

Alaverdi v Bui

2019 NY Slip Op 33218(U)

October 28, 2019

Supreme Court, New York County

Docket Number: 159549/2017

Judge: Adam Silvera

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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**

PRESENT: HON. ADAM SILVERA PART IAS MOTION 22

Justice

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INDEX NO. 159549/2017

LOURA ALAVERDI, AN INCAPACITATED PERSON, BY
HER TEMPORARY GUARDIAN, RUDYARD WHYTE, ESQ,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 012

- v -

HUEY BUI, JENNY YMOUI CHEV, ROSEANN
BIRRITTELLA, RALPH LAUREN CORPORATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 307

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, and after oral arguments, it is ordered that defendant Ralph Lauren Corporation’s order to show cause seeking to vacate this Court’s directive requiring Mr. Ralph Lauren and Mr. Patrice Louvet to appear for a settlement conference is hereby deemed moot for the reasons set forth below.

At a conference on September 27, 2019, counsel for defendant Roseann Birrittella requested the deposition of Mr. Ralph Lauren. After strenuous objections from defendant Ralph Lauren Corporation’s various counsel, the Court commenced settlement negotiations in an effort to resolve the entire case rather than one issue at a time. All counsel consented to ex parte communications for the purposes of settlement. Following some discussion with counsel together and ex parte, the Court ordered all parties, their counsel, adjustors from the insurance companies, the guardian for plaintiff, the father of plaintiff’s children, Mr. Lauren, and Mr. Louvet to appear for a settlement conference currently set for October 29, 2019 at 2:15pm. Thereafter, defendant Ralph Lauren Corporation filed the instant order to show cause to vacate the Court’s mandate

that Mr. Lauren and Mr. Louvet appear for a settlement conference. Plaintiff and defendant Birrittella both oppose.

The Court notes that this action has been highly contentious since its inception. Although this action was only filed two (2) years ago on October 26, 2017, there have already been twelve (12) motions filed, with two more scheduled to be filed on or before November 8, 2019. Since the first compliance conference on April 27, 2018, there have been ten (10) additional discovery conferences, as well as numerous dates for oral arguments on the various motions. Furthermore, as a result of the circumstances surrounding the accident, telephone conferences have been set up and endless courtesies have been given by the Court. Due to the serious nature of the action, the Court has been sensitive to the timing of these proceedings and is keenly aware of each parties' position.

With regards to the instant order to show cause, the Court must first address defendant Ralph Lauren Corporation's allegation that "the Court's directive that the Chairman and CEO of RLC both attend the settlement conference appears to have been made in an effort to coerce RLC into settling, particularly since neither of these gentlemen are involved with the litigation of this matter nor have they had any involvement in the prior settlement discussions." Order to Show Cause, Aff. of Matthew Naparty, p. 5-6. The Court does not dispute that Mr. Lauren and Mr. Louvet were not previously involved in prior settlement discussions. It is the Court's understanding that counsel for the parties have previously engaged in mediation in an attempt to settle this action. However, the parties were unable to reach a settlement.

Citing the Code of Judicial Conduct Canon 3, defendant Ralph Lauren Corporation argues that "[a] judge should encourage and seek to facilitate settlement...[but] should not take any action or make any comment that might reasonably be interpreted by any party or its counsel

as (a) coercion to settle”. *Id.* at p. 5. Preliminarily, the Court notes that defendant Ralph Lauren Corporation has misperceived the Court’s intentions. As the Court is familiar with the facts and circumstances of this action, as well as with the positions and concerns of each party, having all the individual parties, their representatives, and all interested individuals meet personally could only serve to clarify everyone’s understanding of the case in an effort to settle this action. Moreover, counsel for defendant Ralph Lauren Corporation explicitly conceded that the appearance of Mr. Lauren did not guarantee a settlement, such that the Court’s order that he appear for a settlement conference could not be interpreted as coercion to settle. The Court’s sole intention and reason for ordering all interested individuals to appear for a settlement conference is to facilitate a settlement in this tragic and highly contentious matter.

The true legal issue at hand is whether the Court has the authority to order Mr. Lauren and Mr. Louvet to appear for the settlement conference. With regards to Mr. Louvet, all parties consented on the record at oral arguments that he would not attend as he had a prior engagement, as attested to in the moving papers and confirmed by counsel at oral arguments. Thus, the only remaining issue is the appearance of Mr. Lauren. Noticeably absent from the papers is any affidavit from Mr. Lauren regarding his position with regards to appearing for the settlement conference. Furthermore, no mention of his schedule is found in the papers, and none was made during oral arguments.

Judiciary Law §202.26(e) states “the court may order parties, representatives of parties, representatives of insurance carriers or persons having an interest in any settlement..., to also attend in person...at the settlement conference.” 22 NYCRR §202.26(e). Despite defendant Ralph Lauren Corporation’s argument at oral arguments that the statute refers to representatives, and that Mr. Lauren is not a representative of any party, the statute clearly and explicitly states

“or persons having an interest in any settlement”. *Id.* Here, Mr. Lauren has an interest in this action as defendant Birrittella has been employed by defendant Ralph Lauren Corporation for approximately 48 years, if not more. It is uncontested that she assisted Mr. Lauren in starting the company and helped to build the brand. As such, Mr. Lauren is an interested party such that the Court has the authority to order him to appear at a settlement conference in this action.

However, the Court must address the statements made by various counsel for defendant Ralph Lauren Corporation during oral arguments. Defendant Ralph Lauren Corporation’s counsel stated on the record, in open court, that should the Court deny the instant order to show cause, settlement talks would not be fruitful. Counsel further stated on the record that if Mr. Lauren were ordered to appear for the settlement conference, defendant Ralph Lauren Corporation would strongly consider withdrawing their consent to *ex parte* communications for the purposes of settlement negotiations. Ironically, defendant Ralph Lauren Corporation’s baseless allegations of coercion by the Court is the exact tactic now taken by defendant Ralph Lauren Corporation itself. Counsel’s brazen statements on the record amount to threats to willfully frustrate and sabotage the Court’s attempts at settlement should the instant order to show cause be denied. It is clear to the Court that defendant Ralph Lauren Corporation has engaged in conduct designed solely to frustrate the Court’s efforts to settle. The Court need not waste the time of the parties and counsel should any side be unwilling to negotiate in good faith. As such, the settlement conference currently scheduled for October 29, 2019 is hereby vacated and defendant Ralph Lauren Corporation’s instant order to show cause is deemed moot.

All counsel shall appear on October 29, 2019 at 2:15pm for submissions of briefs, and for oral arguments, regarding the issue of a deposition of Mr. Lauren. The Court notes that no motion was filed requesting such deposition such that a briefing schedule is unnecessary. All

counsel were given an opportunity to brief the issue. Such briefs are to be provided to the Court on October 29, 2019, and oral arguments shall be heard at the conference.

Accordingly, it is

ORDERED that defendant Ralph Lauren Corporation's order to show cause to vacate the Court's directive requiring Mr. Ralph Lauren to appear for a settlement conference is deemed moot; and it is further

ORDERED that the settlement conference is vacated; and it is further

ORDERED that all counsel shall appear for oral arguments on October 29, 2019 at 2:15pm in room 136 of 80 Centre Street, New York, NY; and it is further

ORDERED that the time to file an order to show cause for summary judgment is adjusted as follows: summary judgment shall be filed on or before November 8, 2019. Opposition, if any, shall be filed by November 22, 2019 and reply, if any, shall be filed by December 3, 2019; and it is further

ORDERED that the December 10, 2019 court date is vacated; and it is further

ORDERED that all parties to appear on December 4, 2019 at 10:30am for oral arguments on the motions for summary judgment; and it is further

ORDERED that within 14 days of entry, defendant Ralph Lauren Corporation shall serve a copy of this decision/order upon all parties with notice of entry.

This constitutes the Decision/Order of the Court.

ADAM SILVERA, J.S.C.

10/28/2019
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE