

**Palmiero v 417 East 9th St. Assoc.**

2013 NY Slip Op 32574(U)

October 17, 2013

Sup Ct, New York County

Docket Number: 106138/2010

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER  
Justice

PART 15

Index Number : 106138/2010  
PALMIERO, JOHN  
vs.  
417 EAST 9TH STREET ASSOCIATES  
SEQUENCE NUMBER : 003  
STRIKE ANSWER

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). 1 2  
Answering Affidavits — Exhibits \_\_\_\_\_ No(s). 3  
Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH  
ACCOMPANYING DECISION / ORDER

FILED

OCT 22 2013  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 10/17/13

  
HON. EILEEN A. RAKOWER, J.S.C.

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

- 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 — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

Justice

PART 15

JOHN PALMIERO AND JOHN PALMIERO  
AS TEMPORARY GUARDIAN OF HIS SON JOHN  
PALMIERO,

Plaintiffs,

- v -

417 EAST 9<sup>TH</sup> STREET ASSOCIATES, LLC,  
JAKOBSON PROPERTIES, LLC., PETER JAKOBSON,  
PETER JAKOBSON, JR., THOMAS C. TUNG AND  
CD DESIGN, INC.,

Defendants.

417 EAST 9<sup>TH</sup> STREET ASSOCIATES, LLC.,  
JAKOBSON PROPERTIES, LLC., PETER JAKOBSON,  
PETER JAKOBSON, JR.,

Third-Party Plaintiffs,

-v-

DAVID MAHLER,

Third-Party Defendant.

INDEX NO. 106138/2010  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 3  
MOTION CAL. NO. \_\_\_\_\_

**FILED**

OCT 22 2013

COUNTY CLERK'S OFFICE  
NEW YORK

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

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1, 2
Answer — Affidavits — Exhibits _____	3
Replying Affidavits _____	

The instant action is brought to recover for injuries allegedly sustained by Plaintiff caused by fire and smoke, at premises located at 417 East 9<sup>th</sup> Street, New York, New York. Plaintiff alleges that he was unable to escape the fire due to lack of the required means of egress. The premises were owned and managed by defendants 417 East 9<sup>th</sup> Street Associates and Jakobson Properties, LLC (collectively,

“Defendants”).

Presently before the Court is plaintiff’s motion pursuant to CPLR §3124 and §3126 to strike the answer of defendants 417 East 9<sup>th</sup> Street Associates, LLC, Jakobson Properties, LLC, Peter Jakobson and Peter Jakobson, Jr. based on their alleged failure to comply with the Court Order dated March 19, 2013, which required said Defendants to provide discovery responses to Plaintiff’s Post-EBT Notices for Discovery and Inspection of January 9, 2013 and January 10, 2013 within 30 days.

On December 4, 2012 and December 18, 2012, a deposition of Peter Jakobson Jr. was held. On January 9, 2013 and January 10, 2013, Plaintiff served its Post-EBT Notice for Discovery and Inspection on Defendants 417 East 9<sup>th</sup> Street Associates and Jakobson Properties, LLC.

On March 19, 2013, a Compliance Conference Order was entered requiring Defendants to provide discovery responses to Plaintiffs Post-EBT Notices for Discovery and Inspection of January 9, 2013 and January 10, 2013 within thirty days.

In response, on March 22, 2013, Defendants provided eight responses and seventeen objections. Plaintiff contends that the objections were untimely and consist only of blanket objections lacking specificity.

CPLR §3101(a) provides that “[t]here shall be full disclosure of all matters material and necessary in the prosecution or defense of an action, regardless of the burden of proof.”

Here, the subject document demands requested by Plaintiff’s first set of Post EBT demands relate to the building in which Plaintiff was injured and the entities responsible for said and include the following:

1. The proper name of the entity: ‘The Peter Jakobson 1997 Qualified Annuity Trust.’
2. Date 417 Defendants acquired 418 E. 9<sup>th</sup> Street, New York, NY.
3. Date 417 East 9<sup>th</sup> Street Associates, LLC, was formed.
4. Date 417 East 9<sup>th</sup> Street Associates, LLC was formed.
5. Names of the limited partners in 417 East 9<sup>th</sup> Street Associates, LP.
6. “Real Estate” Closing File” maintained by Defendants for 417 East 9<sup>th</sup>

- Street, New York, NY (hereinafter the "Subject Premises").
7. "Financing File" for the Subject Premises.
  8. "Lease File" for the Subject Premises.
  9. Name, address and telephone person, persons and/or entity employed to perform daily cleaning and/or maintenance of the Subject Premises at the time of the fire of December 3<sup>rd</sup>, 2009.
  10. Copies of any and all paychecks or payroll records issued from January 2009 to on or about the time of the fire ... by defendants ... or the "Payroll Company"
  11. Names, addresses and telephone numbers of all the employees in the Property Management Department from January to December 2009 including but not limited to: (a) property manager; (b) assistant junior property manager; (c) administrative assistant.
  12. Names, addresses and telephone numbers of the entity used to issue payroll and maintain payroll records in 2009 for: (a) property management dept.; (b) employees who worked or were responsible for the Subject Premises.
  13. Name, address and telephone numbers of the persons and/or entity employed to perform daily cleaning and/or maintenance of the Subject Premises from January to December 2009.
  14. Copy of the contract with (i) CD Design, Inc. (ii) Central Development Housing and/or (iii) Sam Wu with respect to the repairs to Apartment 1 located at the Subject Premises.
  15. Copies of any documents, including but not limited to records, invoices, photographs taken by any parties in connection with the remediation after the fire ...
  16. Any and all photographs of Apartment 1 ... pre and post date of loss.
  17. Copy of the "Lease Package" that was provided to Plaintiff at the time of the signing of the lease ...
  18. List of other units located in the Subject Premises that were directly above Apt. 1.
  19. List of tenants who lived at the loss location ... as of the date of the loss...

In their responses, Defendants objected to Demands No. 1-9, 12-15, 18-19 with the following form objection: "Objection; burdensome, and irrelevant, and not calculated to lead to material evidence." Defendants answered demands Nos. 10 and

11, referred Plaintiffs to their previous responses with respect to No. 16, and produced documents in response to No. 15. Defendants contend that Plaintiff has failed to demonstrate that the information requested will lead to material evidence.

Plaintiff's Second Post EBT demands also pertained to the subject building and apartment, including the following demands: request for Notice to Cure sent to Plaintiff, color copies of photographs taken before date of loss, last known address of leasing administrator Veena Vong, incident report prepared, lease file of prior tenant, and tenant file for the apartment leased by Plaintiff and third party defendant David Mahler. Here, Defendants objected to Plaintiff's request for the lease file of the prior tenant of Plaintiff's apartment (Request No. 5) with a blanket objection.

CPLR §3101(a) generally provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has held that the term "material and necessary" is to be given a liberal interpretation in favor of the disclosure of "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity," and that "[t]he test is one of usefulness and reason" (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]). However, a party is not required to respond to discovery demands which are "palpably improper." A demand is palpably improper if it seeks information which is irrelevant or confidential, or is overbroad and unduly burdensome (*Gilman & Ciocia, Inc. v. Walsh*, 2007 NY Slip Op 8410, \*1 [2nd Dept. 2007]).

Here, in light of CPLR §3101(a) which provides that "[t]here shall be full disclosure of all matters material and necessary in the prosecution or defense of an action" and the documents demanded by Plaintiff (with the exception of Plaintiffs' request for the lease file for the prior tenant of the subject apartment) pertain to the building where Plaintiff was injured, the entities which Plaintiff contends were responsible, and other information which Plaintiff contends bear on his claims, Defendants were obligated to respond to Plaintiffs' Post-EBT demands, and to date, have failed to do so. However, as for demand for the "lease file" for the prior tenant of plaintiff John Palmiero's apartment, Plaintiffs have failed to demonstrate that this information will lead to evidence material and necessary for the prosecution of this action.

Wherefore, it is hereby

ORDERED that plaintiffs' motion to strike defendants' answer is denied; and it is further

ORDERED that defendants 417 East 9<sup>th</sup> Street Associates and Jakobson Properties, LLC are directed to respond to Plaintiffs' January 9, 2013 and January 10, 2013 Post EBT demands with the exception of Plaintiffs' demand for the lease file of the prior tenant (Request No. 5 of Second Post EBT Demands) within 30 DAYS of receipt of a copy of this order with notice of entry thereof; and it is further

ORDERED that all parties are reminded that they must appear for their scheduled conference at 80 Centre Street, Room 327, on November 26, 2013 at 9:30 a.m.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: 10/17/2013



HON. EILEEN A. RAKOWER ~~SR.~~

Check one: FINAL DISPOSITION    X NON-FINAL DISPOSITION

Check if appropriate:     DO NOT POST     REFERENCE

**FILED**

OCT 22 2013

COUNTY CLERK'S OFFICE  
NEW YORK