

Complex Strategies, Inc. v AA Ultrasound, Inc.

2015 NY Slip Op 32686(U)

July 6, 2015

Supreme Court, Nassau County

Docket Number: 605909-14

Judge: Timothy S. Driscoll

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----X
**COMPLEX STRATEGIES, INC. and DIRECT
EFFECT CONSULTS, INC.,**

**TRIAL/IAS PART: 14
NASSAU COUNTY**

Plaintiffs,

**Index No. 605909-14
Motion Seq. No. 1
Submission Date: 5/21/15**

-against-

**AA ULTRASOUND, INC., CAROL HOPKINS,
STEVENIE HOPKINS, JACKSON HEIGHTS
CARDIOVASCULAR IMAGING AND
ULTRASOUND, P.C., and IRENE SCHULMAN
MEDICAL, P.C.,**

Defendants.

-----X

The following papers have been read on this motion:

- Notice of Motion, Affidavit in Support and Exhibits.....X**
- Proposed Order.....X**
- Correspondence dated June 26, 2015.....X**

This matter is before the Court for decision on the motion filed by Plaintiffs Complex Strategies, Inc. and Direct Effect Consults, Inc. ("Plaintiffs") on April 30, 2015 and submitted on May 21, 2015, to which Defendants consent. For the reasons set forth below, the Court grants the motion and will sign the proposed Qualified Protective Order submitted by Plaintiffs.

BACKGROUND

A. Relief Sought

Plaintiffs move for a protective order, pursuant to CPLR § 3103(a). Defendants consent to the motion.

B. The Parties' History

This is an action for, *inter alia*, breach of written agreements. In support of the motion, counsel for Plaintiffs ("Plaintiffs' Counsel") affirms that on February 19, 2015, Plaintiffs served a Notice for Discovery and Inspection ("Notice") (Ex. A to McEntee Aff. in Supp.) requiring Defendants to produce a variety of documents. Defendants failed to produce any documents or interpose any objections to the Notice. On March 31, 2015, the Court held a Preliminary Conference, resulting in a Preliminary Conference Stipulation and Order dated April 1, 2015 (Ex. B to McEntee Aff. in Supp.).

Plaintiffs' Counsel affirms that he sent an email to counsel for Defendants ("Defendants' Counsel") dated April 8, 2015 (Ex. C to McEntee Aff. in Supp.) which read as follows:

Mr. Walters: I do not know if you intend to withhold the production of any documents on the grounds that they might contain patient names or any other patient information. You did not mention this at the [preliminary] conference. Nevertheless, to avoid any delays in production, I have prepared a stipulated protective order to address this issue. Please let me have your comments. If we can't resolve the issue between ourselves we can have the Court resolve it at the conference I have requested.

Plaintiffs' Counsel affirms that a Stipulated Qualified Protective Order ("Proposed Order") was annexed to the email, and Plaintiffs' Counsel emailed another copy of the Proposed Order to Defendants' Counsel that same day (*see* Ex. D to McEntee Aff. in Supp.). On April 13, 2015, having received no response from Defendants' Counsel, Plaintiffs' Counsel sent another email to Defendants' Counsel (Ex. E to McEntee Aff. in Supp.) in which Plaintiffs' Counsel noted that he had not heard back from Defendants' Counsel regarding the Proposed Order. On April 20, 2015, Plaintiffs' Counsel again wrote to Defendants' Counsel advising him that the telephone conference requested by Plaintiffs had been adjourned, at the request of Defendants' Counsel, to April 21, 2015 (*see* Ex. F to McEntee Aff. in Supp.). In that email, Plaintiffs' Counsel attached another copy of the Proposed Order and advised Defendants' Counsel that if he signed the Proposed Order, then the need for the telephone conference would be obviated. Defendants' Counsel did not respond to that email.

Plaintiffs' Counsel affirms that on April 21, 2015, the Court held a telephonic conference call with counsel for the parties. During that conference, Plaintiffs' Counsel stated that he had

prepared and sent the Proposed Order to Defendants' Counsel so that Defendants' Counsel would not withhold the production of documents on the grounds that they contained protected health information ("PHI") under the federal Health Insurance Portability and Accountability Act ("HIPAA"). Defendants' Counsel acknowledged that he anticipated withholding documents from production on that ground, and it was agreed that Defendants' Counsel would provide Plaintiffs' Counsel with his comments on the Proposed Order by April 24, 2015. It was further agreed that if the parties were unable to agree on the terms of the Proposed Order, then Plaintiffs could move for a protective order by April 29, 2015. On April 28, 2015, having not heard from Defendants' Counsel, Plaintiffs' Counsel sent an email to Defendants' Counsel (Ex. G to McEntee Aff. in Supp.) requesting his comments to the Proposed Order and advising Defendants' Counsel that if he did not receive those comments, he would file a motion. Plaintiffs subsequently filed the instant motion.

C. Parties' Positions

Plaintiffs submit that, in light of Defendants' Counsel stated intention to withhold the production of documents containing PHI, and the failure of Defendants' Counsel to prepare, propose or discuss a qualified protective order to protect the PHI, the issuance of a protective order is appropriate. Plaintiffs ask the Court to issue a Qualified Protective Order in the form provided (Ex. H to McEntee Aff. in Supp.).

In his letter to the Court dated June 26, 2015, counsel for Defendants advised the Court that Defendants consent to the motion.

RULING OF THE COURT

CPLR § 3103(a) provides that "a court may make a protective order conditioning or regulating the use of any disclosure device...to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts." The supervision of discovery, settling of reasonable terms and conditions for disclosure, and determination of whether a particular discovery demand is appropriate are all matters within the discretion of the trial court, which must balance competing interests. *Kooper v. Kooper*, 74 A.D.3d 6, 17 (2d Dept. 2010), citing, *inter alia*, *Wander v. St. John's Univ.*, 67 A.D.3d 904, 905 (2d Dept. 2009).

In light of Plaintiff's unsuccessful efforts to resolve with Defendants' Counsel the issue of Defendants' production of documents containing PHI, and in consideration of Defendants' consent to the motion, the Court grants the motion and will sign the proposed Qualified Protective Order submitted by Plaintiffs.

All matters not decided herein are hereby denied.

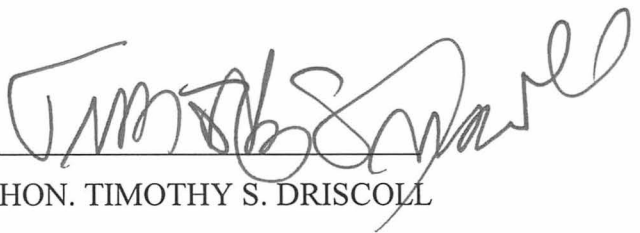
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a Certification Conference on August 13, 2015 at 9:30 a.m.

ENTER

DATED: Mineola, NY

July 6, 2015



HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

JUL 21 2015

NASSAU COUNTY
COUNTY CLERK'S OFFICE