SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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THOMAS LING,

Index No.
650092/2014

Plaintiffs,

- v -

**DECISION AND ORDER**

Mot. Seq. 002, 003

KEMPER INDEPENDENCE CO.,

Defendant.

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HON. EILEEN A. RAKOWER, J.S.C.

This is an action for breach of contract and false and deceptive business practices based on, *inter alia*, a homeowner insurance policy that defendant, Kemper Independence Co. ("Defendant" or "Kemper"), issued to Plaintiff Thomas Ling ("Plaintiff" or "Ling"). Plaintiff brings this action to recover damages allegedly arising from property damage and theft that Ling's contractor, Kellam Clark ("Clark"), purportedly caused in Ling's home, in connection with certain construction work.

Plaintiff now moves (Mot. Seq. #002), for an Order compelling Kemper to respond to Plaintiff's first and second document requests, interrogatories, and for a protective order protecting Plaintiff from Defendant's discovery requests for confidential settlement documents.

Kemper opposes. Kemper moves (Mot. Seq. #003) for an Order striking Plaintiff's complaint, compelling discovery, and for a protective order protecting Defendant from Plaintiff's palpably improper discovery demands.

CPLR § 3101(a) generally provides that, "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has held that the term "material and necessary" is to be given a liberal

interpretation in favor of the disclosure of "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity," and that "[t]he test is one of usefulness and reason" (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]). In addition, CPLR § 3130 and 3131 permit a party to serve interrogatories that "relate to any matters embraced in the disclosure requirements of [CPLR §3101]". However, a party is not required to respond to discovery demands which are "palpably improper." A demand is palpably improper if it seeks information which is irrelevant or confidential, or is overbroad and unduly burdensome. (*Gilman & Ciocia, Inc. v. Walsh*, 2007 NY Slip Op 8410, *1 [2d Dep't 2007]).

CPLR §3103(a) provides that:

> The court may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.

The party moving for a protective order bears the burden of demonstrating that the disclosure sought is improper, and must offer more than conclusory assertions that the requested disclosure is overbroad or unduly burdensome (*see Sage Realty Corp. v. Proskauer Rose, L.L.P.*, 251 A.D.2d 35, 40 [1st Dept. 1998]).

Pursuant to CPLR § 3126, a court may impose sanctions when a party willfully fails to disclose information which the court finds ought to have been disclosed. The sanction of striking a party's answer is warranted when a party repeatedly and persistently fails to comply with several disclosure orders issued by the court. (*Yoon v. Costello*, 29 A.D.3d 407 [1st Dep't 2006]).

A. Mot. Seq. #002

Plaintiff's First Request for Documents to Kemper ("First Request") seeks four categories of documents: (1) documents addressing Plaintiff's request for coverage and Kemper's denial of the same; (2) related communications; (3)

applicable claim manuals or guidelines; and (4) documents upon which Kemper intends to rely at trial. Plaintiff served his First Request on January 15, 2014. Kemper served responses on or about July 30, 2014, refusing to produce any documents.

Plaintiff served his Second Request for Documents ("Second Request") and Revised First Set of Interrogatories (Interrogatory) seeking documents and information related to the following:

1. Kemper's review of Plaintiff's claim: Second Request Nos. 1 (claim file), 3 (audit file); 6 (reserve), 7 (valuation of loss), 8 (communications), Request No. 10 (personnel files); Interrogatory Nos. 3 & 5 (witnesses).
2. Kemper's treatment of similar claims: Second Request Nos. 2 (similar claim files); 4 (similar audit files), 9 (procedures and policies); Interrogatory Nos. 6 (procedures and policies), 10 (number of similar policies), 11 (percentage of denials); 12 & 13 (persons involved in drafting and interpreting policy).
3. Kemper's unfair practices: Second Request Nos. 15 (decisions, order, judgments), 16 (tax returns), 17 (financial statements); Interrogatory Nos. 7 & 8 (complaints), 9 (punitive damages).
4. Kemper's insurance and reinsurance: Second Request No. 14; Interrogatory Nos. 1 & 2.
5. Factual Basis of Kemper's Contentions: Interrogatory Nos. 14-28.

Kemper served blanket objections to Plaintiff's Interrogatory and Second Request. In addition, Kemper objects that the dismissal of Plaintiff's cause of action for breach of the covenant of good faith and fair dealing precludes discovery responsive to Plaintiff's Revised First Interrogatory, Interrogatory Nos. 7 & 8 (complaints regarding bad faith and unfair settlement practices) and 9 (punitive damages) and Plaintiff Second Request for Documents, Request Nos. 15 (decisions, order, or judgments related to bad faith, breach of the covenant of good faith, or unfair settlement practices), 16 (tax returns), 17 (financial statements).

On September 4, 2014, Kemper served its responses to Plaintiff's Second Request. Plaintiff argues that Kemper failed to comply with its discovery obligations because Kemper produced documents solely in hardcopy, rather than in native form per Plaintiff's request.

B. Mot. Seq. #003

Defendant argues that Plaintiff failed to comply with discovery obligations because Plaintiff did not include printed hard copies in Plaintiff's discovery response, and because Plaintiff failed to properly organize and label his discovery responses to correspond to the categories in Defendant's request. In addition, Defendant claims that several discovery requests remain outstanding from Plaintiff.

Defendant claims that certain of Plaintiff's discovery requests are palpably improper because they are overbroad, and that Plaintiff failed to make a sufficient showing of necessity respecting Plaintiff's request for Kemper's tax returns. Defendant seeks a protective order as to its: tax returns; personnel files; "any documents in any file"; "any document from any similar file"; and, any documents from Kemper's file that were created post-suit.

Here, insofar as Kemper has previously responded to Plaintiff's discovery requests, albeit in hardcopy rather than in native form, Plaintiff's motion to compel is moot. In addition, Plaintiff fails to demonstrate that the documents pertaining to the settlement with Clark and Clark's insurer are confidential, that there is any overriding necessity requiring Kemper to disclose its tax returns, or that Kemper's personnel files are material and or necessary to the prosecution or defense of this action. However, Defendant's objection that Plaintiff's remaining requests are overly broad or unduly burdensome is unavailing.

Wherefore it is hereby

ORDERED Plaintiff's motion (Mot. Seq. #002) is granted only to the extent that Kemper shall provide responses to Plaintiff's outstanding interrogatories within 30 days of service of this order with notice of entry; and it is further

ORDERED that Defendant's motion (Mot. Seq. #003) is granted only to the extent that a protective order is granted only as to Defendant's tax returns and personnel files; and it is further

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: DECEMBER 9, 2014

EILEEN A. RAKOWER, J.S.C.