

<b>MJ Martin &amp; Son, Inc. v Real Steal Value Stores, LLC</b>
2020 NY Slip Op 33160(U)
August 17, 2020
Supreme Court, Bronx County
Docket Number: 30641/2018
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX  
PART 6

Index No. 30641/2018

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MJ MARTIN AND SON, INC.,

Plaintiff,

**DECISION/ORDER**

-against-

**Present:**  
**Hon. Laura G. Douglas**  
**J.S.C.**

REAL STEAL VALUE STORES, LLC and  
USHA PROPPER,

Defendants.

\_\_\_\_\_  
Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to strike complaint and related relief and cross-motion for summary judgment and related relief:

<u>Papers</u>	<u>Numbered</u>
<b>Defendants’ Notice of Motion, Affirmation of David S. Schwartz, Esq. dated September 8, 2019 in Support of Motion, and Exhibits (“A” through “D”).....</b>	<b>1</b>
<b>Plaintiff’s Notice of Cross-Motion, Affirmation of Michael B. Doyle, Esq. dated October 18, 2019 in Support of Cross-Motion and in Opposition to Motion and Exhibits (“1” through “9”).....</b>	<b>2</b>
<b>Affirmation of David S. Schwartz, Esq. dated November 22, 2019 in Opposition to Cross-Motion.....</b>	<b>3</b>
<b>Reply Affirmation of Michael B. Doyle, Esq. dated November 29, 2019 and Exhibit (“1”).....</b>	<b>4</b>

*This motion and cross-motion are consolidated for purposes of Decision/Order and, upon the foregoing papers and after due deliberation, the Decision/Order on this motion and cross-motion is as follows:*

The defendants seek an order pursuant to CPLR § 3126 striking the plaintiff’s complaint as a penalty for its purported failure to properly respond to discovery requests, compelling the plaintiff to provide proper responses to the defendants’ interrogatories and document requests pursuant to CPLR

Rule 3124, and/or staying all other discovery in this action until the plaintiff provides proper discovery responses. The motion is granted solely as ordered below and is denied in all other respects. The plaintiff cross-moves for an order granting it summary judgment, striking the affirmative defenses and counterclaims, and/or compelling the defendants to comply with discovery requests. The non-disclosure branches of the cross-motion were resolved by Hon. Alison Y. Tuitt, J.S.C. in a Decision/Order dated March 16, 2020. Justice Tuitt then referred the remaining branch of the cross-motion to compel the plaintiff to comply with discovery to the DCM Part, over which I presided at the time. That branch of the cross-motion is denied.

The plaintiff's claims stem from a lease agreement between the parties for certain commercial property. The plaintiff alleges that the defendants vacated the premises owing rent and additional charges due pursuant to the lease and guaranty agreements beginning in April 2014. The defendants served a Request for Documents dated January 28, 2019 and Interrogatories dated February 15, 2019. The plaintiff responded to these demands in a written response dated March 25, 2019.

The interrogatories at issue are numbers 2(b), 3, 7, 9, 10, 12, 13, 14, 15, 19, and 20. Interrogatories numbered 2(b) and 19 are stricken for being overly broad, in that they seek disclosure of "each of the [plaintiff's] agents and contractors under its employ and their respective titles and duties" and "inspections" without date restriction (*see Bertocci v. Fiat Motors of North America, Inc.*, 76 AD2d 779 [1<sup>st</sup> Dept 1980]). The Court finds that the plaintiff adequately answered interrogatory number 3 by giving the names of the individuals therein requested. The plaintiff adequately responded to interrogatory number 10 by naming the websites used to lease the premises after the defendants vacated. The plaintiff adequately responded to interrogatory number 14 by stating that the referenced lease clause was not applicable.

The plaintiff shall respond to interrogatory number 9, since mitigation by the plaintiff was contemplated by the parties' lease agreement. In pertinent part, the parties' lease agreement stated as follows:

(d) Upon the termination of this Lease by reason of the happening of any Default, or in the event of the termination of this Lease by summary dispossess proceeding or under any provision of law now or at any time hereafter in force, or upon Landlord recovering possession of the Premises in the manner or in any of the circumstances hereinbefore provided, or in any other manner pursuant to

legal process, by reason of or based upon or arising out of the occurrence of a Default, Landlord shall use reasonable efforts, from time to time, to relet the Premises or any part or parts thereof, and receive and collect the rents therefore, applying the same first to the payment of such reasonable expenses as Landlord may have incurred in recovering possession of the Premises, including reasonable or customary attorney fees and for putting the same in good order or condition or preparing or altering the same for re-rental, and expenses, commissions and charges paid by Landlord in and for the reletting thereof and then to the fulfillment of the covenants and agreements of Tenant hereunder.

With respect to interrogatory number 7, the plaintiff is required to account for the rent and additional rent sought through a detailed and itemized rent history, rather than through reference to other disclosure items or contract provisions. The plaintiff shall provide the date(s) on which it accelerated the rents and additional rents allegedly due and the date(s) that it notified the defendants about their default and lease termination as requested in interrogatory numbers 12 and 13. In response to interrogatory number 15, the plaintiff shall state the ways in which it alleges that the defendants never complied with paragraph 2 of the parties' guaranty, instead of simply stating that the defendants "never complied" with that section. The plaintiff shall respond to interrogatory number 20, since it failed to respond or object to same in its responses dated March 25, 2019.

The document requests at issue are numbers 5, 14, 19, and 25. The plaintiff's refusal to provide the documents requested in numbers 5 and 14 is based on its contention that it had no duty to mitigate any damages allegedly caused by the defendants. As detailed above however, the parties' own contract contained mitigation clause(s). The plaintiff's refusal to provide the documents requested in numbers 19 and 25 is unavailing. Records for certain maintenance and repair work performed by the plaintiff is discoverable, since the parties' lease agreement assigned responsibility to the plaintiff for certain work and the defendants have asserted defenses that place the condition of the demised premises at issue.

The branch of the plaintiff's cross-motion seeking to compel the defendants to furnish certain disclosure is denied. The defendants responded to the plaintiff's discovery demands in a written response dated March 17, 2018. The plaintiff simply argues that "defendants, if their answer is not struck as a sufficient sanction for their actions, should be directed to respond and provide all the documentation that support these sanctionable claims" (Doyle Affirmation, paragraph "11").

However, the plaintiff fails to indicate how or in what manner the defendants' responses are deficient.

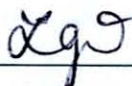
Accordingly, it is hereby

ORDERED that the plaintiff shall provide the items requested in the defendants' document requests numbered 5, 14, 19, and 25 no later than 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED that the plaintiff shall further respond to interrogatories number 7, 9, 12, 13, and 15 no later than 30 days following service of a copy of this Order with notice of entry.

The foregoing constitutes the Decision and Order of this Court.

DATED: August 17, 2020  
Bronx, New York

  
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HON. LAURA G. DOUGLAS  
J.S.C.