

Ormsten v Kiop Merrick L.P.

2021 NY Slip Op 31266(U)

April 15, 2021

Supreme Court, New York County

Docket Number: 154119/2018

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
INDEX NO. 154119/2018
MOTION DATE 04/14/2021
MOTION SEQ. NO. 004 005

MARION ORMSTEN, FRANK ORMSTEN,
Plaintiff,

- v -

KIOP MERRICK L.P., KIR MERRICK 028, LLC, KIMCO
INCOME OPERATING PARTNERSHIP, L.P., KIMCO
INCOME REIT, KIMCO REALTY CORPORATION, BEST
YET MARKET, INC., BEST MARKET OF MERRICK,
INC., BEST MARKET OF TRIBECA, INC., BEST YET
MARKET OF HARLEM, INC.

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 142, 143, 144, 145,
146, 147, 148, 149, 151, 153, 156, 157, 158, 159, 160, 170

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 133, 134, 135, 136,
137, 138, 139, 140, 141, 150, 152, 154, 161, 162, 163, 164, 165, 166, 167, 168, 169

were read on this motion to/for DISCOVERY

Motion Sequence Numbers 004 and 005 are consolidated for disposition. The motion
(MS004) by defendant Best Yet Market, Inc., Best Market of Merrick, Inc., Best Market of
Tribeca, Inc. and Best Yet Market of Harlem, Inc. (collectively, "Best Market Defendants") for a
protective order striking the notice to admit dated January 13, 2021 is granted.

The motion (MS005) by defendants Kiop Merrick L.P., Kir Merrick 028, LLC, Kimco
Income Operating Partnership, L.P., Kimco Income Reit, Kimco Realty Corporation for a
protective order striking the notice to admit dated January 13, 2021 is granted.

Background

In this trip and fall case at a supermarket, defendants move for a protective order related to the January 13, 2021 notices to admit served by plaintiffs. Both motions complain about the length of the notices to admit. The Best Market Defendants observes that the notice to admit sent to them is 179 pages and 904 paragraphs. The remaining defendants also claim the notice to admit sent to them is similarly way too long (also 904 paragraphs) and repetitive. Defendants maintain that this is a straightforward trip and fall case that was captured on video. They also argue that the notice to admit seeks admissions that go to the heart of the case or are not within the knowledge of the defendants.

In opposition, plaintiffs assert that the notice to admit properly seeks to clarify issues related to the accident. They insist that the notices to admit merely seek admissions about the genuineness of various papers and documents or the truth of matters that plaintiffs believe are not in dispute.

Discussion

“Requests to admit are intended to eliminate from the litigation factual matters which will not be in dispute at trial, not to obtain information in lieu of other disclosure devices. Such requests for admissions may not cover ultimate conclusions which can only be made after a full and complete trial nor may they properly relate to technical, detailed and scientific information which is the subject for examination by an expert witness. As a disclosure device, their purpose is to eliminate from contention factual matters which are easily provable and about which there can be no controversy. Their use serves to expedite the trial by eliminating as issues that as to which there should be no dispute” (*Berg v Flower Fifth Ave. Hosp.*, 102 AD2d 760, 476 NYS2d 895 [1st Dept 1984] [internal quotations and citations omitted]).

As an initial matter, the Court observes that the notices to admit (NYSCEF Doc. Nos. 139, 147) are unduly burdensome although calling notices to admit that seek 904 admissions unduly burdensome is an insult to the phrase unduly burdensome. Other adjectives like oppressive, preposterous or bizarre come to mind. In fact, these documents are an embarrassment to the legal profession. This is a trip and fall case, not a Multidistrict Litigation about a toxic tort, spanning dozens of plaintiffs and defendants across various states. This Court has never seen such a long and ridiculous notice to admit and the undersigned hopes it never sees it again.

A notice to admit is designed to reduce the number of contested issues in a case. That means, of course, that it is often used when certain key documents or evidence are not in dispute. The purpose of this discovery device is not, as plaintiffs appear to believe, to identify every conceivable factual issue in a case and see if defendants will admit it (and thereby potentially admit liability).

Setting aside the absurd length of these notices to admit (which is an independent basis to grant the instant motions), the substance of these documents also compels the Court to grant the defendants' motions. Plaintiffs seek admissions about obligations to maintain and repair the accident site which are key issues in a trip and fall. These go to the heart of the case—which defendants might face liability. They are not proper requests to admit.

To the extent that plaintiffs sought to modify the notices to admit after the instant motions were filed, the Court observes that has nothing to do with these motions and plaintiffs did not produce an agreement signed by all sides. The Court also observes that plaintiffs filed two 30-page oppositions to each motion and did not submit a certificate of compliance that these

documents complied with the trial court rules concerning the length of papers. In the future, the Court may disregard submissions that fail to comply with 22 NYCRR 202.8-b.

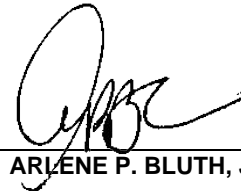
Accordingly, it is hereby

ORDERED that the motions (MS004) and (MS005) for protective orders related to the January 13, 2021 notices to admit are granted and the notices to admit are stricken.

Already Scheduled Remote Conference: April 20, 2021 at 11:30 a.m.

4/15/2021

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