

<b>Santaiti v Town of Ramapo, Inc.</b>
2018 NY Slip Op 33565(U)
April 30, 2018
Supreme Court, Rockland County
Docket Number: 031509/2016
Judge: Sherri L. Eisenpress
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
DIANA SANTAITI, Administratrix of the Goods and  
Chattels of PATRICIA A. NIGRO

*Plaintiff,*

-against-

TOWN OF RAMAPO, INC. TOWN OF RAMAPO POLICE  
DEPARTMENT, and JAMIE F. GROESBECK, as Exectutor  
of the Last Will and Testament of WILLIAM GROESBECK  
III,

*Defendants.*  
-----X

*Sherri L. Eisenpress, A.J.S.C.*

**DECISION AND ORDER**

Index No. 031509/2016

(Motions # 2, 3 and 4)

The following papers, numbered 1 to 10, were considered in connection with (i) Plaintiff's Notice of Motion for an Order, pursuant to Civil Practice Law and Rules § 3126, striking the Answer of the Ramapo Defendants for their willful refusal and failure to provide discovery material, or in the alternative, precluding Defendants from offering any proof upon the issues dealing with Plaintiff's claim of impropriety in returning an illegal handgun to defendant Groesbeck, and/or imposing sanctions for the failure to comply with discovery (Motion #2); (ii) the Ramapo Defendants' cross-motion for an order compelling plaintiff to provide outstanding discovery, or in the alternative, precluding them from offering evidence at trial (Motion #3); and (iii) the Ramapo Defendants' cross-motion for sanctions against Plaintiff:

**PAPERS**

**NUMBERED**

NOTICE OF MOTION (MOTION #2)/AFFIRMATION IN SUPPORT/ EXHIBITS (A-C)	1-2
NOTICE OF CROSS MOTION (MOTION #3)/AFFIRMATION IN SUPPORT/ AFFIRMATION IN GOOD FAITH/EXHIBITS (A-J)	3-5
AFFIRMATION IN OPPOSITION TO MOTION #2/EXHIBITS (A-G)	6
AFFIRMATION IN OPPOSITION TO CROSS-MOTION #3/EXHIBITS (A-C)	7

NOTICE OF CROSS-MOTION #4	8
AFFIRMATION IN REPLY TO MOTION #2 AND IN OPPOSITION TO CROSS-MOTION #3	9
AFFIRMATION IN REPLY TO CROSS-MOTION #3	10

Upon a careful and detailed review of the foregoing papers, the Court now rules as follows:

On April 28, 2016, Plaintiff, as Administratrix of the Estate of her mother, Patricia A. Nigro, filed a Summons and Verified Complaint through the NYSCEF system alleging a cause of action in negligence against the Town of Ramapo and the Town of Ramapo Police Department in connection with the murder of her mother, by her mother's husband William T. Groesbeck, III, a retired police officer, who then committed suicide. Plaintiff alleges, in sum and substance, that Defendants are liable for the murder of her mother in that they returned a handgun to her mother's husband, William Groesbeck III, that they previously confiscated in connection with a domestic violence incident, notwithstanding that Groesbeck did not possess a license to carry the gun in New York, and he had physically assaulted Plaintiff's mother and that she had conveyed to the police that she was mortally in fear of her life.

Defendants filed a motion seeking an Order dismissing the Complaint for failure to state a cause of action which was denied by the Honorable Linda Christopher, J.S.C., by Order dated February 24, 2017. Thereafter, issue was joined as to Defendants with service of Verified Answers with Cross-Claims in March 2017. A Preliminary Conference was held on June 5, 2017 and an Order signed by the Honorable David S. Zuckerman on that date. The Preliminary Conference Order required all paper discovery to be provided by September 8, 2017. A Compliance Conference was held on September 8, 2017, at which time all paper discovery and examinations before trial were ordered to be completed by November 17, 2017.

Plaintiff moves to Strike Defendants' Answers for failure to provide demanded discovery. Defendants served an initial response to Plaintiff's Demand for Discovery and Inspection dated September 29, 2017, which provided some documents but also contained objections to almost all demands on the ground that the demands were vague, ambiguous,

overbroad, unduly burdensome, nor material or relevant or protected by "law enforcement privilege." Thereafter, on October 23, 2017, Defendants served a supplemental response containing additional reports and photographs.

To date, there are requested discovery items which have not been provided. The main item to which Defendants object is the demand for "copies of any and all Ramapo Police Department internal rules and regulations concerning (a) the confiscation of hand guns legally possessed in matters where a spouse or other family member or another complains that they are in fear of the person possessing said hand gun; (b) the confiscation of illegal hand guns (as in this case) where the person complaining indicates he or she is in fear of his/her life; and (c) the written policy of the Ramapo Police Department concerning an unlicensed hand gun with or without a complaint." Essentially, Plaintiff seeks relevant portions of the "Patrol Guide" which pertain to the claims asserted. It is Defendants' position that a "law enforcement privilege" bars Plaintiff's requests for police procedures. Defendants also, inexplicably, claim that "these procedures are not relevant or necessary to her case." They further assert that disclosure may jeopardize law enforcement operations. Defendants also oppose the motion on the ground that Plaintiff did not provide a "good faith affirmation" that it sought to resolve the outstanding issues and because Plaintiff sought different relief in her Reply, namely, that she sought to compel a response from Defendants, such relief should not be granted.

Defendants cross-move to compel Plaintiff to respond to discovery, or in the alternative, to preclude her from offering evidence for failure to provide complete responses to discovery demands. Specifically, they contend that Plaintiff has failed to provide authorizations for the Medical Examiner's records, Coroner's report, autopsy report, decedent's medical and mental health records for 2005 through 2015, decedent's state and federal tax returns for 2010-2015, decedent's employment records, documents evidencing Plaintiff's alleged financial losses, decedent's telephone records for 2015, photographs depicting decedent and her husband in 2015, decedent's social media and electronic exchanges in 2015 and investigative

reports. Defendants also seek decedent's diaries and reports drafted or created by private investigators employed by Plaintiff related to the events of June 7, 2015 or October 21, 2015.

Pursuant to Civil Practice Law and Rules § 3126:

If any party, or a person who at the time a deposition is taken or an examination or inspection is made is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or
2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or
3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

The Court has broad discretion in making determinations concerning matters of disclosure including the nature and degree of the penalty to be imposed under Civil Practice Law and Rules § 3126. [*Stone v. Zinoukhova*, 119 A.D.3d 928 (2d Dept. 2014); *Silberstein v. Maimonides Medical Center*, 109 A.D.3d 812 (2d Dept. 2013); *Raville v. Elnomany*, 76 A.D.3d 520 (2d Dept. 2010)]. The striking of a pleading may be appropriate where the movant has made a clear showing that the failure to comply with the discovery demands is willful or contumacious. [*Silberstein v. Maimonides Medical Center*, 109 A.D.3d 812 (2d Dept. 2013)]. Further, the Court can infer that a party is acting willfully or contumaciously through repeated failures to respond to demands or to comply with discovery orders, coupled with inadequate explanations for the failure to comply. [*Stone v. Zinoukhova*, 119 A.D.3d 928 (2d Dept. 2014); *Silberstein v. Maimonides Medical Center*, 109 A.D.3d 812 (2d Dept. 2013)]. However, public policy favors the resolution of cases on their merits, and the drastic remedy of striking a

pleading should not be imposed unless the failure to comply is clearly willful and contumacious. [*Stone v. Zinoukhova*, 119 A.D.3d 928 (2d Dept. 2014)].

As an initial matter, while Plaintiff did fail to provide an affirmation of good faith, she did annex a letter which demonstrates an attempt to resolve the outstanding discovery issues absent judicial intervention. Additionally, the Court has the power to supervise discovery and can thus compel Defendants to comply with discovery demands, regardless of whether or not this relief was specifically requested in the moving papers. It appears to the Court that the main objection of Defendants is with respect to the request for portions of the "Patrol Guide" and/or written procedures as set forth in the demands. In support of their contention that they need not provide such discovery, Defendants rely upon the federal case, *In re The City of New York*, 607 F.3d 923 (2d Cir. 2010) in which Plaintiffs, in a 42 U.S.C. Sec. 1983 action, sought discovery of certain sensitive intelligence reports prepared by undercover officers in the NYPD related to potential security threats in the months before the 2004 Republican Convention. The Court found that these reports should not be disclosed pursuant to the "so called 'law enforcement privilege'" since that information would undermine the confidentiality of sources, would endanger witnesses and law enforcement personnel or the privacy of individuals involved in an investigation and would otherwise interfere with a investigation.

In the instant matter, the requested discovery does not undermine confidentiality of sources, endanger witnesses or law enforcement personnel or interfere with an investigation. Under Public Officer's Law Section 87(2), public agencies are required to make available their records to the public with certain exceptions. The requested information constitutes intra-agency material which is characterized as "instructions to staff that affect the public" and as such, it does not constitute an exception and must be disclosed. Moreover, it has been held that a Police Department Patrol Guide is properly admitted into evidence for purposes of evaluating whether officers adhered to, or materially deviated from, prescribed protocol. See *Lubecki v. City of New York*, 304 A.D.2d 224, 758 N.Y.S.2d 610 (1<sup>st</sup> Dept. 2003). As such, it

is clearly discoverable.

Defendants are directed to provide a response to this demand, (and demands #11 and 12 which are related), and produce either the requested records, or an affidavit that no such procedures exist, within twenty (20) days of this Order. Defendants are also directed to provide any audio recordings regarding the initial domestic dispute on a separate disk within twenty (20) days. Further, Defendants are also directed to respond to Plaintiff's Demands No. 6-8, within twenty (20) days which seeks information as to whether any written inquiry that was made with the Ramsay, New Jersey Police Department concerning the licensure of the Groesbeck Colt 38 gun used at the time of the murder; whether a "good guy" letter from the Ramsey Police Department consenting to Groesbeck's licensure after leaving the job was issued to them and whether Defendants addressed in writing to the State of New York, or to any County, an inquiry as to the licensure of the subject handgun. The remaining demands are in the nature of an interrogatory and can be inquired into at the time of an examination before trial.

With respect to Defendants' cross-motion to compel discovery, Plaintiff shall provide an authorization to obtain any records from the Medical Examiner with respect to the autopsy performed on decedent within twenty (20) days. All other requests for medical authorizations are denied at this time. If authorizations for decedent's Federal and State taxes for the years 2013-2015 have not yet been provided, they must be provided within twenty (20) days, as shall an authorization to obtain decedent's employment records. Plaintiff is directed to provide any receipts or other documentary evidence which demonstrate payment or gifts made to Plaintiff or her children, from her mother, within twenty (20) days or provide a statement that no such documents exist. Plaintiff shall produce evidence of any phone calls, em-mails, correspondence or text messages from decedent to the Police Department within twenty (20) days. All other demands, including demands for a year of telephone records, photographs of the decedent and William T. Groesbeck and an authorization for access to

decendent's media accounts, are denied without prejudice to renew after examinations before trial are held and give rise to a specific reason why this discovery is warranted.

Lastly, Defendants' Motion #4 for sanctions is denied in its entirety. The Parties are cautioned that their failure to timely comply with this discovery Order may result is harsher penalties including, but not limited to, preclusion, striking of the Answer or dismissal of the Complaint. The parties are directed to appear for a Compliance Conference on **WEDNESDAY, MAY 23, 2018, at 9:45 a.m.** for purposes of ensuring compliance with this Order and scheduling the remainder of discovery.

Accordingly, it is hereby

**ORDERED** that Plaintiff's Notice of Motion (#2) is granted in part and denied in part consistent with the terms and conditions of this Decision and Order; and it is further

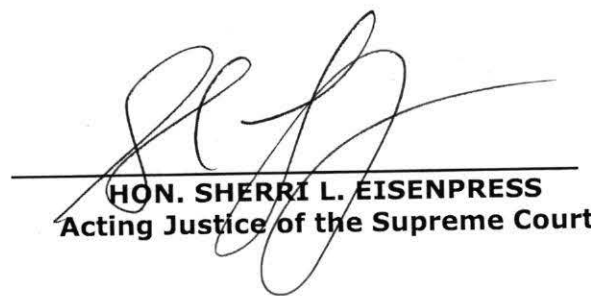
**ORDERED** that Defendants' Notice of Cross-Motion (#3) is granted in part and denied in part consistent with the terms and conditions of this Decision and Order; and it is further

**ORDERED** that this matter is scheduled for a status conference before the undersigned on **WEDNESDAY, MAY 23, 2018 at 9:45 a.m.**; and it further

**ORDERED** that Defendants' cross-motion for sanctions (#4) is denied in its entirety.

The foregoing constitutes the Decision and Order of this Court on Motions # 6 and #7.

Dated: New City, New York  
April 30, 2018

  
**HON. SHERRI L. EISENPRESS**  
Acting Justice of the Supreme Court

TO: (via -NYSCEF-)

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(Via Mail)

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