

Katzman v Tribeca Equity Partners, L.P.

2016 NY Slip Op 31055(U)

March 29, 2016

Supreme Court, New York County

Docket Number: 159701/14

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
COUNTY OF NEW YORK: I.A.S. PART 58

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MARIA KATZMAN,

Plaintiff,

- against -

Index No. 159701/14
DECISION & ORDER
(Motion Seq. 002)

TRIBECA EQUITY PARTNERS, L.P. and RELATED
MANAGEMENT COMPANY, L.P.,

Defendants.

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DONNA MILLS, J.:

Defendants move, pursuant to CPLR 3126 and 3042, to dismiss plaintiff's complaint for her refusal to respond to defendants' demand for a verified bill of particulars and other discovery demands. Alternatively, defendants move, pursuant to CPLR 3124 and 3042, to compel plaintiff to provide responses to the same. Plaintiff opposes the motion, arguing that, on September 21, 2015, plaintiff served a complete set of discovery responses which have since been supplemented, and that defendants have refused to withdraw the motion and resolve any outstanding discovery issues at a preliminary conference.

This lawsuit arises from alleged water damage and mold contamination in the apartment plaintiff rents from defendants. Plaintiff alleges both personal injuries and damage to her personal property. On May 15, 2015, defendants served their initial discovery demands, comprising a Demand for a Verified Bill of Particulars, Combined Discovery Demands, a Notice to Produce, a Demand for a Verified Bill of Particulars Re: SCHIP Extension Act, and a Notice for Discovery and Inspection Re: SCHIP Extension Act. These demands were ignored until August 26, 2015, when defense counsel was told responses would be forthcoming the following

week. When this event failed to occur, defendants were forced to bring this motion on September 9, 2015.

On September 21, 2015, plaintiff served a Verified Bill of Particulars and Plaintiff's Response to Combined Demands, the latter which purported to also respond to defendants' Notice of Produce. Plaintiff did not respond to defendants' two SCHIP Extension Act demands. By letter dated October 19, 2015, defense counsel outlined the alleged deficiencies in plaintiff's verified bill of particulars, and requested supplementation. Defense counsel also outlined the deficiencies in Plaintiff's Response to Combined Demands. Plaintiff provide a Supplemental Bill of Particulars on or about November 5, 2015, but ignored defense counsel's request to supplement her discovery responses.

Plaintiff's response to defendants' Notice of Produce is patently deficient. In response to paragraph 3 (documentation regarding the purchase price of any damaged property) and paragraphs 5 and 6 (before and after photographs of damaged property), plaintiff advised: "to be provided at a later date." Such a response is simply more inexcusable delay. Likewise, plaintiff merely responded "to be provided" in response to paragraph 4 (documents regarding the date of purchase, purchase price, condition, and current valuation of damaged property) and paragraph 10 (documents regarding any expenses allegedly incurred). Either plaintiff has in her possession, custody and control photographs or other documentation, such as receipts or credit card statements, regarding the extensive list of personal property she claims was damaged and/or the \$25,000 in claimed alternate housing or she does not. Plaintiff will be precluded from offering the same at trial if not produced forthwith.

Paragraphs 8 and 9 of defendants' Notice to Produce sought documents regarding any notice given to the defendants or their agents or employees regarding the condition in her

apartment. Plaintiff's response that she "is not in possession of the requested information, but "reserves her right to provide same later discovered" is basically the same non-responsive answer and stall for more time. If plaintiff has any emails, notes, text messages, diary or calendar notations, letters, correspondence, or any other documentation regarding the actual or constructive notice she alleges was given to the individuals identified in paragraph 10 of her Supplemental Bill of Particulars, then she must produce that information now and not at some later date. This same response was given to defendants' demand for names and addresses of witnesses, despite the fact that the complaint alleges that she retained certain professionals to evaluate and recommend a solution to the alleged condition of her apartment (*see* Verified Complaint, ¶ 1). Plaintiff is required to name any and all witnesses, including family members, friends, neighbors, visitors, workmen and any other individuals who witnessed the water leaks and alleged mold condition of her apartment since 2012 as alleged in her complaint, and the time to do so is now, not when it might be more convenient.

Accordingly, for the foregoing reasons, defendants' motion is granted to the extent that plaintiff is hereby ordered to produce the following within thirty (30) days of service of a copy of this order with notice of entry:


- (i) a response to defendants' Demand for a Verified Bill of Particulars Re: SCHIP Extension Act and Notice for Discovery and Inspection Re: SCHIP Extension Act;
- (ii) complete responses to paragraph numbers 3, 4, 5, 6, 8 and 9 of defendants' Notice to Produce;
- (iii) a response to defendants' Demand for Names and Addresses of Witnesses; and
- (iv) a response to defendants' Supplemental Demand For A Verified Bill of Particulars dated November 23, 2015.

Counsel are directed to appear for a preliminary conference in Room ___, _____
Street, on May __, 2016 at _____ a.m./p.m.

The foregoing constitutes the decision and order of this court.

Dated: March __, 2016

ENTER: 3/29/16



J.S.C.
DONNA M. MILLS