

Ratner v Robinson

2013 NY Slip Op 33926(U)

February 26, 2013

Supreme Court, Nassau County

Docket Number: 005607/12

Judge: Daniel R. Palmieri

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

P R E S E N T :

**HON. DANIEL PALMIERI
Justice Supreme Court**

-----X
CARY RATNER,

Plaintiff,

-against-

LINDA ROBINSON,

Defendant.
-----X

TRIAL TERM PART 22

INDEX NO. 005607/12

Motion Seq. 003

Motion Date: 2-15-13

Submit Date: 2-15-13

The following papers have been considered:

- Notice of Motion, dated 1-21-13.....1**
- Affirmation in Opposition, dated 1-31-13.....2**
- Defendant's Reply, dated 2-7-13.....3**
- Memorandum of Law, dated 2-4-13.....4**

This action was assigned to the undersigned or about January 1, 2013.

Defendant's motion to strike pursuant to CPLR §3126 is conditionally granted as provided herein, all other requests for relief are denied. Plaintiff shall, no later than 3:00 p.m., March 15, 2013, deliver to the office of defendant's attorneys, for discovery and inspection, photographic copies of the discovery demanded in defendant's demand dated September 24, 2012. In the event a document does not exist or after exercising due diligence it cannot be found, plaintiff shall submit an affidavit to that effect, listing in detail the efforts made by plaintiff to locate the missing item and plaintiff shall not thereafter be permitted to submit as evidence any such missing item unless prior disclosure thereof is made.

In the event that plaintiff fails timely and completely to comply with this Decision and Order within the aforesaid time period, he shall, without further Order, be precluded from offering any evidence at trial, in a motion or in any other matter associated with this case.

Plaintiff opposes this motion by submitting an affirmation under oath to which he attaches a rejection of a demand to take his deposition in Suffolk County. However, here defendant seeks discovery and inspection not a deposition. Plaintiff's claim that it would be a hardship for him to comply because the office of defendant's counsel is located in an adjoining county, is not supported by sufficient facts or legal authority and hence, is rejected.

The plaintiff has not sufficiently articulated a basis for excusing him from paying for the reproduction costs of the demanded material and hence, the Court will adhere to established case law and order that the cost of reproduction shall be borne by plaintiff and all produced material shall be consecutively numbered and "Bates" stamped. *See U.S. Bank, N.A., v. GreenPoint Mtge. Funding, Inc.*, 94 AD3d 58, 63 (1st Dept. 2012).

The supervision of discovery and the setting of reasonable terms and conditions for disclosure are matters within the sound discretion of the trial court. *Wadolowski v. Cohen*, 99 AD3d 793 (2d Dept. 2012).

A party seeking discovery must demonstrate that the discovery sought will lead to relevant evidence or is reasonably calculated to lead to discovery of information bearing on the claim. *Vyas v. Campbell*, 4 AD3d 417 (2d Dept. 2004), and the movant has met her burden. Moreover, the failure of a party to challenge the propriety of a request

forecloses inquiry into the appropriateness of the information sought, except for material which is privileged or palpably improper. *Otto v. Triangle Aviation Services, Inc.*, 258 AD2d 448 (2d Dept. 1999).

Given the nature of this action and the broad sweep of the allegations, the Court does not find the requested information to be palpably improper, unduly burdensome or oppressive and plaintiff's generalized and conclusory objections are insufficient to establish otherwise. *Cf The Amherst Synagogue v. Schuele Paint Co., Inc.* 30 AD3d 1055 (4th Dept. 2006). The items demanded are reasonable and relevant to the allegations made and plaintiff has failed to cite to this Court sufficient law or facts that would justify a protective order CPLR §3103 or a denial of the motion by defendant.

The Court has not considered the numerous personal attacks and irrelevant information submitted by both parties and advises them that any future submitted papers which contain such content shall be rejected in their entirety and may subject the offending party to sanctions.


Plaintiff and defendant's counsel shall appear at a conference before the undersigned at the Supreme Courthouse, 100 Supreme Court Drive, Mineola, N.Y., on March 18, 2013, at 9:00 a.m. The conference presently scheduled for March 13, 2013 is cancelled. No adjournments of this conference will be permitted absent the permission of or Order of this Court. All parties are forewarned that failure to attend conference may result in default judgment, the dismissal of pleadings (see 22 NYCRR 202.27) or monetary sanctions (22 NYCRR 130-2.1 et seq).

All requests for relief not specifically addressed are denied.

This shall constitute the Decision and Order of this Court.

DATED: February 26, 2013

ENTER


HON. DANIEL PALMIERI
Supreme Court Justice

TO: Plaintiff Pro Se
Cary Ratner
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Attorney for Defendant
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ENTERED
MAR 01 2013
NASSAU COUNTY
COUNTY CLERK'S OFFICE