

**Kong v Morrison-Tennenbaum PLLC**

2019 NY Slip Op 32771(U)

September 17, 2019

Supreme Court, New York County

Docket Number: 156864/2016

Judge: Margaret A. Chan

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM**

*Justice*

-----X

SEOHEE KONG,

Plaintiff,

- v -

MORRISON-TENNENBAUM PLLC, THE MORRISON LAW  
OFFICES PC,

Defendants.

-----X

**INDEX NO. 156864/2016**

**MOTION DATE 06/17/2019,  
08/16/2019,  
08/27/2019**

**MOTION SEQ. NO. 010 011 012**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 010) 176, 177, 178, 179, 180, 181, 182, 183, 188, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201

were read on this motion to/for SANCTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 011) 202, 203, 204, 205, 206, 207, 208, 209, 211, 212, 213

were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 012) 214, 215, 216, 217, 218, 219, 220, 221, 222

were read on this motion to/for MISCELLANEOUS

Upon the foregoing documents and pursuant to the in-court conference on September 11, 2019, wherein counsel for all parties appeared, it is determined that the parties' respective motions for sanctions against the other are denied, and plaintiff's motion to strike the errata sheet to deponent Morrison's transcripts is granted to the extent that defendants are to furnish plaintiff with an amended errata sheet in compliance with CPLR 3116(a).

Defendants move in Motion Sequence 010 for sanctions against plaintiff and her counsel, jointly and severally, pursuant to 22 NYCRR 130-1.1 and awarding the defendants reasonable attorney fees and actual expenses reasonably incurred in conducting the deposition of plaintiff on April 15, 2019 and April 26, 2019, and reasonable attorneys' fees in filing the instant motion.

Defendants first contend that plaintiff's counsel violated the Uniform Rules for the Conduct of Depositions §222.1, which states, in relevant part:

“(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning” (22 NYCRR 221.1).

Defendants argue that counsel for plaintiff made a number of speaking objections that violated § 221.1 by suggesting answers to plaintiff.

However, upon review, none of the speaking objections made by plaintiff's counsel suggested an answer to plaintiff (NYSCEF # 183 at 5-10). In fact, most of counsel's objections were to compound questions or to clarify a confusing question or to a mischaracterization of the testimony. It is noted that defendants withdrew as a basis for sanctions statements made by plaintiff's counsel on pages 285, 469, 546, and 593 of the transcripts (*id.* at 10).

Next, defendants contend that plaintiff's counsel violated 22 NYCRR 221.2, which requires that a deponent answer “all questions at a deposition, except: (a) to preserve a privilege or right of confidentiality; (b) to enforce a limitation set forth in an order of a court; or (c) when the question is plainly improper and would, if answered, cause significant prejudice to any person . . . .” (22 NYCRR 221.2).

At the outset, there is one instance where plaintiff's counsel improperly directed plaintiff to not answer a question posed by defendants' counsel (NYSCEF # 183 at 11). The question asked whether plaintiff responded to a document demand in full. Plaintiff's counsel stated that plaintiff would not know the answer to that question and directed plaintiff to not answer. While the basis to support the direction to plaintiff is unclear, it is noted that this matter is marred with bad blood to say the least, transforming what would normally be garden-variety questions into opportunities for counsel to dig at each other. With that in mind, the court finds that counsel for plaintiff's direction that plaintiff not answer this particular question is not a basis for sanctions.

The balance of the branch of defendants' motion for sanctions pursuant to § 221.2 is denied, as counsel for plaintiff has demonstrated a basis for directing plaintiff to not answer (*id.* at 12-13). Defendants' counsel asked questions that were plainly improper and would result in prejudice against plaintiff (NYSCEF # 180 at 35-38; 333; NYSCEF # 181 at 649, 654). Defendants withdrew instances of alleged

improper direction by plaintiff's counsel as a basis for sanctions on pages 333, 334, 339, 681, and 682 of the transcripts.

Defendants also contend that plaintiff's counsel is liable for sanctions based on 22 NYCRR 221.3, which states that:

"An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly" (22 NYCRR 221.3).

There is one occasion where plaintiff's counsel improperly interrupted the deposition of plaintiff (NYSCEF # 183 at 13-15). In this instance, plaintiff's counsel stopped the deposition and directed his client to leave the room with him. Upon their return, plaintiff's counsel directed his client not to answer defendants' question on whether plaintiff was coached on how to answer (*id.*). This behavior is improper and done in bad faith. However, given the tenor of the deposition, and this litigation in general, the court will not impose sanctions at this time.

Finally, defendants seek to sanction plaintiff for interfering and obstructing the deposition (*id.* at 18-19). While the level of back and forth between plaintiff and defendants' counsel delayed the completion of the deposition, it is not unexpected considering the tenor of this deposition with both sides contributing to the uncivility. Thus, sanctions are inappropriate at this time.

Plaintiff cross-moves in MS 010 for sanctions pursuant to 22 NYCRR 130.1.1 against defendants and their attorneys for their frivolous conduct at the deposition of defendants' witness Lawrence Morrison on April 9, 2019; against defendants' attorneys for frivolous conduct at plaintiff's deposition on April 15 and 26, 2019; and against defendants' attorneys for making a frivolous motion for sanctions pursuant to 22 NYCRR 130.1.1.

Plaintiff argues that defendants' counsels' "long speaking objections," and deponent Morrison's evasive answers, non-responsive answers, and answering a withdrawn question are sanctionable. While improper, these acts do not warrant sanctions. Moreover, plaintiff's argument that defendants' counsel was discourteous and insulting throughout Morrison's deposition by making statements such as, "[i] think you are immature, and you act like a child during the examination," while improper, do not warrant sanctions at this time (NYSCEF # 192 at ¶36).

Plaintiff adds that defendants should be sanctioned based on: (i) falsely accusing counsel of screaming, whispering in plaintiff's ear, and helping plaintiff answer questions; (ii) threatening to make a motion for sanctions against plaintiff and her counsel; (iii) insulting plaintiff's counsel by stating on the record that "you know you are embarrassing yourself in front of your client. You're embarrassing yourself in front of me" (NYSCEF # 180 at 154:5-8); and (iv) accusing plaintiff of lying. These actions are certainly unprofessional and unbecoming of a member of the bar. But, given these parties' animosity, sanctions will not be imposed.

The basis for plaintiff's motion for sanctions against defendants for their frivolous motion wanes given a finding of some merit to defendants' motion.

Plaintiff moves in MS 011 to extend the deadline to file note of issue and to sanction defendant's counsel for refusing to so stipulate to the extension. MS 010, 011 and 012 were heard on September 18, 2019, after the time plaintiff was required to file the note of issue, and thus, the request to extend the time to file the note of issue is moot. And, defendants' counsel's decision to not stipulate to extend the time to file the note of issue is indicative of the uncivility between the parties, but it is not a basis to sanction defendants' counsel.

Finally, in MS 012, rather than striking deponent Lawrence Morrison's errata sheet to his deposition transcripts of January 4 and April 9, 2019, because there were no explanations for the changes pursuant to CPLR 3116(a), defendants shall furnish to plaintiff an affidavit explaining the changes to the transcript.

Accordingly, it is ORDERED that defendants' motion and plaintiff's cross-motion for sanctions against the other in MS 010 is denied; it is further

ORDERED that plaintiff's motion in MS 011 is granted only to the extent that the note of issue shall be filed by September 20, 2019; and it is further

ORDERED that plaintiff's motion in MS 012 to strike deponent Lawrence Morrison's errata sheets to the January 4 and April 9, 2019, transcripts is granted only to the extent that defendants shall provide an explanatory affidavit as directed above by September 27, 2019.

This constitutes the decision and order of the court.

9/17/2019  
DATE

  
MARGARET A. CHAN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE