

**32 Gramercy Park Onwers Corp. v Conniff**

2014 NY Slip Op 32055(U)

May 13, 2014

Sup Ct, New York County

Docket Number: 112712/11

Judge: Donna M. Mills

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This opinion is uncorrected and not selected for official publication.

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,

MOTION DATE \_\_\_\_\_

-v-

MOTION SEQ. NO. 004

DIANE CONNIFF and JOHN/JANE DOE,

Defendants.

MOTION CAL NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to strike.

PAPERS NUMBERED

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

1, 2

Answering Affidavits- Exhibits \_\_\_\_\_

3, 4

Replying Affidavits \_\_\_\_\_

**FILED**

MAY 15 2014

CROSS-MOTION:  YES  NO

COUNTY CLERK'S OFFICE  
NEW YORK

In this ejectment action, defendant Diane Coniff seeks an Order pursuant to CPLR § 3126(3) striking the plaintiff 32 Gramercy Park Owners Corp.'s amended complaint for failure to provide necessary discovery, and in the alternative, compelling the plaintiff to provide discovery. Plaintiff opposes the motion and cross-moves to compel the defendant to appear and complete her deposition, compel a sworn statement from defendant asserting certain facts, and directing defendant to pay use and occupancy pendente lite and arrears.

Defendant appeared for a deposition on July 17, 2013, however it was not completed. Subsequent to her deposition, defendant retained new counsel who now want to be provided with a copy of the defendant's incomplete deposition before scheduling the conclusion of her deposition. Defendant asks this Court to direct the plaintiff to provide her with a copy of the deposition, or in the alternative to provide her with the name of the stenographer who was present at the deposition.

Pursuant to CPLR § 3116, plaintiff is required to submit the deposition to the defendant at the end of the deposition. As such, plaintiff is not required at this time to provide a copy to the defendant, and while professional courtesy would suggest that plaintiff provide the name of the stenographer, there is no legal basis to compel plaintiff to do so.

That branch of the defendant's motion seeking an unredacted copy of John Lueng's March 14, 2012, email is denied. After receiving the redacted copy of the subject document, defendant filed the note of issue affirming that all discovery was complete. At trial, defendant can make a motion in limine before the trial judge for the unredacted copy.

In light of defendant's discovery motions being denied, there is no basis in law or fact to support the branch of her motion for sanctions.

Plaintiff is entitled to complete its deposition of the defendant without any conditions. That branch of plaintiff's cross-motion for use and occupancy shall be

granted. A court has broad discretion in awarding use and occupancy pendente lite (see *Alphonse Hotel Corp. v 76 Corp.*, 273 AD2d 124 [1<sup>st</sup> Dept 2000]). Although the court may look to the amount of rent paid under a prior lease between the parties in setting use and occupancy (see *Kuo Po Trading Co. v Tsung Tsin Assn.*, 273 AD2d 111 [1<sup>st</sup> Dept 2000]), prior rent is only probative, not dispositive, on the issue (see *Mushlam, Inc. v Nazor*, 80 AD3d 471, 472 [1<sup>st</sup> Dept 2012]). To the extent that defendant is ultimately successful at trial, it may be provided with a refund or net credit (see *Morris Hgts. Health Ctr., Inc. v DellaPietra*, 38 AD3d 261 [1<sup>st</sup> Dept 2007]).

Accordingly it is

ORDERED that defendant's motion is denied in its entirety; and it is further

ORDERED that plaintiff's cross-motion to compel the defendant to complete her deposition is granted, and the defendant is directed to submit to the completion of her deposition within 20 days of receiving a copy of this order with notice of entry from movant; and it is further

ORDERED that plaintiff's cross-motion for use and occupancy in the full amount of maintenance, assessments and any other fees which are required to be paid by all shareholders is granted, from June 1, 2014 through the resolution of this action; and it is further

ORDERED that defendant is directed to pay arrears to plaintiff in the amount of \$13,449.69 within 20 days of receiving a copy of this order with notice of entry from

movant. The actual arrears that is due plaintiff, if any, will be determined at trial.; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 574, 111 Centre Street, on July 25 2013, at 10:00 AM..

Dated: 5/13/14

*Donna M. Mills*  
J.S.C.

**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**FILED**

MAY 15 2014

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NEW YORK