

Kamal v Hashmat

2020 NY Slip Op 32756(U)

August 21, 2020

Supreme Court, New York County

Docket Number: 652710/2017

Judge: Robert R. Reed

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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. ROBERT R. REED PART 43

Justice

-----X
IMAN KAMAL,

Plaintiff,

INDEX NO. 652710/2017
MOTION DATE N/A
MOTION SEQ. NO. 007

- v -

BILAL HASHMAT, ALI HASHMAT, MARIAN HASHMAT,
AIZID HASHMAT, HASHMAT FAMILY TRUST, HOWARD
GILL, ESTATE OF HILDA GILL, ANDREW GILL, MARK
GILL, BABU EASOW, V SANDERSON, BABAR RAO, JOHN
MUNEY, TIMOTHY PATCHETT, ESTATE OF ROBERT C.
FRITTS, KABOT PARTNERS, CUREMD.COM, INC.,

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

CUREMD.COM, INC.

Plaintiff,

Third-Party
Index No. 595628/2018

-against-

IMAN KAMAL

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 007) 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265

were read on this motion for DISCOVERY

Defendants move for an order (1) to compel the continuation of plaintiff's court-ordered deposition; (2) to compel the continued deposition of nonparty Terence McLaughlin's court-ordered deposition;¹ (3) to compel plaintiff to produce all fee arrangements and retainer agreements she has with her counsel, Russ & Russ PC, or any lawyers and/or entities affiliated therewith, and to answer deposition questions concerning said arrangements and agreements; (4)

¹ Subsequent to the filing of this order to show cause the parties agreed to continue Terence McLaughlin's deposition on September 10, 2020.

to direct that plaintiff's counsel refrain from making continued improper speaking objections at the depositions in these matters in violation of Section 221.1 of the Uniform Rules for the Conduct of Depositions; and (5) to impose penalties against plaintiff's counsel, as the court deems appropriate, pursuant to Rule 4 of this court's individualized rules for failure to comply with discovery orders and in violation of the Uniform Rules, including contempt of court, waiver of discovery sought by plaintiff, dismissal of plaintiff's action, costs, sanctions, and attorney's fees, if plaintiff's counsel does not abide by this order.

Defendants 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”

In opposition plaintiff's counsel argues that the information sought is protected by attorney-client privilege.

CPLR 3101 (a) provides, in pertinent part, 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,’ are . . . to 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. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; see *Forman v Henkin*, 30 NY3d 656, 661 [2018]; *Asphalt Maintenance Servs. Corp. v Oneil*, 174 AD3d 562 [2019]; *Cajamarca v Osatuk*, 163 AD3d 619, 620 [2018]). “However, the principle of ‘full disclosure’ does not give a party the right to

uncontrolled and unfettered disclosure” (*McAlwee v Westchester Health Assoc., PLLC*, 163 AD3d 547, 548 [2018]; see *Ramirez v New York City Tr. Auth.*, 132 AD3d 653, 654 [2015]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531, 531 [2007]). “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court and, absent an improvident exercise of that discretion, its determination will not be disturbed” (*Berkowitz v 29 Woodmere Blvd. Owners', Inc.*, 135 AD3d 798, 799 [2016], quoting *Mattocks v White Motor Corp.*, 258 AD2d 628, 629 [1999]).

Here, plaintiff’s counsel interposed several speaking objections and directed plaintiff not to answer deposition questions related to plaintiff’s fee arrangements and retainer agreements with her attorneys. A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is “material and necessary” (see CPLR 3101 [a] [1])). While some of plaintiff’s counsel objections may have been improper, defendants’ counsel has failed to establish that the information sought through her deposition questions concerning fee arrangements and retainer agreements is material and necessary. Defendants, however, are entitled to the completion of plaintiff’s deposition. Defendants’ counsel is directed not to ask any additional questions concerning plaintiff’s fee arrangement or retainer agreement with her attorneys.

Accordingly, it is hereby

ORDERED that defendants' motion is granted to the extent that plaintiff is hereby directed and compelled to appear virtually, between October 20, 2020 and October 30, 2020, for the completion of her deposition; and it is further

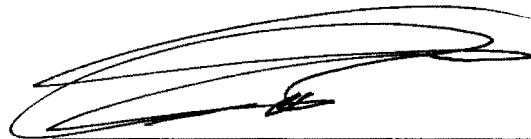
ORDERED that said deposition shall be scheduled for no more than two hours (and may extend for no more than two hours); and it is further

ORDERED that, if plaintiff's counsel violates the deposition rules at this deposition, costs and sanctions shall be imposed; and it further

ORDERED that the parties' previously scheduled status conference shall be adjourned to September 28, 2020 at 11:00 a.m. via telephone.

8/21/2020

DATE



ROBERT R. REED, 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