

Towne v Kingsley

2014 NY Slip Op 34045(U)

December 16, 2014

Supreme Court, Greene County

Docket Number: 12-0132

Judge: Richard M. Platkin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

ORIGINAL

STATE OF NEW YORK
SUPREME COURT

COUNTY OF GREENE

JAMES T. TOWNE, JR., individually,
and derivatively on behalf of TOWNEKING
REALTY, LLC,

Plaintiff,

DECISION
AND
ORDER

-against-

JOHN P. KINGSLEY,

Defendant.

Index No. 12-0132

(RJI No. 19-12-6137)

APPEARANCES:

DUCHARME, CLARK & SOVERN, LLP
Attorneys for Plaintiff
(John B. DuCharme, of counsel)
10 Maxwell Drive , Suite 205
Clifton Park, New York 12065

JOHN P. KINGSLEY, PC
Attorneys for Defendant
(John P. Kingsley, of counsel)
329 Main Street
Catskill, NY 12414

Greene County Clerk
Document Number 407528
Rcvd 12/18/2014 2:19:56 PM

Hon. Richard M. Platkin, A.J.S.C.

Plaintiff moves pursuant to CPLR 3124 for an order compelling defendant to provide complete responses to his Second Notice for Discovery and Inspection ("Second Notice"), along with an award of fees and costs. Defendant opposes the motion and cross-moves for a protective order vacating paragraphs "1" through "3" of plaintiff's Second Notice.

On or about September 10, 2012, plaintiff filed a motion for summary judgment. At a court conference on November 16, 2012, the Court advised the parties that it intended to hold the motion in abeyance pending the completion of disclosure. Pursuant to a discovery stipulation & order executed on the same date, paper discovery was to be completed by December 14, 2012, depositions to be completed by February 28, 2013 and a trial-term note of issue to be filed by March 8, 2013.

The Second Notice, which was served by plaintiff on or about November 20, 2012, sought income tax information, lease agreements, income and expense information and insurance policies. Plaintiff claims that he did not receive any responses or objections to the Second Notice, notwithstanding his follow-up letters of July 23, 2013, August 2, 2013, and August 12, 2014. Defendant does not dispute the foregoing, but requests a protective order with respect to plaintiff's demands for his personal and corporate income-tax returns, claiming the demands are palpably improper and irrelevant. In reply, plaintiff emphasizes the relevance and materiality of the requested information.

The Court concludes that plaintiff "waived [his] right to further disclosure when [he filed his] note of issue and certificate of readiness, which stated both that disclosure was complete and that there are no outstanding disclosure requests" (*Melcher v City of New York*, 38 AD3d

376, 377 [1st Dept 2007]). In addition to the representations made by plaintiff's counsel on the March 7, 2013 filing, counsel advised the Court by letter dated April 15, 2013 as follows:

On March 7, 2013, I filed the note of issue and certificate of readiness, a copy of which was also served on Mr. Kingsley, who did not object to the filing of the note of issue.

Based on what we discussed during the November 16, 2012 conference with your Honor, it is my understanding that you would hold my client's motion for summary judgment in abeyance until all discovery was completed. Once the note of issue was filed, I would have sixty (60) days to supplement the plaintiff's motion (see, ¶ 6 of the scheduling order). Given the fact that the defendant engaged in no further discovery, there is no reason for me to supplement the plaintiff's motion. As such I respectfully request that your Honor decide the motion as submitted.

The Court further notes that plaintiff did not raise this issue with the Court at the September 13, 2013 conference, at which time the case was assigned a day-certain for trial, or request to conference the issue thereafter, as required by the express terms of the stipulated discovery order. Indeed, despite two adjournments of the trial date, the instant discovery motion was made returnable less than sixty days before trial.

Accordingly, it is

ORDERED that plaintiff's motion is denied in all respects; and it is further

ORDERED that defendant's cross-motion is denied as academic.

This constitutes the Decision and Order of the Court. The original Decision and Order is being transmitted to counsel for the defendant for filing and service. All other papers are being transmitted to the Greene County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220. Counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and Notice of Entry.

Dated: Catskill, New York
December 16, 2014



RICHARD M. PLATKIN
A.J.S.C.

Papers Considered:

Notice of Motion, dated November 6, 2014;
Affirmation of John B. DuCharme, Esq., dated November 6, 2014, with attached exhibits A-D;
Notice of Cross-Motion, undated;
Affidavit of John P. Kingsley, Esq., dated November 25, 2014, with attached exhibits A-C;
Reply Affirmation of John B. DuCharme, Esq., dated November 28, 2014, with attached exhibits A-L.