

Garcia v Carlyle at the Palace, Inc.

2018 NY Slip Op 34408(U)

November 6, 2018

Supreme Court, Suffolk County

Docket Number: Index No. 607197/2015

Judge: Martha L. Luft

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.

Short Form Order

Index No. 607197/2015

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 50 - COUNTY OF SUFFOLK

PRESENT:

Hon. Martha L. Luft
Acting Justice Supreme Court

DECISION AND ORDER

CLARITZA GARCIA, x

Plaintiff,

-against-

CARLYLE AT THE PALACE, INC.,
ALPHA 1 SECURITY, INC. and WARD
SECURITY INC.,

Defendants.
_____ x

Mot. Seq. No. 002 - Mot.-D
Orig. Return Date: 12/19/2017
Mot. Submit Date: 02/27/2018

PLAINTIFF'S ATTORNEY

Michael Della, Esq.
Gruenberg, Kelly, Della
700 Koehler Avenue
Ronkonkoma, NY 11779

DEFENDANTS' ATTORNEY

Briggs Johnson, Esq.
Lewis, Brisbois, Bisgaard & Smith LLP
77 Water Street, Suite 2100
New York, NY 10005

Upon the e-filed documents numbered 38 through 62, it is hereby

ORDERED, that plaintiff's motion to compel discovery is granted to the extent indicated herein; and it is further

ORDERED, that plaintiff's motion to strike the answer is denied with leave to renew as provided herein.

This is an action by plaintiff Claritza Garcia arising out of personal injuries she allegedly sustained in an assault which occurred on August 4, 2012 in a catering establishment known as Carlyle at the Palace. Defendant Carlyle owns and operates the catering facility. Defendants Alpha 1 Security, Inc. ("Alpha") and Ward Security Inc. allegedly provided security services at the catering facility at the time of the alleged assault.

Plaintiff has moved to compel and to strike the answer based upon defendant Alpha's

Garcia v. Carlyle at the Palace, Inc., et al
Index No. 607197/2015

LUFT, J.
Page 2

alleged failure to fully comply with plaintiff's May 11 and June 30, 2017 document demands. Alpha responded to the motion by providing responses to certain demands, objecting to others, and by submitting the affidavit of Walter DeGolyer.

The DeGolyer affidavit indicates that documents were destroyed by mice while in storage and contended that there were hard drive failures in Alpha's computer system such that the information contained therein could not be retrieved. A pre-motion conference was held and permission for plaintiff to make a motion was granted. Plaintiff then made the instant motion to compel and to strike Alpha's answer.

Plaintiff's Motion to Compel

Alpha's objections to plaintiff's demands.

Defendant objected to items 3, 4 and 10 of the June 30, 2017 demand as "overly broad, vague and ambiguous." Plaintiff contends that since Alpha failed to object to these demands in a timely manner pursuant to CPLR 3122, it waived its right to do so. Plaintiff also argues that Alpha further waived its objections because it did not use the words "palpably improper" when stating its objections.

A Court is not barred from entertaining objections to the disclosure demands because a party fails to assert them within the time prescribed by CPLR 3122, where the demands are palpably improper. *Hackshaw v. Mercy Med. Ctr.*, 139 AD3d 798; 33 NYS3d 297, 300 [2d Dept 2016] (citations omitted). CPLR 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." "The words 'material and necessary' as used in section 3101 must be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." *Id.*, 139 AD3d at 799. "However, unlimited disclosure is not mandated, and the court may deny, limit, condition, or regulate the use of any disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." *Id.*, 139 AD3d at 800. "The supervision of disclosure and the setting of reasonable terms and conditions rests within the sound discretion of the court.... ." *Id.*

Demands have been found palpably improper "because they sought irrelevant information, or were overbroad and/or burdensome." *Accent Collections, Inc. v. Cappelli Enterprises, Inc.*, 84 AD3d 1283, 1284, 924 NYS2d 545, 548 [2d Dept 2011]. Here, Alpha objected to the three demands by using the words "overly broad, vague and

Garcia v. Carlyle at the Palace, Inc., et al
Index No. 607197/2015

LUFT, J.
Page 3

ambiguous”, in other words, palpably improper.

Demand #3 is for “copies of all email communications between Earnst Darnell Smith and the owner of Alpha 1 Security Inc. (“Alpha”) on the date of the occurrence of August 4, 2012 up until today.” The Court finds this demand to be overly broad and seeks irrelevant information. The demand, therefore, is restricted by the Court to all email communication from August 4, 2012 to the present in any way related to the occurrence on August 4, 2012 or security practices and procedures utilized at the subject premises. In the event any items are withheld, a privilege log must be provided. Privileged information within a document may be redacted.

Demand #4 is for any communication on August 4, 2012 between the same two people. This demand must be complied with. Any information of a confidential nature may be redacted. If any privilege is asserted a log must be provided.

Demand #10 requests information from a license/identification scanner with no time limits whatsoever. Plaintiff must provide reasonable time limitations for this demand.

Documents alleged to have been destroyed

The affidavit of Walter DeGolyer, the president of Alpha, indicates that the relevant documents were stored in an unnamed friend’s garage and that mice had chewed through the boxes, created a nest, shredded the papers and contaminated them with fecal material. No dates are provided to particularize when the boxes were placed there or when the search took place. A more detailed affidavit is in order.

Similarly, the DeGolyer affidavit does not provide sufficient information with respect to computer records and the allegedly non-functioning hard drive. It does not describe what efforts Alpha made to retrieve the information from the hard drive and who made the attempts or what their technical qualifications were. The affidavit does not describe why the information demanded was not transferred to Alpha’s new computers. There are no dates as to when the computers were placed in storage or when they were examined. This information must be provided in a detailed affidavit to be served within thirty days of service of this order with notice of entry.

Plaintiff’s Motion to Strike the Answer

“The determination whether to strike a pleading for failure to comply with court-ordered disclosure lies within the sound discretion of the trial court.” *Fishbane v Chelsea Hall*,

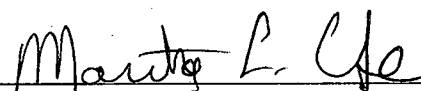
Garcia v. Carlyle at the Palace, Inc., et al
Index No. 607197/2015

LUFT, J.
Page 4

LLC, 65 AD3d 1079, 885 NYS2d 718 [2d Dept 2009]; *Apladenaki v Greenpoint Mtge. Funding, Inc.*, 117 AD3d 976, 986 NYS2d 589 [2d Dept 2014]; *Arpino v F.J.F. & Sons Elec. Co. Inc.*, 102 AD3d 201, 959 NYS2d 74 [2d Dept 2012]. Moreover, actions should be resolved on the merits whenever possible. *MacDonald v Leif*, 89 AD3d 995, 933 NYS2d 363 [2d Dept 2011]; *Savin v Brooklyn Mar. Park Dev. Corp.*, 61 AD3d 954, 878 NYS2d 178 [2d Dept 2009]. A court may strike a pleading or impose other sanctions against a party who “refuses to obey an order for disclosure or willfully fails to disclose information which the court finds should have been disclosed.” CPLR 3126; *Edwards v Prescott Cab Corp.*, 110 AD3d 671, 972 NYS2d 629 [2d Dept 2013]; *Rodriguez v United Bronx Parents, Inc.*, 70 AD3d 492, 895 NYS2d 57 [1st Dept 2010]. The penalties authorized by CPLR 3126 are designed “to prevent a party who has refused to disclose evidence from affirmatively exploiting or benefitting from the unavailability of the proof” during a civil action. *Oak Beach Inn Corp. v Babylon Beacon*, 62 NY2d 158, 166, 476 NYS2d 269 [1984]. In view of the foregoing, the motion to strike is denied, but may be renewed in the event defendant Alpha fails to comply with this order or any part thereof.

ENTER

Date: June 6, 2018
Riverhead, New York


MARTHA L. LUFT, A.J.S.C.

FINAL DISPOSITION

NON FINAL DISPOSITION