

<b>Batan v Ball</b>
2014 NY Slip Op 31992(U)
July 28, 2014
Sup Ct, NY County
Docket Number: 160844/13
Judge: Manuel J. Mendez
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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ Justice

PART 13

JODI BATAN a/k/a JODI BATAN-DRYERMAN a/k/a JODI SEEGULL,

Plaintiff,

-against-

LINDA BALL,

Defendants.

INDEX NO. 160844/13 MOTION DATE 06-18-14 MOTION SEQ. NO. 001 MOTION CAL. NO.

The following papers, numbered 1 to 9 were read on this motion to/for Compel Discovery and Cross-Motion for a Protective Order:

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits cross motion

Replying Affidavits

PAPERS NUMBERED

1 - 3

4 - 6

7, 8 - 9

Cross-Motion: X Yes No

Upon a reading of the foregoing cited papers, it is Ordered that defendant's motion pursuant to CPLR §3124 to compel plaintiff to respond to her Combined Discovery Demands and First Demand for Discovery and Inspection, is granted solely to the extent that plaintiff shall respond to defendant's First Demand for Discovery and Inspection, demands numbers 1 through 5 and 8. The remainder of the motion is denied. Plaintiff's cross-motion for a protective order pursuant to CPLR §3103, against defendant's First Demand for Discovery and Inspection and First Set of Interrogatories and pursuant to CPLR §3211[a][7] dismissing defendant's first counterclaim, is granted only to the extent of striking the defendant's First Set of Interrogatories and the defendant's first counterclaim. The remainder of the cross-motion is denied.

Plaintiff brought this action to recover damages for breach of a sublease agreement, costs, and attorney fees, and for payment of real estate agent fees. Plaintiff alleges that defendant signed the sublease on August 5, 2013, and submitted certified checks in the amount of \$5,500.00 as security, and \$2,475.00 for the real estate agent, as part of a one year rental of a cooperative apartment #7C, located at 233 East 86th Street, New York, New York 10028. Plaintiff also alleges that the rental was subject to approval by the Cooperative Board which required defendant's appearance for an interview. Defendant failed to appear for the interview and cancelled the certified checks.

Defendant seeks an Order pursuant to CPLR §3124, to compel plaintiff to respond to her Combined Discovery Demands and First Demand for Discovery and Inspection. Defendant contends that plaintiff has waived objection to the Combined Discovery Demands and First Demand for Discovery and Inspection pursuant to CPLR §3122. Defendant argues that her discovery demands are relevant to this action, specific and are not burdensome.

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

Plaintiff opposes the motion and cross-moves pursuant to CPLR §3103 for a protective order against defendants' Combined Discovery Demands and First Demand for Discovery and Inspection and First Set of Interrogatories, contending they are, unduly burdensome, seek an extensive narrative and are punitive in character.

Pursuant to CPLR §3124, the Court may compel compliance upon failure of a party to provide discovery. It is within the Court's discretion to determine whether the materials sought are "material and necessary" as legitimate subject of inquiry or are being used for purposes of harassment to ascertain the existence of evidence (Roman Catholic Church of the Good Shepard v. Tempco Systems, 202 A.D. 2d 257, 608 N.Y.S. 2d 647 [N.Y.A.D. 1<sup>st</sup> Dept., 1994]) The court has broad discretion in supervising disclosure and to grant a protective order pursuant to CPLR §3103 (Foster v. Herbert Slepoy Corp., 74 A.D. 3d 1139, 902 N.Y.S. 2d 426 [N.Y.A.D. 2<sup>nd</sup> Dept., 2010]).

The failure of a defendant to timely object pursuant to CPLR §3122, to the propriety of discovery requests, does not foreclose inquiry where they are palpably improper because of irrelevance, unnecessarily burdensome or are overly broad and lacking the specificity required by CPLR §3120 (Kamanou-Goune v. Swiss International Airlines, 100 A.D. 3d 968, 954 N.Y.S. 2d 227 [N.Y.A.D. 1<sup>st</sup> Dept., 2012] and Perez v. Board of Educ. of the City of N.Y., 271 A.D. 2d 251, 706 N.Y.S. 2d 43 [N.Y.A.D. 1<sup>st</sup> Dept., 2000]). A discovery request using the term "all" is generally deemed overbroad, unless it can be determined by examination that the items sought are limited to the specific subject matter of the action and can be identified with "reasonable particularity" so that it can be readily identified (Mendelowitz v. Xerox Corp., 169 A.D. 2d 300, 573 N.Y.S. 2d 548 [N.Y.A.D. 1<sup>st</sup> Dept., 1991]).

Plaintiff provided responses to defendant's Combined Discovery Demand seeking parties statements, witness disclosure and expert witness disclosure (Cross-motion Exh. D). The defendant's "First Demand for Discovery and Inspection From Plaintiff," seeks seventeen (17) items to be produced (Mot. Exh. F). Each of the seventeen demands uses the terms, "any and all," and there are no specific dates or time period stated in any of the enumerated demands. Defendant has not stated a basis to reduce the relevant time period to the last three years since the rental sublease was alleged to have been entered into approximately a year ago. The first four demands, although using the terms "any and all" seek communications and agreements between the parties, and any documents signed or initialed by either the plaintiff and defendant. Although these demands do not specifically provide dates they can be found to apply to documents from six months before and one year after the date defendant signed the sublease. Utilizing the same six months prior and one year period after the defendant signed the sublease as a time frame, plaintiff is capable of responding to demand number 5, seeking any and all communications between the plaintiff and the building; and demand number 8 seeking any and all communications between plaintiff and "any real estate agent or real estate broker"; each are related to rental of the apartment to the defendant.

This Court finds that plaintiff is not required to respond to demands, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16 and 17. The enumerated demands are overly broad; defendant does not specify a time frame; seeks communications related to either "any other person" or "any person other than the defendant"; and in at least two instances (Demands 12 & 15, 13 & 14) are identical demands. Defendant has also not

established that plaintiff would be aware of, or is capable of producing documents related to communications between the defendant and real estate brokers, agents or others, which defendant can identify herself. She has not stated the relevance of demand number 11, seeking any attempted sale of the apartment after the sublease. Demand 16 seeks "any and all documents evincing plaintiff's interest in the Apartment," defendant has conceded that plaintiff had an ownership interest in the apartment at the time of the sublease and has not stated the relevance of this overbroad and nonspecific demand. Demand number 17 which seeks, "each and every documents and communication that you intend to submit as evidence at the trial of this matter," is also overbroad and nonspecific.

Plaintiff seeks a protective order because the defendant's "First Set of Interrogatories," are abusive and unduly burdensome. Plaintiff contends that defendants' interrogatories have five pages of directions, consist of 94 questions with subparts and seek narratives which are not being used for purposes of outlining the facts.

Interrogatories that are contradictory or seek documentation without, "reasonable particularity" of identification are improper (*Nankof v. Ara Services Inc.*, 96 A.D. 2d 493, 465 N.Y.S. 2d 515 [N.Y.A.D. 1<sup>st</sup> Dept., 1983]). Interrogatories consisting of, "multiple subparts and references to other documents," are patently overbroad and improper (*Botsas v. Grossman*, 7 A.D. 3d 654, 776 N.Y.S. 2d 519 [N.Y.A.D. 2<sup>nd</sup> Dept., 2004]). Courts generally avoid pruning overbroad interrogatories, however they may be limited where the majority of the questions are germane to the action. To the extent that interrogatories only remotely relate to the issues in the action and when taken as a whole are, patently overbroad, vague and burdensome, they should be stricken (*Albert v. Time Warner Cable*, 255 A.D. 2d 248, 680 N.Y.S. 2d 499 [N.Y.A.D. 1<sup>st</sup> Dept., 1998] and *Lerner v. 300 West 17<sup>th</sup> Street Housing Development Fund Corp.*, 232 A.D. 2d 249, 648 N.Y.S. 2d 439 [N.Y.A.D. 1<sup>st</sup> Dept., 1996]).

Defendant opposes the motion arguing that the interrogatories although numerous, are designed to provide follow-up questions for specific responses. Defendant contend that the questions are relevant and do not seek minutiae and plaintiff should have sought to remove specific objections instead of the entire interrogatory.

This Court disagrees with defendant's contentions that the First Set of Interrogatories are relevant and not overbroad. Defendant's detailed and alternative questions, asserted before obtaining responses from the plaintiff, result in confusing, overbroad interrogatories most of which could not be responded to.

Plaintiff also seeks an order pursuant to CPLR §3211[a][7], dismissing the defendant's first counter-claim for storage costs of furniture. Defendant states in paragraph 7 of the Reply Affirmation that the First Counter-claim is withdrawn on consent.

Accordingly, it is ORDERED that the plaintiff's motion pursuant to CPLR §3124 to compel plaintiff to respond to her Combined Discovery Demands and First Demand for Discovery and Inspection, is granted solely to the extent that plaintiff shall respond to defendant's First Demand for Discovery and Inspection, demands numbers 1 through 5 and 8; and it is further,

**ORDERED**, that the plaintiff shall provide a responses to the Defendant's First Demand for Discovery and Inspection, numbers 1 through 5 and 8; within thirty days from service of a copy of this Order with Notice of Entry; and it is further,

**ORDERED**, that the plaintiffs shall not provide responses to Defendant's First Demand for Discovery and Inspection items 6 -7 and 9 through 17, those demands are stricken; and it is further ,

**ORDERED**, that the remainder of defendant's motion is denied, and it is further,

**ORDERED**, that plaintiff's cross-motion pursuant to CPLR §3103 for a protective order against defendant's First Demand for Discovery and Inspection and First Set of Interrogatories and pursuant to CPLR §3211[a][7] dismissing defendant's first counterclaim, is granted only to the extent of striking the defendant's First Set of Interrogatories and the defendant's first counterclaim, and it is further,

**ORDERED**, that the remainder of the cross-motion is denied, and it is further,

**ORDERED**, that counsel are directed to appear for a preliminary conference in IAS Part 13, at 71 Thomas Street, Room 210 on September 24, 2014, at 9:30 a.m.

**ENTER:**



**MANUEL J. MENDEZ,  
J.S.C.**

**MANUEL J. MENDEZ  
J.S.C.**

Dated: July 28, 2014

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST                     REFERENCE