

Siler v Ennis Francis Houses MGMT./A.D.C./H.D.F.C.
2012 NY Slip Op 31121(U)
April 20, 2012
Supreme Court, New York County
Docket Number: 401611/09
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. JOAN A. MADDEN
J.S.C.

PRESENT: _____
Justice

PART 11

Index Number : 401611/2009
SILER, REGINALD
vs.
ENNIS FRANCIS HOUSES MGMT/A.D.
SEQUENCE NUMBER : 002
COMPEL DISCLOSURE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *determined in accordance with the annexed decision and order.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

FILED

APR 26 2012

NEW YORK COUNTY CLERK'S OFFICE

Dated April 20, 2012

HON. JOAN A. MADDEN J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X
REGINALD SILER,

Plaintiff,

INDEX NO. 401611/09

-against-

ENNIS FRANCIS HOUSES MGMT./A.D.C./H.D.F.C.,

FILED

Defendants.

APR 26 2012

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JOAN A. MADDEN, J.:

NEW YORK
COUNTY CLERK'S OFFICE

Defendant moves for an order pursuant to CPLR 3124 compelling plaintiff to respond fully to its demand for a bill of particulars and its discovery demands, or alternatively an order pursuant to CPLR 3126 dismissing plaintiff's complaint.

In June 2009, plaintiff pro se commenced this action by filing a Summons with Notice, and copy of a "Claim" presumably filed with the Court of Claims in March 2009, which plaintiff submits as the complaint in this action (hereinafter the "complaint").¹ When plaintiff commenced this action, he was incarcerated and he is currently incarcerated. Defendant is plaintiff's former landlord, and acknowledges that plaintiff was evicted from his apartment sometime after his arrest.²

¹Plaintiff attaches a Verification dated June 24, 2009 referring to this document as "the foregoing complaint."

²In a letter to the court dated February 1, 2011, defendant's attorney states his client's position is that plaintiff was "lawfully evicted from the apartment by Court Order dated February 13, 2009," and that he "was only evicted after he was arrested and removed from the property for dealing drugs."

In the Summons with Notice, plaintiff describes the nature of his case as negligence, wrongful eviction, filing false reports, harassment, illegally entering apartment and theft of property; he seeks \$7 million in damages, and the return of his apartment and his parking space “maintenance free, paid in full trust.” Although the complaint includes specific facts, they are far from clear and do not necessarily relate to the claims asserted in the Summons with Notice.³ At best, the complaint alleges as follows. “[O]n and prior to 2/27/09” plaintiff “filed 3 housing court matters,” and defendant “defaulted on two cases and was held in contempt of court.” On December 26, 2007, plaintiff and defendant appeared in Housing Court and defendant was “charged with contempt of court,” and a stipulation was entered and the “agreement was prolonged” to June 12, 2008. The “work in the apartment was finished, but not properly or efficiently, so I awaited the follow-up inspection by the courts, however I was arrested” on October 20, 2008, and again on November 20, 2008, and on the December 18, 2008 housing court date, “I was still incarcerated.” Defendant’s “abuse, neglect, harassment and denial of services” continued for an “extensive length of time” which “caused a great deal of physical and mental pains, and stress to myself, as well as my family members. . . . now this ordeal with the management and their actions of 2/27/09.” On February 27, 2007, and months and years before, defendant “had actual knowledge of damages that had been done; defective and dangerous conditions” and plaintiff filed “grievances” requesting “aid and repairs” before December 27, 2007, which management “ignored.” The “dangerous and defective conditions . . . existed for . . . approximately 15 years,” and management “should and could have done more” to alleviate

³Despite the unclear nature of plaintiff’s pleadings, defendant served and filed an answer, and has chosen to pursue discovery before moving for any affirmative relief with respect to the pleadings.

[* 4]

the conditions “long before” the HUD and Section 8 inspectors “requested my matters be addressed immediately.” As a “result of this incident,” plaintiff “sustained personal injuries of mental stress,” “physical and mental pains and anguish” and “permanent disabilities,” including chronic headaches, loss of memory, depression, nose bleeding, loss of sleep, anxiety and stress for which he is taking “medications.”

Most recently, in June 2011, defendant served plaintiff with a demand for a bill of particulars and discovery demands. By letter dated July 14, 2011, defendant advised plaintiff that he had not responded, and requested that he serve full and complete responses so as to avoid motion practice. On or about August 20, 2011, plaintiff served a three-page Answer and Response to Combined Discovery Demands. Defendant objects that plaintiff’s responses “are grossly insufficient and incomplete,” that plaintiff has “made no attempt to provide a bill of particulars,” and that his responses to defendant’s Combined Demands “consist of baseless, non-specific objections to every item and provide none of the information, documentation or authorizations to which Defendant is entitled.”

Even though plaintiff did not challenge defendant’s discovery requests within the time prescribed by CPLR 3122, where, as here, the requests are palpably improper because they are over broad and neither relevant nor material to the issues in the case, the court’s inquiry into the propriety of such discovery requests is not foreclosed. See Lea v. New York City Transit Authority, 57 AD3d 269 (1st Dept 2008); Duhe v. Midence, 1 AD3d 279 (1st Dept 2003); Haller v. North Riverside Partners, 189 AD2d 615 (1st Dept 1993).

“The issues framed by the pleadings determine the scope of discovery in a particular action.” Mavroudis v. State Wide Insurance Co., 102 AD2d 864 (2nd Dept 1984); see also Kern

v. City of Rochester, 261 AD2d 904, 905 (4th Dept 1999). Defendant’s demand for a bill of particulars and its combined discovery demands largely consist of broad boilerplate requests for information and documents that bear little relevance or materiality to the claims asserted by plaintiff. Such demands are palpably improper, as they are so overly broad and seek irrelevant and immaterial information that they are unduly burdensome and oppressive, especially in light of the fact that plaintiff is not only pro se, but also incarcerated. See Duhe v. Midence, supra; Perez v. Board of Education of the City of New York, 271 AD2d 251 (1st Dept 2000); Haller v. North Riverside Partners, supra; Aetna Insurance Co. v. Mirisola, 167 AD2d 270 (1st Dept 1990). Insofar as defendant contends that plaintiff did not fully comply with its discovery demands, to the extent plaintiff responded that he cannot “retrieve” documents that are “lost” or “not recoverable” due to his eviction and “management’s action,” plaintiff cannot be compelled to produce information that does not exist or is not in his possession. See Maffai v. County of Suffolk, 36 AD3d 765 (2nd Dept 2007); DeGourney v. Mulzac, 287 AD2d 680 (2nd Dept 2001); Romeo v. City of New York, 261 AD2d 379 (2nd Dept 1999).

Defendant’s motion is therefore denied, and within 30 days of the date of this decision and order, defendant is directed to prepare and serve new and appropriate demands in plain and commonly understandable language which are sufficiently narrow and specifically addressed to plaintiff’s claims, and plaintiff shall respond to such demands within 30 days of receiving them. Once plaintiff has responded to defendant’s new demands, the court will hold a compliance conference regarding further discovery including, whether in view of plaintiff’s incarceration, the parties should proceed by written interrogatories in lieu of depositions.

Accordingly, it is hereby

ORDERED that defendant's motion is denied; and it is further

ORDERED that within 30 days of the date of this decision and order, defendant shall serve plaintiff with a new demand for a bill of particulars and new discovery demands in plain and commonly understandable language which are sufficiently narrow and specifically addressed to plaintiff's claims; and it is further

ORDERED that plaintiff shall provide full and complete responses to defendant's new demand for a bill of particulars and new discovery demands within 30 days of receiving them; and it is further

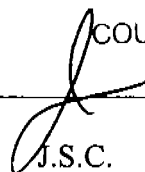
ORDERED that this matter will appear on the court's calendar for a compliance conference on July 12, 2012, at 9:30 a.m., in Part 11, Room 351, 60 Centre Street, at which time defendant's counsel shall appear in person and report as to the status of discovery; plaintiff shall appear by writing directly to this court, Justice Joan A. Madden, Supreme Court of the State of New York, 60 Centre Street, Room 611, New York, NY 10007, and sending a copy to defendant's counsel, in advance of the July 12, 2012 date, detailing his discovery requests, if any.

The court is notifying the parties by mailing copies of this decision and order to plaintiff and to defendant's counsel.

DATED: April 20, 2012

ENTER: APR 26 2012

NEW YORK
COUNTY CLERK'S OFFICE



J.S.C.