

Supreme Court of the State of New York  
Appellate Division: Second Judicial Department

D35888  
H/C/prt/hu

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Submitted - June 11, 2012

MARK C. DILLON, J.P.  
ARIEL E. BELEN  
LEONARD B. AUSTIN  
SANDRA L. SGROI, JJ.

2011-10413  
2011-10414

DECISION & ORDER

AAA Vascular Care, PLLC, appellant, v Integrated  
Healthcare Management, LLC, respondent.

(Index No. 2792/11)

Scher & Scher, P.C., Great Neck, N.Y. (Robert A. Scher of counsel), for appellant.

Meiselman, Denlea, Packman, Carton & Eberz, P.C., White Plains, N.Y. (Jill C. Owens of counsel), for respondent.

In an action, inter alia, to recover damages for breach of contract, the plaintiff appeals, as limited by its brief, from (1) so much of an order of the Supreme Court, Nassau County (Jaeger, J.), entered September 27, 2011, as, in effect, denied that branch of its motion which was pursuant to CPLR 3124, in effect, to compel the defendant to comply with item numbers one through five of its document request dated February 25, 2011, by producing the database maintained by the defendant, and granted that branch of the defendant's cross motion which was for a protective order with respect to items number eight and nine of the plaintiff's second document request dated June 3, 2011, and (2) so much of an order of the same court dated October 27, 2011, as found that the defendant had complied with the order entered September 27, 2011.

ORDERED that the appeal from the order dated October 27, 2011, is dismissed; and it is further,

ORDERED that the order entered September 27, 2011, is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

October 3, 2012

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CPLR 3101(a) provides, in pertinent part, that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” The principle of “full disclosure,” however, does not give a party the right to uncontrolled and unfettered disclosure (*JFK Family Ltd. Partnership v Millbrae Natural Gas Dev. Fund 2005, L.P.*, 83 AD3d 899, 900 [internal quotation marks omitted]; see *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531). “Generally, the supervision of disclosure is left to the broad discretion of the trial court, which must balance the parties’ competing interests” (*Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d 1283, 1283). The determination of the trial court will not be disturbed absent an improvident exercise of discretion (see *Spodek v Neiss*, 70 AD3d 810).

In this action, the plaintiff sought, in its first cause of action, “the immediate turnover to it and possession of all its records in the custody of the defendant.” Under the circumstances of this case, the Supreme Court providently exercised its discretion by, in effect, denying that branch of the plaintiff’s motion which was pursuant to CPLR 3124, in effect, to compel the defendant to comply with item numbers one through five of its document request dated February 25, 2011, by producing the database maintained by the defendant, since requiring production of the database would be granting the ultimate relief sought in the plaintiff’s first cause of action (see *Macklowe v 42nd St. Dev. Corp.*, 157 AD2d 566, 567). The Supreme Court also providently exercised its discretion in granting that branch of the defendant’s cross motion which was for a protective order with respect to item numbers eight and nine of the plaintiff’s second document request dated June 3, 2011, on the ground that those requests were redundant (see *Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison*, 214 AD2d 453).

The appeal from the order dated October 27, 2011, must be dismissed, as the portion of the order appealed from that found that the defendant had complied with the order entered September 27, 2011, is a finding of fact, which is not independently appealable (see *Glassman v ProHealth Ambulatory Surgery Ctr., Inc.*, 96 AD3d 801, 861).

The plaintiff’s remaining contentions either are without merit, are raised for the first time on appeal, or have been rendered academic in light of our determination.

DILLON, J.P., BELEN, AUSTIN and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court