

Knox v Aronson, Mayefsky & Sloan, LLP

2018 NY Slip Op 32695(U)

October 19, 2018

Supreme Court, New York County

Docket Number: 158738/2016

Judge: Carmen Victoria St. George

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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 - - PART 34

JODI KNOX, a/k/a JODI MCGINNIS,

Plaintiff,

Index No.: 158738/2016
Motion Sequence No.: 007

- against -

Decision and Order

ARONSON, MAYEFISKY & SLOAN, LLP, and
KAREN ROBARGE,

Defendants.

ST. GEORGE, CARMEN VICTORIA, J.S.C.:

This is a legal malpractice action¹ stemming from the divorce proceeding between plaintiff Jodi Knox and her former husband James McGinnis. Defendants Aronson, Mayefsky & Sloan, LLP (AMS) and Karen Robarge (Robarge) (collectively, “defendants”) move pursuant to CPLR § 3103 and § 3123, for a protective order, striking plaintiff’s April 16, 2018 Notices to Admit and April 25, 2018 Notices to Admit.² Plaintiff opposes the motion. For the reasons explained below, defendants’ motion is granted.

The facts underlying this dispute are set forth in this Court’s decision and order, dated October 16, 2017 (NYSCEF Doc. No. 145), and will not be fully restated here. Succinctly put, plaintiff alleges that her former attorneys AMS and Robarge – colluded with McGinnis during the divorce proceeding so as to prevent the court from hearing her cross-motion for a protective order. The basis of the cross-motion was that McGinnis was both physically and emotionally abusive to her and the couple’s infant daughter. As is relevant herein, plaintiff alleges that on May 7, 2013,

¹ The complaint also includes claims for fraud and violation of the judiciary law.

² Plaintiff’s 4/25/2018 Notices to Admit is identical to her 4/16/2018 Notices to Admit except for a typographical error in the prior demand. According to the papers, plaintiff has not withdrawn her 4/16/18 Notices to Admit so this decision and order applies to both demands.

the cross-motion's return date, defendants submitted a temporary stipulation which she had no prior knowledge of, and which withdrew the cross-motion's allegations of abuse and provided for "relatively mundane provisions regarding visitation rights" (Complaint ¶ 21). Plaintiff maintains, *inter alia*, that defendants colluded with McGinnis in subverting consideration of plaintiff's cross-motion for a protective order, misled her about the resolution of the cross-motion, and made oral misrepresentations that led her to sign the temporary stipulation.

The plaintiff's Notices to Admit requests that defendants admit the truth of eight separate statements. Among other things, plaintiff requests that defendants admit that they never discussed the temporary stipulation with her prior to its presentation to Justice Ellen Gesmer, that they discussed said stipulation with McGinnis' lawyers prior to the return date, that Robarge told plaintiff that the cross-motion for a protective order had been denied, and that Robarge told plaintiff that Justice Gesmer had directed plaintiff to sign the Temporary Stipulation. Further, plaintiff requests that defendants admit that if the temporary stipulation had not been presented to Justice Gesmer, she would have ordered hearings on the assertions in plaintiff's cross-motion for a protective order.

Now, defendants move to strike plaintiff's Notices to Admit on the grounds that the requests contained therein improperly seek admissions as to material issues and ultimate facts, along with requests that call for legal conclusions. Defendants also assert that plaintiff's admission requests mirror the allegations set forth in the Amended Complaint, which they have denied and remain in dispute.

In opposition, plaintiff argues that defendants' motion should be denied because they failed to address the eight notices to admit one by one.

It is well settled that “a notice to admit pursuant to CPLR § 3123 (a) is to be used only for disposing of uncontroverted questions of fact or those that are easily provable, not for the purpose of compelling admissions of fundamental and material issues of ultimate facts that can only be resolved after a full trial” (*Meadowbrook-Richman, Inc. v Cicchiello*, 273 AD2d 6, 6 [1st Dept 2000]). Additionally, a notice to admit is available only to elicit an admission of something which the party seeking “reasonably believes there can be no substantial dispute” (CPLR § 3123 [a]). Further, a notice to admit “may not be employed as a substitute for other disclosure devices, such as examinations before trial, depositions upon written questions or interrogatories” (*Taylor v Blair*, 116 AD2d 204, 206 [1st Dept 1986]).

Here, plaintiff’s requested admissions that the defendants made certain misrepresentations relating to the cross-motion for the protective order and the temporary stipulation are fundamental to the legal issues asserted in the complaint. Plaintiff is essentially asking defendants to admit to those very facts which plaintiff’s complaint indicates are the negligent and fraudulent acts of the defendants. Moreover, the answers to the types of questions included in the notice are more properly obtained by other disclosure devices such as depositions and demands for documents (*see Berg v Flower Fifth Ave. Hosp.*, 102 AD2d 760, [1st Dept 1984] [“To allow the notice to admit to become perverted into a further form of deposition in the nature of written interrogatories would defeat and detract from its intended purpose”]). Indeed, defendants point out that at the time this motion was made, this case was still in its initial stages of discovery and depositions had not even taken place yet. Based on the foregoing, this Court finds that plaintiff’s use of the Notices improperly requests the defendants to admit legal conclusions and ultimate issues at the core of this dispute and as such defendants’ motion for a protective order to strike the Notices to Admit is granted.

Accordingly, it is

ORDERED that the defendants' motion pursuant to CPLR § 3103 for a protective order striking the plaintiff's April 16, 2018 Notices to Admit and plaintiff's April 25, 2018 Notices to Admit is granted.

This constitutes the Decision and Order of the Court.

Dated:

10/19/2018

ENTER:



CARMEN VICTORIA ST. GEORGE, J.S.C.

HON. CARMEN VICTORIA ST. GEORGE
J.S.C.