

**DuPont v EF Intl. Academy, Inc.**

2013 NY Slip Op 33762(U)

December 2, 2013

Supreme Court, Westchester County

Docket Number: 52450/2012

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER-COMPLIANCE PART

-----X  
LANKA DUPONT

Plaintiff

**DECISION and ORDER**

**Index # 52450/2012**

**Seq. No. 3**

**Motion Date: Dec 2, 2013**

-against-

EF INTERNATIONAL ACADEMY, INC., dba  
EF INTERNATIONAL ACADEMY,

Defendant

-----X  
LEFKOWITZ, J.

The following papers were read on this motion by defendant for an order: (1) compelling plaintiff to serve responses to defendant's first set of interrogatories, items 4, 6, 9, 11, 12, 25 and 27; and to defendant's first demand for documents, items 2, 3, 12, 27 and 29; (2) precluding plaintiff from offering any evidence at the trial of this action in support of the items not yet produced; and (3) for such other and further relief as this court deems just and proper.

- Order to Show Cause dated October 15, 2013
- Affirmation in Support
- Exhibits A-F
- Memo of Law in Opposition

Upon the foregoing papers and upon oral argument heard on December 2, 2013, this motion is determined as follows:

*Factual and Procedural Background*

This action was commenced in February, 2012. Plaintiff seeks a tuition refund from the defendant school after her son (to be referred to as Max) was expelled therefrom on November 17, 2011. In her complaint plaintiff alleges that when she enrolled Max in the defendant's school in October, 2011, she paid the full year's tuition. Plaintiff claims that because Max was at the school for only six weeks before he was expelled, plaintiff is entitled to a refund of a portion of the tuition she pre-paid. Issue was joined on or about March, 2012, whereby the defendant school denied the essential allegations made against it and asserted these affirmative defenses: this cause of action may not be maintained because of a release given by plaintiff to

defendant; the complaint fails to state a cause of action; plaintiff's culpable conduct, if any, shall diminish the amount of damages otherwise recoverable; and, if plaintiff suffered injuries resulting in damages, such damages were the result of the actions of third parties for which defendant is not responsible.

On or about April 26, 2012, defendant served plaintiff with its first set of interrogatories and its first demand for documents. Defendant states that plaintiff provided it with responses to its discovery requests on May 8, 2013. By letter dated May 31, 2013, defendant demanded that plaintiff provide to it complete supplemental responses to its interrogatories and document requests. According to defendant a compliance conference was held on August 15, 2013, at which conference the court directed the parties to engage in discussions and at which time a further conference was set for August 29, 2013.

By Compliance Conference Order dated August 29, 2013, the court directed plaintiff to respond to defendant's discovery demands and interrogatories by September 13, 2013. The order directed plaintiff to serve brief supplemental response to interrogatories 4, 6, 7, 9, 10, 11, 12, 13, 15, 25 (to the extent of litigations alleging or arising from Max's education or alleged violence) and 27, and ordered that each response be keyed to the particular interrogatory to which it responds. The order further directed plaintiff to comply with document demands 2, 3, 12, 27 and 29. The order further directed plaintiff to provide by September 13, 2013, authorizations for school records (attendance performance and discipline) for the five years prior to the subject incident. Plaintiff's supplemental responses to defendant's interrogatories and discovery demands is dated September 12, 2013. Defendant notes that not only is the response not signed but it fails to comply with the court's directive in many respects.

#### *Parties' Contentions*

Presently defendant is moving for an order, among other things, compelling plaintiff to fully and adequately comply with its discovery demands. Initially, defendant notes that plaintiff's supplemental response to its interrogatories was not signed. Plaintiff contends that the original response was signed and she should not have to sign every supplement. Upon review, the court finds that the original dated May 6, 2013, was signed by plaintiff although the supplemental response was not signed by either counsel or plaintiff. CPLR 3133 (b) provides that interrogatories shall be answered in writing under oath by the party served. Each question shall be answered separately and fully and each answer shall be preceded by the question to which it responds. The court finds it proper to require plaintiff to sign her supplemental responses and when answering the interrogatories to comply fully with the applicable statute.

Defendant further notes that plaintiff has not provided to it authorizations allowing it to obtain the school records for plaintiff's son. Defendant notes that in connection with its request for these authorizations plaintiff must provide a supplemental response to interrogatory 5 which asks for the name and address of each school attended by Max from birth to the present, the date he enrolled in the school and the date the matriculation ended, the nature

of any disciplinary action taken against him, and the reason he stopped matriculating at each school. To date plaintiff has only provided the names of three schools attended by Max. Defendant notes that also relevant to these authorizations is its interrogatory 14 which seeks all of Max's school records from October 13, 2006 (five years prior to the subject incident) through the present. To date plaintiff has only provided documents reflecting payment and the cost of tuitions. The court finds that plaintiff should provide the requested authorizations as well as a list of the schools attended by Max in the past five years which list includes the information as requested by defendant.

Defendant also notes that plaintiff agreed she would put in writing that she will limit her potential witnesses to the three listed in the first response to its interrogatory 23. Plaintiff responds that if other witnesses are identified at defendant's deposition or otherwise through discovery, she will use that person. Plaintiff states that she only agreed that she would not use any witnesses other than those persons identified in the discovery process. The court declines at this juncture of the discovery proceedings to require plaintiff to put in writing that she will limit her witnesses only to those presently listed in her first response to interrogatory 23.

Defendant asserts that plaintiff failed to properly supplement certain requested interrogatories (4, 6, 9, 11, 12, 25 and 27) and to properly respond to certain of its document demands (2, 3, 12, 27, and 29). Plaintiff responds that she has done a reasonable job in responding to the discovery requests and that any further information is of minimal value. Plaintiff states that to require even greater supplementation would involve unfair and disproportionate cost. Plaintiff states she will not use any documents at trial other than those identified in the discovery process.

Upon its review of the interrogatories dated April 26, 2012, plaintiff's answers dated May 6, 2013, and plaintiff's supplemental answers dated September 12, 2013, the court finds that plaintiff improperly and/or inadequately responded to interrogatories 4, 6, 9, 11, 12, 25 and 27. The court directs plaintiff to fully, properly and precisely answer the enumerated interrogatories.

Upon its review of the documents demanded by defendant on April 26, 2012, plaintiff's response dated May 6, 2013 and plaintiff's supplemental response dated September 12, 2013, the court finds that plaintiff properly responded to the document demands. In response to document demand 2, plaintiff has adequately responded thereto by providing defendant with the names of the medical studies, the journals and the dates where the study can be found. In response to document demand 3, plaintiff has adequately responded thereto that to her knowledge there has been no police investigation relating to the underlying incident relating to this matter. Furthermore, plaintiff has stated that in this action she is not making a claim on behalf of Max for any mental injury he may have sustained and only seeks reimbursement of the tuition paid before he was expelled. Therefore, the documents already provided by plaintiff are adequately responsive to defendant's document demands 12, 27 and 27 seeking information regarding damages.

In view of the foregoing, it is:

ORDERED that defendant's motion is granted to the limited extent that on or before December 27, 2013, plaintiff provide to defendant authorizations allowing defendant to obtain the school records (referring to Max's attendance, performance and discipline) for each school attended by Max from September, 2006, to the present as well as a supplemental response to interrogatory 5 listing the name and address of each school attended by plaintiff's son from September, 2006, to the present, the date he enrolled in the school and the date his matriculation ended, the nature of any disciplinary action taken against him and the reason he stopped matriculating at each school; and it is further,

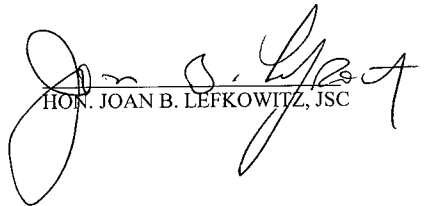
ORDERED that plaintiff fully, properly and precisely answer interrogatories 4, 6, 9, 11, 12, 25 and 27, and clearly mark each response as to which particular interrogatory it is responsive to: for example, each question shall be answered separately and fully and each answer shall be preceded by the question to which it responds and this supplemental response to the interrogatories will be in writing under oath by plaintiff; and it is further,

ORDERED that to the extent plaintiff does not provide the responses as herein above set forth, she will be precluded from offering any evidence at trial in support of the issues raised thereby; and it is further,

ORDERED that the parties appear for a conference in the Compliance Part, Room 800, on January 9, 2014, at 9:30 AM; and it is further,

ORDERED that defendant serve a copy of this order with notice of entry upon plaintiff within ten (10) days of entry.

Dated: White Plains, New York  
December 2, 2013

  
HON. JOAN B. LEFKOWITZ, JSC