop with the requests for landscaping bills. Plaintiff wants copies of all deeds in the name of the Schusters and the corporate defendant, bank account statements, and co-op shares. Again, the Court fails to see how this advances plaintiff's case or helps him defend against defendants' counterclaims. It seems that plaintiff either did not spend enough time evaluating how these demands are relevant to this case or this was an intentional effort to harass defendants. This discovery is just a scattershot of requests and it justifies granting a protective order.

The Court also observes that the history of this litigation justifies striking the subject demand. The parties signed a stipulation dated September 3, 2021 that stated that "The parties have substantially complied with the exchange of information and documentation but depositions remain to be scheduled and taken" (NYSCEF Doc. No. 15). Although this stipulation does not explicitly state that paper discovery was done, no specific demands or outstanding issues were identified. And the parties agreed to complete depositions by October 15, 2021 (plaintiff's initial attorney moved to withdraw on October 7, 2021). A reasonable inference is that because the parties were ready for depositions, paper discovery must have been completed or nearly completed. It simply makes no sense for plaintiff to suddenly and drastically expand the scope of discovery in a case where the parties had already agreed to dates for depositions. Of course, depositions can lead to more document requests but not the broad scope demanded in plaintiff's

second demand. To be clear, the Court makes no finding that plaintiff waived his right to seek more documents. Rather, the Court finds that the second discovery demand is not reasonably contemplated to yield material information.

The Court grants a protective order striking the entire demand at issue here instead of narrowing it down—it is not this Court's role to draft discovery demands or go through nearly 100 requests and identify which ones are relevant and which are not. Both the volume and nature of these requests compel the Court to grant the motion. That defendants allegedly did not first try to resolve this issue before bringing this motion is of no moment because it would have been futile (*Carrasquillo ex rel. Rivera v Netsloh Realty Corp.*, 279 AD2d 334, 719 NYS2d 57 [1st Dept 2001]). What conversation should have occurred after receiving this type of demand? The last discovery order contemplated the taking of depositions, not restarting discovery from scratch.

The Court denies plaintiff's cross-motion to strike the answer because defendants timely moved for a protective order. Moreover, there is no scenario in which sanctions would be appropriate here.

Summary

It may be that counsel for plaintiff, newly arrived in this litigation, wanted to pursue a scorched earth discovery strategy. But changing lawyers does not mean plaintiff can essentially seek to restart discovery unless there's a good reason to do so. This case, already two and half years old, was up to depositions before plaintiff's initial attorney sought to withdraw. This Court cannot condone tactics that have the effect of dragging a case along indefinitely without any clear justification.

Therefore, the Court also orders that depositions must be completed by May 11, 2022. The parties shall e-file an update regarding discovery by May 12, 2022 in accordance with the most recent discovery order (NYSCEF Doc. No. 29).

Accordingly, it is hereby

ORDERED that the motion by defendants for a protective order striking plaintiff's second notice of discovery and inspection is granted; and it is further

ORDERED that the cross-motion by plaintiff is denied in its entirety; and it is further

ORDERED that depositions must be completed by May 11, 2022.

4/12/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE