

Casanas v Carlei Group, LLC
2012 NY Slip Op 33071(U)
December 20, 2012
Supreme Court, New York County
Docket Number: 101057/12
Judge: Donna M. Mills
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SUPREME COURT OF THE STATE OF NEW YORK—NEW YORK COUNTY

PRESENT : DONNA M. MILLS
Justice

PART 58

PETER CASANAS and ELIZABETH CASANAS,

Plaintiffs,

INDEX NO. 101057/12

MOTION DATE _____

-against-

THE CARLEI GROUP, LLC and RICHARD CASANAS,

Defendants.

FILED

MOTION SEQ. NO. 001

DEC 27 2012

MOTION CAL NO. _____

**COUNTY CLERK'S OFFICE
NEW YORK**

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1, 2, 3, 4

Answering Affidavits- Exhibits 5, 6

Replying Affidavits _____

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 12/20/12

Donna M. Mills
DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

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PETER CASANAS and ELIZABETH
CASANAS,

Plaintiff,

- against-

Index No. 10105742

FILED

DEC 27 2012

**COUNTY CLERK'S OFFICE
NEW YORK**

The CARLEI GROUP, LLC and RICHARD
CASANAS,

Defendants.

----- x

Donna Mills, J.:

Defendants The Carlei Group, LLC ("Carlei") and Richard M. Casanas ("Casanas") (collectively, "Defendants") move for an order: (a) pursuant to CPLR 3211 (a)(7), dismissing the complaint as against Casanas personally; (b) pursuant to CPLR 6501 and/or 6514(b), canceling the June 11, 2012 notice of pendency (the "NOP") filed against the premises located at 73 West 82nd Street (the "Premises"); (c) pursuant to CPLR 3103(a), issuing a protective order striking Plaintiffs' First Request for Production of Documents, or, in the alternative, limiting, conditioning or regulating same; (d) pursuant to CPLR 2304, 3101(a)(4) and/or 3103(a), quashing the Notice to Take Deposition/Judicial Subpoena served upon non-party Aledia P. Casanas; (e) pursuant to Rule 130 of the Rules of the Chief Administrator, awarding Defendants costs and sanctions. Plaintiffs, Peter Casanas and Elizabeth Casanas cross move for an order pursuant to CPLR 3124 compelling Defendants to respond to plaintiffs' First Request for Production of Documents dated April 6, 2012.

Plaintiffs allege, in sum, that they hold a 100-year lease for Apartments 3W and 3C in the Premises, and that, as a result, they seek a declaratory judgment to the effect that Plaintiffs are lessees in the Premises. The filing of this action was precipitated by a

notice to quit served on the plaintiffs. In the notice to quit, defendant Richard Casanas, the manager of defendant Carlei Group, LLC, asserted that plaintiffs' occupied the Apartments as licensees of the prior owner and caused defendant Carlei Group LLC to announce that the license was revoked.

Plaintiffs claim to have executed a 100 year lease with the prior owner, Aleida Realty Corp. by Carlos and Aleida P. Casanas, the parents of Peter Casanas (Plaintiff) and of Richard Casanas (Defendant). In their answer to the complaint, defendants Richard Casanas and Carlei Group, LLC claim that the plaintiffs' lease is a forgery. The lease bears the signature of plaintiffs, Peter and Elizabeth Casanas, and of non-parties Carlos Casanas and Aleida Casanas. Carlos Casanas is deceased, but Aleida P. Casanas is available to testify regarding execution of the Lease.

"A declaratory judgment serves a legitimate purpose only when all interested persons who might be affected by the enforcement of rights and legal relations are parties" (Matter of J-T Assocs. v Hudson Riv.--Black Riv. Regulating Dist., 175 AD2d 438, 440). Since this declaratory judgment action seeks to determine whether plaintiffs are lessees in the premises, defendant Richard Casanas as the manager of The Carlei Group, cannot be said to be uninterested in the outcome, and perhaps a necessary party (see, CPLR 1001 [a]).

Plaintiffs' filed a NOP against the premises on June 11, 2012, and defendants' now seek to cancel it. CPLR 6501 provides in pertinent part: "A notice of pendency may be filed in any action in a court of the state in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property." "As the Court of Appeals has stated, 'The usual object of filing a notice of lis pendens is to

protect some right, title or interest claimed by a plaintiff in the lands of a defendant which might be lost under the recording acts in event of a transfer of the subject property by the defendant to a purchaser for value and without notice of the claim' (Braunston v. Anchorage Woods, 10 N.Y.2d 302, 305)." (Rose v. Montt Assets, Inc., 250 A.D.2d 451 [1st Dept 1998].) The courts have long "required strict compliance with the statutory procedural requirements" for the filing of a notice of pendency. (5303 Realty Corp. v. O & Y Equity Corp., 64 N.Y.2d 313, 320 [1984].) Thus, "[t]he powerful impact that this device has on the alienability of property, when conjoined with the facility with which it may be obtained, calls for its narrow application to only those lawsuits directly affecting title to, or the possession, use or enjoyment of, real property." (5303 Realty Corp., 64 N.Y.2d at 315-316; Pix Furniture, Inc. v. Loew's Theatres & Realty Corp., 131 Misc.2d 517, 519 [Bronx County 1986], *affd no opinion* 129 A.D.2d 1018 [1987].)

On a motion to cancel, "the court is essentially limited to reviewing the pleading to ascertain whether the action falls within the scope of CPLR 6501." (5303 Realty Corp., 64 N.Y.2d at 320.) In determining whether to cancel the notice of pendency in the instant case, the issue before the court is thus whether plaintiffs' complaint demands a judgment that would affect the title to, or the possession, use, or enjoyment of, real property. (See CPLR 6501; Robert Fiancé Hair Design Inst. v. Concourse Props. Co., 130 A.D.2d 564 [2d Dept 1987].) Clearly, the complaint does address plaintiffs' ability to enjoy the use of the real property in question.

Defendants' also seek to strike or limit plaintiffs' document demands. CPLR 3101 (a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." The phrase

“material and necessary” should be interpreted liberally, and the test is one of “usefulness and reason” (Kooper v Kooper, 74 AD3d 6, 10 [2010]). Unlimited disclosure, however, is not required (see Spohn-Konen v Town of Brookhaven, 74 AD3d 1049 [2010]), and the rules provide that the court may issue a protective order “denying, limiting, conditioning or regulating the use of any disclosure device” to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts” (CPLR 3103 [a]).

In opposition to defendants’ motion, plaintiff withdraws demands 11, 17 and 25. “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed” (Lolly v Brookdale Univ. Hosp. & Med. Ctr., 45 AD3d 537, 537 [2007]). This Court finds that the demands with the exception of 21 and 22 are material and necessary in the prosecution of this action and should be responded to by defendants.

Defendants also seek to quash the Notice to Take Deposition upon non-party Aledia P. Casanas. The First Department has held that “[a] subpoena will be quashed ... where the material requested is utterly irrelevant to any proper inquiry.” General Electric Co. v. Rabin, 184 A.D.2d 391, 392 (1st Dept 1992). Here, the testimony which plaintiffs seek to obtain from the non-parties is relevant to the underlying action as it will potentially discuss the non-parties’ observations from the purported execution of the Lease, and since the testimony can only be provided by those individuals that attended the signing of the Lease, the defendants’ motion to quash the subpoena, is denied.

Accordingly it is

ORDERED that defendants’ motion to dismiss the complaint against Richard

Casanas is denied; and it is further

ORDERED that defendants' motion canceling the notice of pendency filed against the premises is denied; and it is further

ORDERED that defendants' motion for a protective order striking Plaintiffs' First Request for Production of Documents, dated April 6, 2012, is granted to the limited extent of striking demands 21 and 22; and it is further

ORDERED that defendants' motion quashing the notice to take Deposition is denied; and it is further

ORDERED that plaintiffs' motion to compel defendants to respond to plaintiffs' First Request for Production of Documents is granted to the limited extent of directing defendants' to respond to the demand with the exception of the demands that were withdrawn and demands 21 and 22; and it is further

ORDERED that defendants' are directed to respond to the plaintiffs' First Request for Production of Documents within twenty days of receiving a copy of this Order with notice of entry.

Dated: 12/20/12

FILED

DEC 27 2012

COUNTY CLERK'S OFFICE
NEW YORK

ENTER:

[Handwritten Signature]

J.S.C.

DONNA M. MILLS, J.S.C.