

Sammy v First Am. Tit. Ins. Co. of N.Y.

2011 NY Slip Op 33297(U)

June 27, 2011

Supreme Court, Queens County

Docket Number: 24400/2008

Judge: David Elliot

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE David Elliot
Justice

IAS Part 14

VENESSA SAMMY,
Plaintiff,

Index
Number 24400 2008

Motion
Date February 8 & March 29, 2011

-against-

FIRST AMERICAN TITLE INSURANCE
COMPANY OF NEW YORK, EXPEDIENT TITLE,
INC.,
Defendants.

Motion
Cal. Nos. 17, 18 & 20

Motion
Seq. Nos. 3-5

The following papers numbered 1 to 36 read on this motion by defendant First American Title Insurance Company of New York (First American) and cross motion by defendant Expedient Title, Inc. (Expedient), pursuant to CPLR 3106 (c), to permit the deposition upon oral examination of nonparty witness Ishwardt Raghunath; a separate motion by the plaintiff to compel discovery or, in the alternative, strike the defendants' answers and/or preclude their testimony for failing to comply with discovery demands and cross motion by defendant First American to strike the note of issue, direct the plaintiff to appear for examination before trial, and vacate the plaintiff's First Set of Interrogatories on the ground that they are overbroad, burdensome and patently improper; and an additional motion by the plaintiff, inter alia, to quash two subpoenas.

Papers
Numbered

Notices of Motion - Affid. - Exhib..... 1-4;13-17;24-28
Notices of Cross Motion - Affid. -Exhib..... 5-7;18
Answering Affidavits - Exhibits..... 8-10;19-20;29-34

Reply Affidavits..... 11-12;21-23;35-36

Upon the foregoing papers it is ordered that the motions and cross motions are consolidated for purposes of disposition and determined as follows:

The plaintiff commenced this action, inter alia, to recover damages for breach of contract and negligence arising from the defendants' refusal to honor her claims for title insurance coverage under a policy of insurance alleged to have been issued to her by the defendants, on May 31, 2007, and bearing policy number 1202023-0014004, for the premises located at 117-18 150th Avenue in South Ozone Park, Queens, New York.

On or about March 16, 2007, the plaintiff entered into a contract to purchase the subject real property from one Astenie Sainvil. Thereafter, the plaintiff retained the defendants to examine and insure title to the subject premises as well as record the related title closing documents. Upon closing of title on May 31, 2007, the defendants allegedly took possession of the deed and mortgage instrument for recording. The plaintiff asserts that the defendants failed to promptly record the deed and mortgage documents and did not record such documents until December 6, 2007, more than six months later. On September 28, 2007, Astenie Sainvil executed another deed, which purportedly transferred title to the subject real property to nonparty South Ozone Park Realty Holding Corp. The latter deed was recorded on or about October 30, 2007, prior to the deed conveying the property to the plaintiff. The plaintiff claims that by reason of the subsequent conveyance on September 28, 2007, and the defendants' failure to timely record her closing documents, an adverse claim has been made against her ownership of the subject premises (another action has also been commenced against plaintiff to foreclose on the premises). Defendants assert, inter alia, that plaintiff requested that the recording of the loan documents be delayed, and that they obtained a release from plaintiff discharging them of liability arising from the transaction (namely, the delayed recording of the loan documents).

The defendants seek an order permitting them to depose nonparty Ishwardat Raghunath, who is currently incarcerated in connection with an indictment regarding his alleged involvement in mortgage and wire fraud arising from numerous real estate transactions in Queens, Kings and Bronx Counties. Raghunath is reportedly incarcerated at Metropolitan Detention Center, located at 80 29th Street in Brooklyn, New York, and assigned registration number 78023-053. The defendants claim that he is somehow connected to the underlying transaction because proceeds from the subject closing were subsequently transferred to him or entities believed to be controlled by him. The plaintiff opposes the motion for an order permitting the deposition of Raghunath and claims that it should be denied on the grounds that his testimony is neither relevant nor probative, and the

defendants knew of Raghunath's whereabouts and the extent to which he was involved in the underlying transactions for several years before he was arrested and incarcerated.

In determining whether to order that an inmate's deposition be taken, the Court must ascertain if the expected testimony of the witness is relevant and necessary for the preparation of the trial (*see EDP Med. Computer Sys. v Sears Roebuck & Co.*, 193 AD2d 645 [1993]). Moreover, where the witness to be deposed is a nonparty, "something more than mere relevance or materiality must be shown to obtain disclosure" (*Fraser v Park Newspapers of St. Lawrence*, 257 AD2d 961, 962 [1991]; *see Jira v Levin-Epstein*, 172 AD2d 495 [1991]). In other words, notwithstanding the relevance of the nonparty testimony, there must also be some special circumstances or reasons for obtaining information from him (CPLR 3101 [a] [4]); *see Price v State*, 4 Misc 3d 1008 (A) [2004]). "To make the necessary showing, the party seeking permission to depose a nonparty inmate should spell out (or provide an affidavit establishing) the anticipated testimony; establish that the information the witness possesses is somehow unique and not merely cumulative to what [the parties] will relate and/or what is recorded in any documents concerning the incident, and establish that the information cannot be obtained from another source" (*Price*, 4 Misc 3d at 1008 [A]). The defendants indicate that they want to depose Raghunath to understand his involvement with the underlying transaction, the reason(s) he received monies from the plaintiff's closing, his relationship with the plaintiff, his knowledge of the underlying purchase from Sainvil and his affiliation with nonparty Steven Rogers, who allegedly acted as Sainvil's attorney-in-fact in connection with the plaintiff's purchase of the premises. Under the circumstances presented herein, the court is satisfied that the defendants have demonstrated adequate special circumstances to justify the deposition of incarcerated nonparty witness Ishwardat Raghunath. Accordingly, the defendants' motion and cross-motion for leave to depose nonparty witness Ishwardat Raghunath is granted.

Turning to the plaintiff's request to compel disclosure or preclude the production of evidence, the court notes that CPLR 3101 (a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." It has been held that "[t]he words 'material and necessary' are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist in the preparation for trial by sharpening the issues and reducing delay and prolixity [and] [t]he test is one of usefulness and reason" (*Harrison v Bayley Seton Hosp.*, 219 AD2d 584 [1995]; *see Friel v Papa*, 56 AD3d 607 [2008]). However, a party is not required to respond to discovery demands which are palpably improper. A demand is "palpably improper if it seeks information which is irrelevant . . . or is overbroad and unduly burdensome" (*T.A. Ahearn Contractors Corp. v Dormitory Auth. of the State of N.Y.*, 24 Misc 3d 416, 420 [2009]; *see Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2007]).

Here, the plaintiff's First Set of Interrogatories, which incidentally consists of 66 questions and numerous subparts regarding the names and identities of First American's shareholders, its sources of revenue, all lawsuits commenced against it as well as a host of other immaterial information, is so overly broad, unduly burdensome and irrelevant as to be palpably improper (see *Wesche v Wesche*, 51 AD3d 909 [2008]; *Botsas v Grossman*, 7 AD3d 654 [2004]). In any event, the plaintiff has failed to establish any justification for the disclosure sought therein. With regard to the plaintiff's remaining discovery demands, at this juncture, it appears that the defendants have complied with all other discovery requests (see so-ordered stipulation dated November 16, 2010; Affirmation of plaintiff's counsel dated February 8, 2011, ¶ 10).

In light of the foregoing, defendant First American's cross-motion is granted, in part, to the extent that the plaintiff's First Set of Interrogatories is vacated. As such, the motion by the plaintiff to compel discovery or strike the defendants' answers for failing to comply with her outstanding discovery demands is denied.

Lastly, the plaintiff's motion to quash the Subpoena Duces Tecum served upon JP Morgan Chase, as successor of Washington Mutual Bank, FA, and the Subpoena Duces Tecum Ad Testificandum served upon Maria Shepelsky, Esq., on the ground that the information sought, to wit, inter alia – the down payment check issued by the plaintiff to the seller for the purchase of the property (which the plaintiff testified upon examination before trial that the seller never cashed) and the testimony of the attorney representing the plaintiff at closing as to what, if any, instructions she gave regarding the filing of the plaintiff's closing documents – is irrelevant to the matter at issue, is denied as without merit. This information is material and necessary to defendants' defense in the matter, in light of the issues involved in this litigation. The court notes that to the extent the closing file contains privileged information, though, same need not be produced.

Any outstanding depositions shall be completed at such time as the parties mutually agree, at such location as they mutually agree, but no later than September 26, 2011. With respect to nonparty Ishwardat Ragnath, who is confined under legal process in the Metropolitan Detention Center in Brooklyn, New York, located at 80 29th Street, and assigned registration number 78023-053, is directed to appear for an examination before trial before a Notary Public, and that the defendants be permitted, and he shall be produced, to take the deposition of said deponent at the facility in which he is being held, on or before September 26, 2011. Counsel for First American is directed to serve a copy of this order with notice of entry upon the Superintendent, Warden, or other designated official of the Detention Center, and upon counsel for plaintiff and for defendant Expedient, within 10 days of the entry date of this order, and to coordinate with counsel and the Detention Center in determining an appropriate date and time for the deposition (to be held no earlier than 20 days

prior to service of the order). First American's cross motion to vacate the note of issue is denied, with leave to renew in the Trial Scheduling Part of this Court.

The motions and cross-motions are in all other respects denied.

Dated: June 27, 2011

J.S.C.