

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

D36116  
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Argued - February 3, 2012

RANDALL T. ENG, P.J.  
RUTH C. BALKIN  
L. PRISCILLA HALL  
SANDRA L. SGROI, JJ.

2010-11366  
2011-01358  
2011-03294

DECISION & ORDER

Alexander Breytman, appellant, v Olinville Realty, LLC,  
respondent.

(Index No. 2423/06)

Alexander Breytman, Brooklyn, N.Y., appellant pro se.

Jaffe & Asher LLP, New York, N.Y. (Ira N. Glauber and Nabeena C. Banerjee of counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals (1), as limited by his brief, from so much of an order of the Supreme Court, Kings County (Lewis, J.), dated June 11, 2010, as granted that branch of his motion which was to compel discovery only to the extent of directing the defendant to provide information concerning subsequent rentals of his former apartment, denied his separate motions, inter alia, in effect, to strike the defendant's affirmative defenses, and to hold nonparty Roberto Gonzalez in contempt for failure to appear for a deposition, and granted that branch of the defendant's cross motion which was to enjoin him from filing any further motions without leave of the court, (2) from an order of the same court dated December 10, 2010, which denied, as premature, his motion for "leave to move for summary judgment" on the issue of liability and denied his separate motion to hold the defendant in contempt for failure to comply with the order dated June 11, 2010, and (3), as limited by his brief, from so much of an order of the same court dated February 4, 2011, as granted the defendant's motion to extend the deadline to file the note of issue and, thereupon, directed him to provide signed authorizations for the release of certain medical records, denied that branch of his cross motion which was to impose sanctions upon the defendant, and adjourned his separate cross motions for reconstruction and to compel his own deposition.

October 3, 2012

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ORDERED that the appeal from so much of the order dated February 4, 2011, as adjourned the plaintiff's separate cross motions for reconstruction and to compel his own deposition is dismissed, as no appeal lies as of right from an order that does not decide a motion made on notice (*see* CPLR 5701[a][2]), and leave to appeal has not been granted (*see* CPLR 5701[c]); and it is further,

ORDERED that the order dated June 11, 2010, is affirmed insofar as appealed from; and it is further,

ORDERED that the order dated December 10, 2010, is affirmed; and it is further,

ORDERED that the order dated February 4, 2011, is affirmed insofar as reviewed; and it is further,

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

The Supreme Court providently exercised its discretion in granting that branch of the plaintiff's motion which was to compel discovery only to the extent of directing the defendant to provide information concerning subsequent rentals of his former apartment. CPLR 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action" (*see Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406). However, the principle of "full disclosure" does not give a party the right to unlimited disclosure (*see Buxbaum v Castro*, 82 AD3d 925; *Spohn-Konen v Town of Brookhaven*, 74 AD3d 1049; *Harris v Pathmark Stores, Inc.*, 48 AD3d 631, 632; *Silcox v City of New York*, 233 AD2d 494). Here, while the plaintiff's demand for information concerning subsequent rentals of his former apartment was material and necessary to his defense against one of the defendant's counterclaims, his remaining unfulfilled discovery demands were unduly burdensome, and sought irrelevant and immaterial information. Accordingly, the Supreme Court properly declined to compel the defendant to disclose the remaining information sought (*see Foster v Herbert Slepoy Corp.*, 74 AD3d 1139, 1140; *Harris v Pathmark Stores, Inc.*, 48 AD3d at 632).

Further, under the circumstances of this case, the Supreme Court properly granted that branch of the defendant's cross motion which was to enjoin the plaintiff from filing any further motions without leave of the court. Although public policy generally mandates free access to the courts (*see Dimery v Ulster Sav. Bank*, 82 AD3d 1034, 1035; *Sassower v Signorelli*, 99 AD2d 358, 359), here, the plaintiff forfeited that right by abusing the judicial process (*see Dimery v Ulster Sav. Bank*, 82 AD3d at 1035; *Gorelik v Gorelik*, 71 AD3d 729; *Matter of Simpson v Ptaszynska*, 41 AD3d 607, 608).

The Supreme Court properly denied, as premature, the plaintiff's motion for "leave to move for summary judgment" on the issue of liability. In light of the incomplete state of discovery, including the fact that the plaintiff himself had not yet been deposed, his prospective motion was premature (*see Groves v Land's End Hous. Co.*, 80 NY2d 978, 980; *Wilson v Yemen Realty Corp.*, 74 AD3d 544, 545; *Harvey v Nealis*, 61 AD3d 935, 936).

The plaintiff's remaining contentions are either without merit or not properly before this Court.

ENG, P.J., BALKIN, HALL and SGROI, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court