

Barlich Realty Corp. v SSI Surgical Solutions, LLC.
2011 NY Slip Op 34214(U)
January 21, 2011
Supreme Court, Nassau County
Docket Number: 008722/10
Judge: Jeffrey S. Brown
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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X **TRIAL/IAS PART 21**
BARLICH REALTY CORP.,

Plaintiffs,

- against -

**SSI SURGICAL SERVICES, INC., TEX MEDICAL
SUBSIDIARY INC., MSI SURGICAL SOLUTIONS,
LLC., VITEC SOLUTIONS, LLC, and PHS GROUP,
INC,**

Defendants.

-and-

**MSI SURGICAL SOLUTIONS, LLC., VITEC
SOLUTIONS, LLC, and PHS GROUP, INC.,**

Counterclaim Plaintiffs,

-against-

INA EHRlich,

Additional Counterclaim Defendant.

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The following papers were read on this motion:	Papers Numbered
Notice of Motion, Cross Motion	1, 2
Answering Affidavit	3
Reply Affidavit.....	4

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Plaintiff Barlich Realty Corp. ("BARLICH") moves pursuant to CPLR §§3103(a) and 2004 to strike defendants MSI Surgical Solutions, LLC ("MSI") and Vitec Solutions, LLC's ("VITEC") First Set of Interrogatories. Defendants MSI and VITEC cross-move pursuant to

CPLR §3124 to compel plaintiff to respond with proper answers to the aforesaid Demand for Interrogatories.

This action arises out of an alleged breach of a commercial lease. Defendants MSI and VITEC served a Demand for Interrogatories upon plaintiff dated September 14, 2010. It consisted of 12 interrogatories with subsections. On or about October 7, 2010, plaintiff responded to this demand. By letter dated October 14, 2010, counsel for the aforesaid defendants sent a letter to plaintiff's counsel wherein they indicated that such responses were inadequate because most of the answers made reference to documents already produced during the course of discovery. Plaintiff responded by sending the cross-moving defendants a letter dated October 19, 2010, wherein plaintiff stated the interrogatories were burdensome, improper, not limited in time. Moreover, they provided voluminous documentation in response to a demand for discovery (816 documents and CDs containing hundreds of photographs). It was their position that additional information would be more appropriately obtained through a deposition of the plaintiff. Further, plaintiff contends that the responses provided were proper.

Cross-moving defendants argue that if these responses were not supplemented it would cause them to have to sift through thousands of documents produced to date by all of the parties and "figure out the answers to the interrogatories for themselves." By referring to unspecified documents and conversations, the requirement of responding under oath becomes a nullity. Further, with the exception of Interrogatory No. 10, plaintiff did not timely object to the interrogatories.

Plaintiff responds that if it had originally objected to the interrogatories, it would have obligated MSI and VITEC to make a motion to compel. Rather, plaintiff responded in a manner which seemed to be appropriate.

"[T]he supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are within the sound discretion of the Supreme Court" (*Olexa v. Jacobs*, 36 A.D.3d 776, 777, quoting *Setsuo Ito v. Dryvit Sys.*, 5 A.D.3d 735,). "Under our discovery statutes and case law, competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party" (*Kavanagh v. Ogden Allied Maintenance Corp.*, 92 N.Y.2d 952, 954, quoting *O'Neill v. Oakgrove Constr.*, 71 N.Y.2d 521, 529; *Downing v. Moskovits*, 58 AD3d 671). "It is also important to note that interrogatories are appropriate and useful in enabling the seeking party to obtain lists and other detailed information to set the stage for meaningful depositions." (*Bassett v Bando Sangsa Co.*, 94 AD2d 358).

The court has examined the interrogatories and finds that they are not oppressive or burdensome and that responses to Interrogatories 1, 2, 3, 4, 5, 6 and 12 are inadequate. Although incorporating by reference to a response to a discovery demand can be adequate, without specifying what document is incorporated, the response is inadequate since interrogatories are sworn to under oath. Such a response is equivocal to a non response. Plaintiff must respond

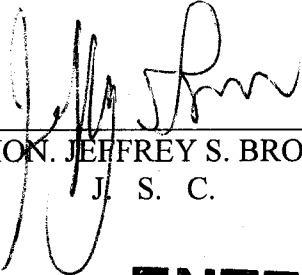
to these demands, with specificity, which document is incorporated by reference to its answer. With respect to Interrogatory No. 10, plaintiff shall supplement its response as previously indicated. The other specific responses can be obtained at the deposition.

Therefore, the motion and cross-motion are **DENIED** with the exception that plaintiff shall supplement its responses to Interrogatories 1, 2, 3, 4, 5, 6, 10, and 12. Plaintiff shall submit supplemental responses within 30 days after service of a copy of this order upon plaintiff's counsel.

This constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: January 21, 2011

ENTER :



HON. JEFFREY S. BROWN
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