

Greenwood v Seabreeze Tower 250 Owners Corp.

2010 NY Slip Op 31280(U)

May 14, 2010

Sup Ct, Nassau County

Docket Number: 5513/08

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

MARY ELLEN GREENWOOD,

Plaintiff,

- against -

SEABREEZE TOWER 250 OWNERS CORP. and
ISLAND DEVELOPMENT ASSET MANAGEMENT
CORP.,

Defendants.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 5513/08
Motion Seq. Nos.: 12, 13,
14, 15

Motion Dates: 01/13/10
03/01/10
03/11/10
03/15/10

The following papers have been read on these motions:

	Papers Numbered
<u>Notice of Motion for Summary Judgment, Affirmation and Exhibits</u>	<u>1</u>
<u>and Memorandum of Law</u>	<u>1</u>
<u>Affirmation in Opposition, Affidavit and Exhibits</u>	<u>2</u>
<u>Reply Affirmation and Exhibit</u>	<u>3</u>
<u>Notice of Motion, Affirmation and Exhibits</u>	<u>4</u>
<u>Notice of Cross-Motion, Affirmation and Exhibit</u>	<u>5</u>
<u>Reply Affirmation and Exhibits</u>	<u>6</u>
<u>Notice of Motion, Affirmation and Exhibits</u>	<u>7</u>
<u>Affirmation in Opposition</u>	<u>8</u>
<u>Reply Affirmation and Exhibit</u>	<u>9</u>

Upon the foregoing papers, it is ordered that the motions are decided as follows:

In Motion Sequence No. 12, defendant, Seabreeze Tower 250 Owners Corp.

("Seabreeze") moves, pursuant to CPLR § 3212, for an order granting summary judgment.

Plaintiff opposes the motion.

By way of background, the present matter is a negligence action wherein the plaintiff seeks recovery for damages for personal injuries and property damages sustained, allegedly

resulting from the defendant Seabreeze's negligence which caused mold infestation in her unit in a cooperative complex located in Long Beach, New York. Plaintiff claims that she was, in essence, constructively evicted from her unit due to the negligence of the defendant Seabreeze which caused a mold condition which damaged her property and threatened her health. As a consequence, plaintiff has not paid the maintenance or rental charges on her unit since September 26, 2006. Defendant Seabreeze has denied the material allegations of the complaint.

On or about March 24, 2008, plaintiff commenced the action by service of a Summons and Verified Complaint. On June 12, 2008, defendant Seabreeze served its verified answer with defenses and counterclaims and on December 23, 2009, in accordance with a stipulation executed by the parties, defendant Seabreeze's second amended verified answer with defenses and counterclaims was served. The former defendant, Island Development Asset Management, was dismissed from this action via Order of Court dated December 18, 2008.

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. *See Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. *See CPLR § 3212 (b); Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of

the court is not to resolve issues but rather to determine if any such material issues of fact exist. *See Sillman v. Twentieth Century- Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. *See Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. *See Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

Defendant Seabreeze submits that it is entitled to summary judgment based primarily upon plaintiff's failure to completely and adequately respond to defendant Seabreeze's demand for a verified bill of particulars as Ordered by the Court in its July 10, 2009 decision. *See* Defendant's Affirmation Exhibit G. Defendant Seabreeze submits that the July 10, 2009 Order required plaintiff to serve complete and adequate responses to defendant Seabreeze's demand for a verified bill of particulars or be precluded from offering evidence or testimony as to the issues addressed in the demands. Defendant Seabreeze argues that plaintiff's second supplemental verified bill of particulars (served in response to the July 10, 2009 Order) is, once again, inadequate, particularly with respect to demand number seven (7), which sought an amplification and specifics regarding the alleged water intrusion into plaintiff's unit and the reporting of same to defendant Seabreeze. Defendant Seabreeze claims that, as a result of plaintiff's alleged inadequate response, plaintiff is now precluded from offering evidence or testimony as to any alleged water intrusions and alleged notice given to defendant Seabreeze. Defendant Seabreeze further claims, that since plaintiff cannot offer evidence as to notice provided to it, plaintiff cannot establish a necessary element of her negligence cause of action or her causes of action for breach of the implied covenant of quiet enjoyment and breach of the implied warranty of habitability, *to wit*: notice.

Defendant Seabreeze also submits that it is entitled to summary judgment with respect to plaintiff's fifth cause of action, which seeks to rescind plaintiff's proprietary lease with defendant Seabreeze and affirmatively require defendant Seabreeze to purchase plaintiff's unit from her. It

argues that plaintiff cannot seek equitable relief where she has an adequate remedy at law.

Defendant Seabreeze contends that “plaintiff’s rescission claim is based upon the same alleged facts and circumstances asserted in support of her other legal causes of action. If plaintiff’s factual claims have merit, she would have a breach of contract claim against Seabreeze pursuant to her proprietary lease and could be adequately compensated via money damages.

As previously stated, defendant Seabreeze’s basis for its motion for summary judgment with respect to plaintiff’s first, third and fourth causes of action is plaintiff’s allegedly incomplete and inadequate response to demand number seven (7) of defendant Seabreeze’s demand for a verified bill of particulars as Ordered by the Court in its July 10, 2009 decision. Said demand was “[s]tate specifically and in detail the source of each and every water intrusion in plaintiff’s Unit.” Plaintiff’s response to said demand contained in her Supplemental Verified Bill of Particulars stated “[p]laintiff is unaware of each and every water intrusion except for those she personally saw and reported to the Board but is unable to recall specific dates, except that days prior to her vacating the unit a Board meeting was being held and she brought the Board to her unit to see the intrusion and ask for it to be remediated. The exact period of occurrence and duration is so that it caused black mold in her unit and eroded steel support beams.”

After receiving this response to demand number seven (7), defendant Seabreeze brought a motion to compel. On July 10, 2009, the Court issued its decision and order on said motion to compel. With respect to plaintiff’s response to demand number seven (7), the decision states “[t]he complaint alleges water intrusion into the plaintiff’s unit and the reporting of such condition to the defendant Seabreeze’s board. The defendants’ demand for information seeks amplification of this allegation. The plaintiff’s response is inadequate as it ignores the information sought to wit the source of the alleged water intrusion.” The decision also stated that “[t]he defendants motion which seeks and order of preclusion is granted to the sole extent that plaintiff will be precluded from offering evidence or testimony as to any of the above items indicated in the afore stated demand, unless a response, verified by the plaintiff in compliance with the demands specified above, is served within 30 days of service of a copy of this order.”

Plaintiff then served her Second Supplemental Bill of Particulars. *See* Defendant’s Affirmation Exhibit H. Plaintiff’s response to demand number seven (7) in her Second Supplemental Bill of Particulars was: “[p]laintiff is unaware of each and every water intrusion except those she personally observed on September 27, 2006 and reported to the Board. There

are, however, as testified to, countless occasions when the outer walls of plaintiff's unit were visibly saturated by water and were reported via email to the board and/or Island Management."

Defendant Seabreeze now asserts that said response is again inadequate and, as a result, plaintiff is now precluded from offering evidence or testimony with respect to "water intrusion into plaintiff's unit and the reporting of such condition to the defendant Seabreeze board" and defendant should therefore be granted summary judgment on the issues arising out of this demand - actual or constructive notice of the alleged leaks in the unit which purportedly caused the damages alleged in plaintiff's complaint.

In her opposition to defendant Seabreeze's motion, plaintiff claims that she is entirely entitled to testify regarding water intrusions into her residential unit, as well as to the prior notice that defendant had regarding the issue. Plaintiff claims that her response to demand number seven (7) in her second supplemental verified bill of particulars "provided the only information she had. She initially only saw water intrusion in the front room of her unit near the north and west walls and reported same to the Defendant Board on September 27, 2006. More specifically, she noticed the entire front room soaked down through to the carpet as well as the entire front walls. On other various occasions, to date, she has seen the walls of her unit saturated to the eye and touch, but was and is unaware of exactly where the water is coming from. She has never known where the leaks are coming from exactly, other than from outside the building walls. Plaintiff provided the defendant all the information she had in her possession." Plaintiff adds "[i]t is clear that even defendants [*sic*] own contractors and remediation companies cannot answer this question as there is still water intrusions into the building, and more specifically her unit, that have not been properly remedied or repaired for over the past three and one half (3 ½) years. Water infiltrations, to this date, keep popping up and causing high moisture readings in plaintiff's unit. The plaintiff as well cannot provide an answer which she does not have exact knowledge of and which the exact source of the water intrusion remains unknown to the plaintiff to date. If defendant's own trained professionals cannot correct and/or state exactly where said water intrusions are coming from, how is plaintiff expected to provide this answer other than that her unit still has continuous leaks from the outside building walls."

Plaintiff further argues that her deposition testimony, taken over the course of three days, provided sufficient information with respect to her claims so that defendant Seabreeze could not claim any surprise or prejudice with respect to same. Plaintiff submits that she should not be

precluded from having her day in court due to an alleged inadequate response provided in a discovery demand and that the matter should be decided on its merits. Plaintiff states that she has provided the same consistent response to defendant Seabreeze's demand throughout the course of discovery in this matter and that she cannot amplify it any further.

Plaintiff further contends that she did not witness any of the water intrusions in her unit. She only witnessed the results of said water intrusions. Plaintiff claims that she has no idea where exactly the leaks were coming from and if she did, perhaps they could have already been repaired.

Plaintiff states that she amplified her demand responses, per the July 10, 2009 Court Order and that defendant Seabreeze "should not be allowed to dictate what responses are acceptable especially when the various responses provided cannot be further amplified by even defendants [*sic*] own repair team allegedly trained to make these types of repairs, have been unable to fix same..."

First, the Court would note that there was no judicial determination as to the adequacy of plaintiff's response to defendant Seabreeze's demand number seven (7) in her second supplemental verified bill of particulars. It is defendant Seabreeze's own conclusion that plaintiff's response is inadequate and, as such, they based their motion for summary judgment with respect to the first, third and fourth causes of action on this conclusion. The Court finds that plaintiff's response to demand number seven (7) in her second supplemental verified bill of particulars was an adequate response given what plaintiff alleges constitutes her knowledge of the water intrusions. In said response, plaintiff provided defendant Seabreeze with the date to which she provided notice to the board, September 27, 2006. Plaintiff indicated that she did not personally see any specific water intrusions after said date, only the effects of same. The existence of these alleged water intrusions and the alleged damages that may or may not have resulted from same constitute material triable issues of fact. Plaintiff's response to demand number seven (7) does address the issue of notice to defendant Seabreeze. The Court would also note that the case cited by defendant Seabreeze in its argument that "plaintiff cannot properly respond to a demand for a bill of particulars by referring the defendant to extraneous documents and deposition testimony", *In the Matter of Nassau County Dep't of Social Services, on Behalf of Lisa G., a Child Alleged to Be Abused and/or Neglected*, 146 Misc.2d 588, 551 N.Y.S.2d 730 (N.Y. Fam. Ct., Nassau County 1989), is an over twenty year-old Family Court Case and is not

controlling on this Court. Additionally, the facts and circumstances in that matter differ greatly from the ones in the present case.

The Court further notes that, in deciding a summary judgment motion, it is the existence of an issue, not its relative strength, that is the critical and controlling consideration. *See Barrett v. Jacobs*, 255 N.Y. 520 (1931); *Cross v. Cross*, 112 A.D.2d 62, 491 N.Y.S.2d 353 (1st Dept. 1985). The evidence should be construed in a light most favorable to the party moved against. *See Weiss v. Garfield*, 21 A.D.2d 156, 249 N.Y.S.2d 458 (3d Dept. 1964); *Mitchell v. Fiorini Landscape, Inc.*, 253 A.D.2d 860, 678 N.Y.S.2d 341 (2d Dept. 1998); *Nikolic v. Valley Stream Cent. High School District*, 240A.D.2d 551, 658 N.Y.S.2d 665 (2d Dept. 1997). Additionally, summary judgment is rarely granted in negligence cases. *See Connell v. Buitekant*, 17 A.D.2d 944, 234 N.Y.S.2d 336 (1st Dept. 1962).

After applying the law to the facts in this case, and construing the evidence in a light most favorable to the plaintiff, the Court finds that there exist material questions of fact concerning the alleged negligence issues in this matter. The Court therefore holds that defendant Seabreeze's motion for summary judgment with respect to the first, third, and fourth causes of action is hereby denied.

Defendant Seabreeze's motion for summary judgment on plaintiff's fifth cause of action seeking equitable relief is hereby granted. Defendant Seabreeze argues that where an adequate remedy at law is available, *i.e.*, money damages, a plaintiff cannot pursue equitable forms of relief. Defendant Seabreeze states that plaintiff, in her fifth cause of action, is seeking an order rescinding her over eight-year-old proprietary lease and requiring defendant Seabreeze to purchase said unit from plaintiff based upon the same allegations that form the basis of her other legal claims. Defendant Seabreeze asserts that, if plaintiff believes defendant Seabreeze breached the proprietary lease, plaintiff should have asserted a breach of contract claim in which she could have sought monetary damages and a termination of the proprietary lease. Defendant Seabreeze additionally alleges that plaintiff's request for an order requiring it to affirmatively purchase the unit from plaintiff is a request for a mandatory injunction and that a plaintiff cannot seek a mandatory injunction if a legal remedy exists.

In opposition, plaintiff claims that her fifth cause of action supplemented by her third and fourth causes of action listed in the verified complaint do in fact lay out a breach of contract claim and the plaintiff's desire to seek both an equitable remedy and a remedy grounded in law.

Plaintiff claims that her third, fourth and fifth causes of action seek double relief based upon defendant Seabreeze's alleged breach of the proprietary lease.

The Court does not find any merit with respect to plaintiff's argument that the fifth cause of action is supplemented by the other pled causes of action. Plaintiff's complaint failed to allege a breach of contract. The Court holds that plaintiff cannot seek to rescind the proprietary lease or seek a mandatory injunction because an adequate remedy at law (money damages) was available to her. Consequently, defendant Seabreeze's motion to dismiss plaintiff's fifth cause of action is hereby granted.

In Motion Sequence No. 13, defendant Seabreeze moves for an order granting a default judgment against plaintiff with respect to defendant Seabreeze's counterclaims in this action. In Motion Sequence No. 15, plaintiff opposes defendant Seabreeze's default judgement motion and cross-moves, pursuant to CPLR § 3012(d), for an order extending time for plaintiff to serve an Answer to the counterclaims asserted by defendant Seabreeze. Plaintiff additionally moves, pursuant to CPLR § 3025 (c), for an order permitting plaintiff to amend its pleadings at any time either before or after judgment to conform them to the evidence. Defendant Seabreeze opposes plaintiff's cross-motion.

As previously stated, plaintiff's summons and verified complaint in this action were served on or about March 24, 2008. Defendant Seabreeze's verified answer with defenses and counterclaims were served on or about June 12, 2008. Defendant Seabreeze asserts that plaintiff never served a reply to these first counterclaims. On February 5, 2009, defendant Seabreeze served an amended verified answer with defenses and counterclaims. Defendant Seabreeze asserts that plaintiff never served a reply to these second counterclaims. In December 2009, defendant Seabreeze claims that it informed plaintiff that she had failed to reply to Seabreeze's counterclaims in this action. On December 8, 2009, counsel for defendant Seabreeze and plaintiff executed a written stipulation stating that defendant Seabreeze would serve a second amended answer with defenses and counterclaims and that plaintiff would serve a reply to same within thirty days of service. Defendant Seabreeze served their second amended verified answer with defenses and counterclaims on December 23, 2009. Defendant submits that as of February 11, 2010, plaintiff had not replied to the third counterclaims, had not requested additional time to serve said reply and was therefore in default.

In plaintiff's cross-motion (motion sequence no. 15), plaintiff claims that in December

2009, defendant Seabreeze's counsel contacted plaintiff's counsel as defendant Seabreeze's counsel allegedly "just realized, one and a half (1 ½) years after commencement of the action, that he has totally failed to answer plaintiff's fourth and fifth causes of action of the plaintiff's Verified Complaint when he initially interposed his Verified Answer." Plaintiff asserts that, in the interest of justice, both plaintiff's and defendant Seabreeze's counsel entered into a stipulation that defendant Seabreeze would serve a new amended answer in order to respond to plaintiff's fourth and fifth causes of action which he previously had failed to answer. Plaintiff argues that she placed no time limits on defendant Seabreeze to submit their second amended verified answer with defenses and counterclaims. Plaintiff admits that, based upon a "diarying error" by plaintiff's counsel's office, plaintiff did not answer defendant's counterclaims until February 11, 2010, approximately two weeks after the time period set forth in the stipulation generated by defendant Seabreeze's counsel (and the same date defendant Seabreeze filed motion sequence no. 13). Plaintiff contends that her failure to serve the answer to the counterclaims was not intentional, but rather an oversight of plaintiff counsel's office and that the delay was only a brief one and "no prejudice will befall the defendant by denying defendant's application for a default on the counterclaims and compelling them to accept the answer to the counterclaims herein."

The Court notes no default judgment has been ordered in this case, but rather, defendant Seabreeze's motion is one requesting such an order. Plaintiff is not seeking vacatur of a default judgment, but rather an order extending time to serve her answer to defendant Seabreeze's counterclaims. CPLR § 3012(d) states "[u]pon the application of a party, the court may extend the time to appear or plead, or compel the acceptance of a pleading untimely served, upon such terms as may be just and upon a showing of reasonable excuse for delay and default." CPLR § 2005 states "[u]pon an application satisfying the requirements of subdivision (d) of section 3012 or subdivision (a) of rule 5015, the court shall not, as a matter of law, be precluded from exercising its discretion in the interests of justice to excuse delay or default resulting from law office failure."

The Court finds that plaintiff has provided a reasonable excuse for its brief delay in serving its answers to defendant Seabreeze's second amended answer with defenses and counterclaims. The Court also finds that defendant Seabreeze will not be prejudiced by this two week delay in service of plaintiff's answers to said counterclaims. While defendant Seabreeze

claims this was not just a two week delay, defendant Seabreeze was the one who executed the December 2009 stipulation providing the time from which plaintiff could file said answers. Additionally, defendant Seabreeze's contention that it would be unfairly prejudiced if it was required to accept plaintiff's belated reply at this late juncture since the Note of Issue was filed in December 2009 is completely without merit. The Court notes that the Note of Issue was filed on December 23, 2009, while the stipulation executed by defendant Seabreeze and plaintiff provided plaintiff until thirty days of service of defendant Seabreeze's second amended answer with defenses and counterclaims. Interestingly enough, defendant Seabreeze served its second amended answer with defenses and counterclaims on that same date December 23, 2009, providing plaintiff thirty days to respond to same, specifically January 22, 2010.

The Court hereby grants plaintiff's motion (motion sequence no. 15) with respect to her application pursuant to CPLR §3012(d) for an extension of time to serve her answer to defendant Seabreeze's counterclaims. Defendant Seabreeze's motion (motion sequence no. 13) for default judgment order is consequently denied.

However, plaintiff's second request in motion sequence no. 15, pursuant to CPLR § 3025 (c), for an order permitting plaintiff to amend its pleadings at any time either before or after judgment to conform them to the evidence is denied as plaintiff failed to attach a proposed amended complaint nor did she state what evidence to which the pleadings should be conformed. No where in plaintiff's motion does she explain the basis for said request and it is therefore denied.

In Motion Sequence No. 14, defendant Seabreeze moves, pursuant to CPLR § 3103, for an order quashing and granting a protective order with respect to subpoenas that plaintiff has improperly issued to defendant Seabreeze and non-parties Diane Volpe and Jack Granville without leave of the Court subsequent to the plaintiff's filing of the Note of Issue and Certificate of Readiness in this action; and moves, pursuant to CPLR § 3126, for an order requiring plaintiff and/or her counsel to pay costs and attorney's fees incurred by defendant Seabreeze in connection with this motion. Plaintiff opposes defendant Seabreeze's motion.

In support of its motion to quash, defendant states that plaintiff filed the Note of Issue and Certificate of Readiness in this action on or about December 23, 2010, certifying that discovery was complete and that this action was ready for trial. Accordingly, the only way that plaintiff could proceed with additional pre-trial discovery in this action would be by first making a motion

and obtaining an order pursuant to either Uniform Rule 202.21(d) or (e). Defendant Seabreeze submits that plaintiff never made such a motion and that the instant motion should be granted for this reason alone. Defendant Seabreeze further contends that, even if plaintiff had made such a motion, it would have to be denied because plaintiff could not satisfy the requirements of Uniform Rule 202.21.

Plaintiff opposes defendant Seabreeze's motion by claiming that the "subpoenas served were not for discovery but intended for trial purposes so this matter may proceed quickly and without issue and have documentary evidence that is necessary for trial available when the trial begins." Plaintiff claims that the subpoena served upon defendant Seabreeze requiring them to produce certain documents was a "Trial subpoena." Plaintiff additionally claims, with respect to the two subpoenas served on the non-party witnesses ordering them to appear for depositions, that "[t]he subpoena serve [*sic*] on these two individuals is again not for discovery purposes best [*sic*] to have them cement the evidence necessary for trial in this instant action."

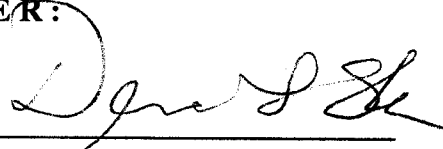
The Court notes that on the date plaintiff served the subpoenas at issue a trial date had not yet been set. The pre-trial conference in this matter did not take place until April 22, 2010, approximately two months after said subpoenas were served. The return date of said subpoenas was approximately one month before the scheduled pre-trial conference date. Additionally, it is interesting that plaintiff claims said subpoenas were for trial purpose, yet set March 12, 2010 as the return date in the subpoena requesting defendant Seabreeze to produce documents, but March 19, 2010 as the date for the non-party witness deposition of Diane Volpe.

The Court hereby grants defendant Seabreeze's motion (motions sequence no. 14), pursuant to CPLR § 3103, for an order quashing and granting a protective order with respect to subpoenas that plaintiff has improperly issued to defendant Seabreeze and non-parties Diane Volpe and Jack Granville without leave of the Court subsequent to the plaintiff's filing of the Note of Issue and Certificate of Readiness in this action. The Court denies defendant Seabreeze's motion, pursuant to CPLR § 3126, for an order requiring plaintiff and/or her counsel to pay costs and attorney's fees incurred by defendant Seabreeze in connection with this motion, as well as denies plaintiff's improper request for sanctions and attorney's fees made in her affirmation in opposition.

All parties shall appear in Nassau County Supreme Court, DCM Trial Part on June 3, 2010 at 9:30 a.m.

This constitutes the decision and order of this Court.

ENTER:

A handwritten signature in cursive script, appearing to read "Denise L. Sher", is written over a horizontal line.

DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
May 14, 2010

ENTERED
MAY 19 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE