

American Bldrs. & Contrs. Supply Co., Inc. v Vinyl Is Final, Inc.
2021 NY Slip Op 34331(U)
June 7, 2021
Supreme Court, Nassau County
Docket Number: Index No. 601712/2019
Judge: Sharon M.J. Gianelli
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS/TRIAL PART 11
Present: Hon. Sharon M.J. Gianelli

AMERICAN BUILDERS & CONTRACTORS
SUPPLY CO., INC. d/b/a ABC SUPPLY CO.,

Plaintiff,

-against-

VINYL IS FINAL, INC., GLEN LINDON individually
and d/b/a VINYL IS FINAL, VINYL IS FINAL HOME
IMPROVEMENT INC., and ERIC JAHRNES,

Defendants.

Papers submitted on these motions:

Lindon Defendant's Notice of Motion, Affirmation
and Exhibits in Support _____X
Jahrnes Defendant's Notice of Cross-Motion,
Affirmation and Exhibits in Support and in
Opposition _____X
Plaintiff's affirmation of No Position _____X
Lindon Defendant's Affirmation in Opposition and
in further support _____X
Jahrnes Defendant's Affirmation in Reply _____X

Index No: 601712/2019

Motion Seq. 003 and 004

Decision and Order

This action was commenced by the filing of a Summons and Complaint on February 5, 2019. An Amended Complaint was filed on June 18, 2019. An answer on behalf of Vinyl is Final Home Improvement Inc. and Eric Jahrnes was filed on July 23, 2019. An Answer on behalf of Vinyl is Final Inc. and Glen Lindon, individually and d/b/a Vinyl is Final Inc. was filed on July 31, 2019.

This action stems from an agreement that occurred on or about May 27, 2005 to provide construction materials.

Defendants Vinyl is Final Inc. and Glen Lindon individually d/b/a Vinyl is Final (hereinafter “The Lindon Defendants”) now move the court for an Order deeming the Defendants Vinyl is Final Home Improvement Inc. and Eric Jahrnes to have admitted to each of the requests contained in the Lindon Defendants’ Notice to Admit, served June 18, 2020 (Lindon Defendants’ Exhibit “E”), except that no admissions are sought as to Item 22 (Lindon Defendants’ Exhibit “V” within Exhibit “E”), Item 36 (Lindon Defendants’ Exhibit “JJ” within Exhibit “E”); Item 72 (Lindon Defendants’ Exhibit “TTT” within Exhibit “E”); and Item 82 (Lindon Defendants’ Exhibit “4” within Exhibit “E”).

Defendants Vinyl is Final Home Improvement Inc. and Eric (hereinafter referred to as the “Jahrnes Defendants”) cross move the Court for an Order pursuant to CPLR § 3103, vacating Co-Defendants’ Notice to Admit.

Factual History

During the period between October 15, 2014 through April 1, 2016, Plaintiff and Defendants allegedly contracted for the purchase of construction materials which were sold and delivered to Defendants. Defendants allegedly accepted these building materials and accessories delivered by Plaintiff for use in the construction of various real properties. The agreed upon value of the construction materials provided totalled

\$87,206.50. Plaintiff received payments and/or received credits toward this outstanding indebtedness in the amount of \$18,208.17, leaving a balance due and owing to Plaintiff of \$68,998.33.

Plaintiff alleges a balance owed for the materials provided in the amount of \$68,998.33, plus finance charges in the amount of \$24,928.70 as of November 28, 2018. Plaintiff is further seeking finance charges at the rate of 2% per month until the date of satisfaction.

The Lindon Defendants argue that it is Plaintiff's position that either the Lindon Defendants or the Jahrnes Defendants purchased the goods that are the subject of this case, that those goods were delivered to and disposed by either the Lindon Defendants or the Jahrnes Defendants.

The Lindon Defendants claim that they ceased doing business years before 2014 and were actually dissolved by tax proclamation. The Lindon Defendants further claim that none of the purchases in question were purchased, delivered, used or disposed of by The Lindon Defendants. Said Defendants argue that this suggests that the Jahrnes Defendants were the presumptive purchasers and users.

On June 18, 2020, the Lindon Defendants served a Notice to Admit on the Jahrnes Defendants via mail and email.

In the Notice to Admit, the Lindon Defendants sought information regarding whether the invoices Plaintiff claims were unpaid were purchased by the Jahrnes Defendants. Further, said Defendants sought information regarding whether the materials listed in the allegedly unpaid invoices were received by the Jahrnes Defendants. Finally, the Lindon Defendants sought information regarding whether the invoices Plaintiff claims were unpaid were disposed of by the Jahrnes Defendants.

By response dated July 7, 2020, the Jahrnes Defendants raised multiple objections to the Notice to Admit.

The Lindon Defendants argue that the Jahrnes Defendants failed to answer the Notice to Admit in a direct and unequivocal way, which is required by the CPLR. The Lindon Defendants argue that where a party to whom a Notice to Admit is directed fails to deny the request without good cause, the request is deemed admitted.

The Lindon Defendants further argue that the Jahrnes Defendants did not move for a protective order, nor did they provide a sworn affidavit stating, in detail, why they could not respond truthfully to the notice, as permitted under CPLR § 3123(a).

As part of the Jahrnes Defendants objections to the Notice to Admit is the argument that the Notice to Admit is undated. The Lindon Defendants argue that this fact does not render the Notice to Admit a nullity, particularly as there is no issue with respect to the receipt of the Notice to Admit. Further, the Lindon Defendants argue that the Jahrnes

Defendants have not established the prejudice required to impact the validity of the Notice to Admit. The Lindon Defendants argue that this technical defect should be overlooked.

Further, the Jahrens Defendants object to the Notice to Admit on the basis that the questions posed seek ultimate resolution of factual issues. The Lindon Defendants argue that the Notice to Admit sought neither admissions concerning ultimate liability, nor did it ask for legal conclusions. The Lindon Defendants claim that the matters as to which they sought admissions, were simple facts concerning the goods that are the subject of the invoices and shipping orders of Plaintiff.

The Jahrens Defendants cross-move for an Order vacating the Lindon Defendants' Notice to Admit.

The Jahrens Defendants argue that the Notice to Admit at issue is patently improper in several ways, each of which render it a legal nullity, and thus, no response was required.

Specifically, the Jahrens Defendants claim that the Notice to Admit was used as a substitute for existing discovery devices or as subterfuge for obtaining further discovery.

Further, the Jahrens Defendants argue that the questions posed in the Notice to Admit were "incomprehensible, vague, confusing and demands hundreds of individual admissions within a single demand."

Next, the Jahrens Defendants argue that the Notice to Admit contained palpably improper demands that the Jahrens Defendants admit to legal conclusions as well as facts that the attorney could not reasonably have believed there could be no substantial dispute at trial.

The Jahrens Defendants also allege that the Notice to Admit requires analysis of documents that are illegible. Specifically, the Jahrens Defendants argue that the attachments to the Notice to Admit are illegible, missing back pages and are cut off.

Based on the above, the Jahrens Defendants argue that this Court should vacate the Notice to Admit served by the Lindon Defendants.

The Jahrens Defendants also argue that the Lindon Defendants' underlying motion is procedurally defective and fails to articulate any legal basis for the relief requested.

The Plaintiff in this matter submitted an Affirmation, which takes no position on the motion. Plaintiff does, however, refer to a conversation with the Court wherein counsel for the Jahrens Defendants allegedly admitted to partial payment to the Plaintiff on certain invoices.

In Opposition to the Jahrens Defendants cross-motion, the Lindon Defendants argue that the Jahrens Defendants are making frivolous arguments for the purpose of avoiding the admission of facts that are essentially not in dispute.

In Reply, the Jahrnes Defendants deny that there was ever an admission to “purchasing and paying for the materials at issue” and argue that these allegations are irrelevant to the underlying Notice to Admit issue. The Jahrnes Defendants argue that the Notice to Admit must be vacated.

Analysis

CPLR § 3123(a) provides that “a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry.”

The purpose of a notice to admit is only to eliminate from the issues in litigation matters which will not be in dispute at trial (De Silva v. Rosenberg, 236 AD2d 508, 508, 654 NYS2d 30 [1997]; see Rosenfeld v. Vossanger, 5 AD 3d 462, 462, 772 NYS2d 597 [2004]). It is not intended to cover ultimate conclusions, which can only be made after a full and complete trial. (De Silva v. Rosenberg, 236 AD2d at 508).

Also, the purpose of a notice to admit is not to obtain information in lieu of other disclosure devices such as the taking of depositions before trial (id. at 509). A notice to admit which goes to the heart of the matters at issue is improper (id. at 508; see Tolchin

v. Glasser, 47 AD3d 922, 849 NYS2d 439 [2008]; Glasser v. City of New York, 265 AD 2d 526, 697 NYS2d 167 [1999]). Nacherlilla v. Prospect Park Alliance Inc. 88 AD3d 770, 930 NYS 2d 643 [2nd Dept., 2011].

In the case at bar, after a careful reading of the submissions herein, the questions asked which seek Yes or No responses as to whether the Jahrnes Defendants purchased, received and/or disposed of the materials listed in each of the fifty (50) invoices the Plaintiff claims are unpaid, are proper subjects for a Notice to Admit and are not overly burdensome to require a protective order.

Accordingly,

It is

ORDERED, that Defendant Vinyl is Final Inc. and Glen Lindon, individually and d/b/a Vinyl is Final Inc.'s motion for an Order deeming the Defendants Vinyl is Final Home Improvement Inc. and Eric Jahrnes to have admitted to each of the requests contained in the Lindon Defendants' Notice to Admit, served June 18, 2020, except for Items 22, 36, 72, and 82, is Granted; and

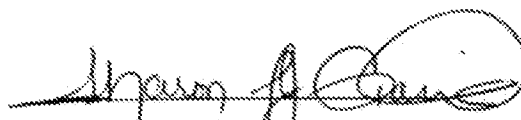
It is

ORDERED, that Defendants Vinyl is Final Home Improvement Inc. and Eric Jahrnes' motion for an Order vacating Co-Defendants' Notice to Admit, is Denied.

All applications not specifically addressed herein are denied.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
June 7, 2021



HON. SHARON M. GIANELLI
Justice of the Supreme Court

The conformed signature on this Order and copies thereof shall be deemed original.

ENTERED

Jun 14 2021

NASSAU COUNTY
COUNTY CLERK'S OFFICE