

**Satterlee Stephens Burke & Burke LLP v Coney on  
the Park, LLC**

2013 NY Slip Op 31375(U)

June 10, 2013

Supreme Court, New York County

Docket Number: 103294/11

Judge: Joan A. Madden

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# SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: How Joan A. Madden  
Justice

PART 11

Index Number : 103294/2011  
SATTERLEE STEPHENS BURKE  
vs  
CONEY ON THE PARK LLC, ET AL.  
Sequence Number : 006  
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 decided in accordance with the  
attached Memorandum Decision + Order.

**FILED**  
JUN 28 2013  
COUNTY CLERK'S OFFICE  
NEW YORK

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

Dated: June 10, 2013

[Signature] 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  
SATTERLEE STEPHENS BURKE & BURKE LLP,

Plaintiff,

-against-

Index No. 103294/11

CONEY ON THE PARK, LLC, BRIDGEFRONT, LLC,  
CITY VIEW GARDENS, LLC, AFRICA ISRAEL  
INVESTMENTS LTD. D/B/A A.I. USA, D/B/A AFRICA-  
ISRAEL USA, d/b/a AFI USA, A.I. & Boymelgreen  
Developers LLC, a/k/a A.I. Boymelgreen Developers LLC,  
Boymelgreen Developers LLC, Boymelgreen Developers Inc.,  
Leviev Boymelgreen Developers LLC, a/k/a Leviev Boymelgreen,  
a/k/a Leviev & Boymelgreen Developers, LLC, d/b/a  
Leviev Boymelgreen, Atlantic Court, LLC, City View Towers LLC,  
Park Slope Gardens, LLC, Park Slope Terrace, LLC,  
Shaya B. Pacific, LLC, 15 Broad Street LLC, 23 Wall Commercial  
Owners LLC, Wall Street Commercial Owners LLC, 20 Pine  
Street LLC, 85 Adams Street LLC, 60 Spring Street LLC,  
W Squared, LLC, XYZ Corp., 1-10.

Defendants.

**FILED**

**JUN 28 2013**

**COUNTY CLERK'S OFFICE  
NEW YORK**

-----X  
JOAN MADDEN, J.:

In this action for unpaid legal fees and expenses, plaintiff *pro se* Satterlee Stephens Burke & Burke LLP (Satterlee Stephens) moves to compel defendant Atlantic Court, LLC ("Atlantic Court") to produce documents responsive to its First Request for Production of Documents, to respond to Plaintiff's First Set of Interrogatories, to extend discovery deadlines and to grant costs and attorneys' fees incurred in making the instant application. Atlantic Court has defaulted on the motion.

Satterlee Stephens, a law firm located at 230 Park Avenue, New York, New York, charges the defendants with collectively owing \$740,000 in unpaid fees and expenses for legal services rendered between October 2004 and January 2009. The firm contends that the various

defendants have, at all relevant times, been involved in real estate ventures in both New York and Kings counties, and that between October 28, 2004 and January 31, 2009, it represented them in numerous litigations, either as defendants or as interested parties in both employment and real estate matters. In its complaint, Satterlee Stephens charges defendants, including Atlantic Court, with breach of contract, account stated and unjust enrichment. Atlantic Court filed an answer on or about June 13, 2011, together with a counterclaim against Satterlee Stephens for legal malpractice stemming from its alleged improper withdrawal as counsel for Atlantic Court in an action under Kings County index No. 18092/06 (Kings County Action). By decision and order dated October 21, 2012, this court dismissed the counterclaim for legal malpractice.

Atlantic Court has responded to Satterlee Stephens' various document requests by asserting that the document requests are "overbroad, unduly burdensome, improper, or seek information irrelevant and not reasonably calculated to lead to discovery;" "that it is not in possession of any responsive documents but reserves the right to supplement its response," "seek[] documents that are privileged in nature," "vague and ambiguous," "calls for a legal conclusion" and therefore require speculation to determine their meaning" and "requests documents in [Satterlee Stephens'] possession." According to Satterlee Stephens, in connection with the document request, Atlantic Court has produced no documents.

Atlantic Court's response to Satterlee Stephens document demand is insufficient. Contrary to Atlantic Court's boilerplate objections, the documents sought by Satterlee Stephens are not irrelevant, overly broad, burdensome or vague and ambiguous. They also do not call for legal conclusions as opposed to factual ones. In addition, Atlantic Court's objection that the documents are possessed by Satterlee Stephens and therefore need not be produced is frivolous,

particularly given that this dispute concerns whether Satterlee Stephens performed legal services for Atlantic Court and the other defendants.

Furthermore, if Atlantic Court does not have responsive documents, it must provide an affidavit from a person with knowledge providing a “detailed statement” as to “the past and present status” of the documents sought, the record keeping methodology with respect to the documents, and the nature and extent of the search conducted for such documents. Longo v. Armor Elevator, Co., Inc., 278 AD2d 127 (1<sup>st</sup> Dept 2000); Fugazy v. Time Inc., 24 AD2d 443 (1<sup>st</sup> Dept 1965)(requiring plaintiff to produce documents where objection that he did not have the requested documents was not supported by an affidavit from plaintiff or a person with knowledge).

Next, Atlantic Court’s objections on the ground of privilege are without merit. In light of “the strong public policy favoring full disclosure,” Atlantic Court has the burden of proving each element of a privilege. Spectrum Systems Intern’l Corp. v. Chemical Bank 157 A.D.2d 444,447 (1<sup>st</sup> Dept 1990), aff’d as modified, 78 N.Y.2d 371 (1991). “In order to raise a valid claim of [attorney-client] privilege, the party seeking to withhold the information must show that it was a ‘confidential communication’ made between the attorney and the client in the context of legal advice or services.” Bertalo’s Restaurant Inc. v. Exchange Ins. Co., 240 A.D.2d 452,454 (2<sup>nd</sup> Dept), lv. dismissed 91 N.Y.2d 848 (1997). In addition, facts in a client’s possession are not insulated from discovery simply as a result of being reported to counsel. Rossi v. Blue Cross and Blue Shield of Greater New York, 73 N.Y.2d 588, 594 (1989). Likewise, facts learned by an attorney from independent sources and then reported are not privileged. Kenford Co. v. County of Erie, 55 A.D.2d 466 (4<sup>th</sup> Dept 1997).

An attorney’s work product is entitled to absolute immunity (CPLR 3101[c]), while

materials prepared in anticipation of litigation are subject to conditional privilege (CPLR 3101[d]). Corcoran v. Peat, Marwick, Mitchell and Co., 151 A.D.2d 443,445 (1<sup>st</sup> Dept 1989). “Lawyer’s interviews, mental impressions and personal beliefs procured in the course of litigation are deemed to be an attorney’s work product.” Id. However, the work product privilege has been construed narrowly. Zimmerman v. Nassau Hospital, 76 A.D.2d 921, 922 (2<sup>nd</sup> Dept 1980). Thus, to be shielded from discovery based on the work product privilege, it must be shown that the materials in issue are “uniquely the products of a lawyer’s learning and professional skills.” Aetna Cas and Surety Co. v. Certain Underwriters at Lloyd’s, 263 A.D.2d 367, 368 (1<sup>st</sup> Dept 1999), lv. dismissed, 94 N.Y.2d 875 (2000)(citations omitted). Under the above-cited standards, Atlantic Court has not met its burden of demonstrating that the attorney-client or work product privileges apply to the document requests at issue.

With respect to its response to the First Set of Interrogatories, Atlantic Court’s assertions of privilege are equally unavailing. In this connection, Atlantic Court’s bald assertions of privilege in response to an interrogatories requesting an organizational chart, information regarding a joint venture between its alleged owners, and a business address are without merit. And, interrogatories relating to communications between Satterlee Stephens and Atlantic Court concerning Satterlee Stephens’ services are not privileged. Schulte Roth & Zabel v. Chammah, 251 AD2d 132 (1<sup>st</sup> Dept 1998).

Atlantic Court’s remaining objections to the interrogatories which seek, *inter alia*, information regarding its retention of counsel relating to the litigations at issue in this action, Atlantic Court’s payments for Saterlee Stephens’ services, and Atlantic Court’s organizational structure, are also insufficient. With few exceptions, Atlantic Court has responded with a boilerplate objection that the information sought in the interrogatories was overbroad and

burdensome. Even assuming *arguendo* that the objections to the interrogatories were timely, the responses are wholly insufficient. Specifically, a review of the interrogatories reveals that they are relevant to the issues in this action and are neither overly broad or burdensome.

Accordingly, the motion to compel is granted to the extent of directing Atlantic Court to respond to Satterlee Stephens' First Request for Documents, and First Set of Interrogatories, in accordance with this decision and order on or before July 11, 2013, and their failure to comply with result in sanctions or penalties per CPLR 3126, including, but not limited to, the determination of issues upon which the discovery is relevant in accordance with Satterlee Stephens' claims. The additionally discovery deadlines will be extended at a status conference to be held on July 18, 2013.

In view of the above, it is

ORDERED that the Atlantic Court shall provide a further response to plaintiff Saterlee Stephens' First Request for Documents, and First Set of Interrogatories, in accordance with this decision and order, on or before July 11, 2013; and it is further

ORDERED that in the event that Atlantic Court fails to comply with the immediately preceding paragraph, the court will impose discovery sanctions/penalties against Atlantic Court as provided in CPLR 3126 including, but not limited to, the determination of issues upon which the discovery is relevant in accordance with Satterlee Stephens' claims; and it is further

ORDERED that all further discovery motions regarding interrogatories and all opposition to such motions shall comply with the format in the annexed supplemental order or the court the shall not consider such motion and/or opposition.

Dated: June 10, 2013

  
\_\_\_\_\_  
J.S.C.