

32 Gramercy Park Owners Corp v Coniff

2013 NY Slip Op 33680(U)

February 14, 2013

Sup Ct, New York County

Docket Number: 112712/11

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

32 GRAMERCY PARK OWNERS CORP.,

INDEX NO. 112712/11

Plaintiff(s)

FILED

MOTION DATE _____

-v-

MOTION SEQ. NO. 002

DIANE CONIFF and JOHN/JANE DOE,

FEB 19 2013

Defendant(s)

MOTION CAL NO. _____

NEW YORK
COUNTY CLERK'S OFFICE

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

PAPERS NUMBERED

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

Answering Affidavits- Exhibits 4, 5

Replying Affidavits 6, 7

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion to compel is decided as follows:

In this ejectment action, the plaintiff 32 Gramercy Park Owners Corp. (the "Cooperative") seeks to evict defendant Diane Coniff from her home, and cancel her shares in the Cooperative based on objectionable conduct. Defendant now moves to compel the Cooperative to produce documents pursuant to CPLR section 3124.

Defendant opposes the motion and cross-moves to strike certain discovery demands.

The parties have resolved most of the discovery issues and the Court will limit its decision to those discovery items that remain in dispute.

CPLR 3101 (a) provides for, inter alia, "full disclosure of all matter material and necessary in the prosecution or defense of an action." Although the phrase "material and necessary" must be "interpreted liberally" in favor of disclosure so long as the information sought meets the test of "usefulness and reason" (Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406 [1968]; a party does not have the right to uncontrolled an unfettered disclosure (see Merkos L'Inyonei Chinuch, Inc. v Sharf, 59 AD3d 408, 410 [2009]). Further, the Supreme Court has broad discretion over the supervision of disclosure, and its determination will not be disturbed absent an improvident exercise of discretion (see Spodek v Neiss, 70 AD3d 810 [2010]).

A motion to compel responses to demands and interrogatories is properly denied where the demands and interrogatories seek information which is irrelevant, overly broad, or burdensome (Gilman & Ciocia, Inc. v Walsh, 45 AD3d 531 [2007]).

In document request No. 9, defendant seeks the entire footage of a surveillance camera that was placed by the Cooperative on the outside of defendant's apartment. The cooperative maintains that the cost of copying the relevant footage would be between \$23,500 and \$94,000 (depending on whether defendant wants three to twelve months of footage "extracted" and copied), and that defendant should bear the cost of said expense. Defendant maintains that she is entitled to the entire footage and

should not have to bear the cost of copying. Plaintiff has also suggested, in the alternative, that defendant arrange a time to view the surveillance footage to avoid the expense of copying it.

It is the opinion of this court that it is not empowered by statute or by case law to overturn the well-settled rule in New York State that the party seeking discovery bear the cost incurred in its production (see Waltzer v. Tradescape & Co., L.L.C., 31 A.D.3d 302, 304, 819 N.Y.S.2d 38 [1st Dept. 2006]). Accordingly, the court will not order the copying of the videotape footage until such time as defendant communicates that she is willing to bear the costs incurred for its production, subject to any possible reallocation of costs at trial (see Etzion v Etzion, 7 Misc.3d 940, 945 [Sup. Ct. Nassau Cty. 2005]).

As to Document Request No. 12, defendant contends that the Cooperative has failed to produce all log books for the Building. The Cooperative in response maintains that it cannot produce the log books which were maintained at the concierge desk because they are missing, stolen or destroyed. The Cooperative should submit an affidavit attesting to same.

Document Request No. 18, requests all communications between itself and defendant. The Cooperative claims that it has produced all documents that it has. An affidavit should be submitted attesting to same.

With respect to Request No. 29, seeking all communications with shareholders

and tenants relating to dogs in the building, defendant claims that the Cooperative has produced its dog policy and little else. The Cooperative maintains that it has provided all documents relevant to its dog policy, as it pertains to the defendant, and material related to other tenants with dogs in the Building. The Cooperative should submit an affidavit that it has checked its records and turned over any and all records of tenants with dogs that led to complaints and relate to the subject request.

With respect to Request No. 33, defendant has requested all invoices and bills for audio/visual vendors for the building. In response the Cooperative claims to have produced all invoices and bills for audio/visual vendors, which renders this request moot.

As to the Request Nos. 15 and 26, which seek, among other things, legal invoices for service rendered by the Cooperative's counsel for its former Board President, Peter Acocella, is denied as irrelevant to the claims in this action.

Accordingly, it is

ORDERED that defendant's motion to compel is granted in part, consistent with this decision; and it is further

ORDERED that the Cooperative is directed to respond accordingly to this Order within ten days of receiving a copy of this Order with notice of entry; and it is further

ORDERED that plaintiff's cross-motion is denied with leave to renew to the extent that the parties have not resolved the issues contained therein.

Dated: 2/14/13

DNM

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION
DONNA M. MILLS, J.S.C.

FILED

FEB 19 2013

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COUNTY CLERK'S OFFICE