

Patricof v Patricof

2020 NY Slip Op 31679(U)

June 1, 2020

Supreme Court, New York County

Docket Number: 653920/2018

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART IAS MOTION 14

Justice

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INDEX NO. 653920/2018

MARCIA PATRICOV, INDIVIDUALLY, AND AS THE
PERSONAL REPRESENTATIVE OF THE ESTATE OF
JULES PATRICOV

MOTION DATE N/A

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION + ORDER ON
MOTION

ALLAN J. PATRICOV,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34,
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52

were read on this motion to/for DISCOVERY.

The motion by plaintiff to direct the deposition of defendant, for a ruling that defendant
waived his right to take a deposition of plaintiff, to strike defendant's pleadings and for an award
of plaintiff reasonable attorneys' fees is granted in part and denied in part. The cross-motion by
defendant for reasonable attorneys' fees and to direct the deposition of plaintiff is granted in part
and denied in part.

Background

In this dispute, plaintiff is suing her son, an attorney who represented his parents when a
property was sold in Valley Stream. Plaintiff contends that defendant impermissibly retained the
proceeds from the payoff on loans that plaintiff (and her now-deceased husband Jules) made to a
non-party. The Court previously denied defendant's motion to dismiss, except for the dismissal
of plaintiff's conversion cause of action (NYSCEF Doc. No. 23).

Plaintiff claims that the parties entered into a preliminary conference order on June 4, 2019 that directed that all depositions take place before September 30, 2019 and then a compliance conference order that directed depositions to take place before January 31, 2020 (NYSCEF Doc. No. 34, 35). Plaintiff contends she sent a notice of deposition dated December 6, 2019 and scheduled the deposition of defendant for January 23, 2020.

After numerous communications with defendant's counsel, it became clear that defendant's counsel believed that he did not need to send a notice of deposition for plaintiff's deposition because depositions were provided for in the discovery conference orders. Plaintiff disagreed with this interpretation. Plaintiff argues that as the deadline for depositions approached (January 31, 2020), no dates were confirmed for defendant's deposition and, instead, defendant sought to schedule a deposition for plaintiff. Plaintiff acknowledges that a notice for an EBT of plaintiff was filed by defendant on the Court's docket on January 24, 2020 although she raises numerous issues with the notice's service and notice requirements.

In opposition and in support of his cross-motion, defendant's attorney recounts the back and forth with plaintiff's attorney and claims that he tried to resolve this discovery issue in good faith. Defendant argues that plaintiff made no effort to find a resolution before making this motion and that his attorney should be compensated for having to file papers. He also wants plaintiff to sit for a deposition.

Discussion

This Court prefers that cases be decided on the merits. It has no interest in the petty squabbles raised in the instant motion. The Court recognizes that plaintiff was correct in asserting that a notice of deposition was required in order for defendant to take plaintiff's deposition. It is also understandable that plaintiff was frustrated with defendant's apparent delay

in scheduling a deposition for defendant even as the court-imposed deadline approached. And defendant is right in pointing out that this matter should have been resolved without the need for motion practice.

But parties can, of course, make motions and this Court must issue decisions, even for trivial disputes. Here, the Court finds that defendant waived priority in taking depositions. Therefore, there shall be a deposition of defendant on or before July 10, 2020. The deposition of plaintiff shall take place within thirty days after the date of defendant's deposition.

The Court recognizes that given the current guidelines in place to prevent the spread of Covid-19, an in-person deposition may not be possible for the foreseeable future. Even if these parties cannot get along, their attorneys, as officers of the court, are expected to remain professional and work together to facilitate a video deposition. Figure it out and do it.

With respect to the remaining requests for relief in the motion, *inter alia* attorneys' fees and striking pleadings, the Court denies those demands at this time. While the conduct at issue here on both sides might be disagreeable, it does not yet rise to the level required to strike a pleading, award attorneys' fees or award sanctions. The parties are reminded, however, that these depositions are court-ordered. It is obnoxious that this case is two years old and no depositions have occurred. No one is getting younger, and further delays will not be tolerated.


Accordingly, it is hereby

ORDERED that the motion by plaintiff is granted only to the extent that the deposition of defendant shall occur on or before July 10, 2020 (and will take place before plaintiff's deposition) by video, and denied as the remaining relief requested; and it is further

ORDERED that the cross-motion by defendant is granted only to the extent that plaintiff's deposition must take place within 30 days after defendant's deposition (also by video) and denied as to the remaining requested relief.

Conference: July 28, 2020 at 10 a.m. The parties are directed to check the docket and this part's rules before the next conference to assess whether the conference will take place remotely. They are free, of course, to submit a discovery stipulation electronically for the Court's approval but it will only be approved if they are in compliance with this order. .

06/01/2020
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE