

Strujan v State Farm Ins.

2012 NY Slip Op 31799(U)

July 3, 2012

Sup Ct, New York County

Docket Number: 400526/2011

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT: _____
Justice

PART 10

Index Number : 400526/2011
STRUJAN, ELENA
vs.
STATE FARM INSURANCES
SEQUENCE NUMBER : 002
COMPEL DISCLOSURE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 002

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

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION.**

*I shall file Note of Issue
on or before August 3, 2012
Case ready for trial*

FILED

JUL 10 2012

JUL 03 2012

Dated: July 3, 2012

NEW YORK
COUNTY CLERK'S OFFICE

HON. JUDITH J. GISCHE
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

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

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 10**

-----X
Elena Strujan,
Plaintiff (s),

-against-

State Farm Insurances,
John/Jane Doe,
Defendant (s).
-----X

DECISION/ ORDER
Index No.: 400526/2011
Seq. No.: 002,003

PRESENT:
Hon. Judith J. Gische
JSC

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

Papers	Numbered
<u>Motion Sequence # 002</u>	
Notice of Motion, EJ affd., exhibits.....	1
BLB affirm., exhibits.....	2
"Plaiintiff's Reply and Complaint", exhibits.....	3
"Plaintiff's Reply Affidavit at Defendant's Objections to Compel with Discovery," exhibit.....	4
<u>Motion Sequence # 003</u>	
Notice of Motion, EJ affd., exhibits.....	1
BLB affirm. In Opp.....	2

FILED

JUL 10 2012

**NEW YORK
COUNTY CLERK'S OFFICE**

Upon the foregoing papers, the decision and order of the court is as follows:

Plaintiff, pro se, brought this action against defendant alleging that it improperly failed to pay out on claims she made against an insurance policy it issued to her. By decision and order dated October 4, 2011, this court dismissed all claims made by plaintiff, except those relating to breach of contract. Discovery on the remaining claim proceeded. Plaintiff now brings two motions. Motion Sequence # 002 seeks to compel defendant to answer her demand for a bill of particulars. Motion Sequence # 003 seeks

an "order of protection." The motions are consolidated for determination in this single decision and order.

DISCUSSION

Discovery

Plaintiff claims that she served a Demand for a Bill of Particulars ("demand"), dated December 22, 2011, that defendant never responded to and that she needs the information requested to prosecute her case. In fact, the demand was responded to on January 26, 2011. Defendant's response raised legitimate objections to the demand, including that it was unauthorized because plaintiff had also served requests for answers to interrogatories and the demand improperly sought the production of documents. Notwithstanding the properly interposed objections, defendant, nevertheless, produced the requested documentation, except that which it otherwise claimed was privileged.

The requested documentation for which no privilege was asserted, and a privilege log, identifying the documents withheld on a claim of privilege, were produced to plaintiff under two cover letters, respectively dated February 3 and 6, 2012. In her reply, plaintiff does not dispute that she received the documentation. Instead, she now claims that the documents she received are false. Notwithstanding her claims, it is not apparent from the face of the copies of the documents that she provides on this motion that they are false. Plaintiff may reserve and attempt to prove this issue at trial, if the documents are otherwise admissible in evidence.

The motion to compel defendant to respond to the demand for a bill of particulars is, therefore, denied.

Motion for an Order of Protection

While at first blush it seems as though plaintiff is seeking further relief regarding discovery, in fact she is really seeking a criminal order of protection. She claims that defendant continues to "harass [her], to stole (sic) evidences, [and] delete files from computer." This is, in part, a rehash of claims she made in her earlier motion (Seq # 001) that were rejected by the court in its October 4, 2011 decision and order because plaintiff had failed to provide any proof of her sweeping accusations. No additional proof is provided in this motion of that alleged behavior.

There are new claims made by plaintiff in this motion, including that defendant stole evidence and deleted her computer files. There is no evidence supporting these bold and serious accusations other than plaintiff's statement, that files she personally controlled are now missing. She also admits that in a landlord tenant matter, with other attorneys, she also had issues with missing files. There is no evidence tying defendant to her missing documents other than personal suspicion.

There is no legal basis for issuing an order of protection. These parties are not related, so that there can be no family offenses that support the relief sought. DRL §240. Nor is there a pending criminal proceeding that would warrant protecting plaintiff as the victim of a crime. CPL ¶530.13. Also lacking is any indicia of criminal behavior that would warrant such drastic relief. Plaintiff's bare-boned allegations are insufficient proof.

The motion for an Order of Protection is, therefore, denied as well.

Conclusion

In accordance herewith, it is hereby

ORDERED that plaintiff's motion (Sequence # 002) for an order compelling discovery is denied, and it is further

ORDERED that plaintiff's motion (Sequence # 003) for and Order of Protection is denied, and it is further

ORDERED that this matter is certified for trial, plaintiff is directed to file a Note of issue on or before August 3, 2012 and it is further

ORDERED that any requested relief not otherwise expressly granted herein is denied and that this constitutes the decision and order of the court.

Dated: New York, New York
July 3, 2012

SO ORDERED:



J.G. J.S.C.

FILED

JUL 10 2012

NEW YORK
COUNTY CLERK'S OFFICE