

**40 Broad Assoc. No. 3 LLC v 40 Broad Commercial
LLC**

2022 NY Slip Op 31161(U)

April 6, 2022

Supreme Court, New York County

Docket Number: Index No. 651757/2020

Judge: Arlene Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

40 BROAD ASSOCIATES NO. 3 LLC

Plaintiff,

- v -

40 BROAD COMMERCIAL LLC,

Defendant.

-----X

INDEX NO. 651757/2020

MOTION DATE 04/04/2022

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 101, 102

were read on this motion to/for

STRIKE PLEADINGS

The motion by defendant to strike plaintiff's complaint is denied. However, plaintiff waived its right to raise objections and so it must respond as described below.

Background

In this breach of lease case, defendant contends that it served plaintiff with interrogatories on November 23, 2021 and that plaintiff did not timely respond, even after counsel for defendant attempted to call counsel for plaintiff on January 20, 2022. Defendant also points out it served a discovery demand on plaintiff in November 2020 and plaintiff did not timely raise objections. After a conference on January 27, 2022, the Court directed plaintiff to respond to defendant's outstanding discovery demands by March 4, 2022.

Counsel for defendant observes that plaintiff's new counsel sent an email to defense counsel in early February 2022 claiming that plaintiff had never received any discovery demands or interrogatories despite the fact that the discovery demand was referenced in the preliminary conference order. Counsel for defendant admits he sent counsel for plaintiff a copy of the

demand and the interrogatories on February 18, 2022. On March 4, 2022 plaintiff finally responded to both the discovery demand and the interrogatories. However, defendant complains that plaintiff improperly raised objections despite the fact that the 20-day period to object had long passed. Defendant also complains about plaintiff's "lumping" of responses to 24 requests into a single response and a vague reference to ledgers.

In opposition, plaintiff claims that striking its complaint is a drastic remedy and that it need only respond to the demands. It asserts that raising objections suffices. Plaintiff argues that this Court's order dated January 31, 2022 requiring it to respond to outstanding discovery demands and interrogatories required it to merely respond, which it claims it did.

In reply, defendant insists that plaintiff has waived its right to raise objections and that plaintiff's behavior in this case is both willful and contumacious.

Discussion

CPLR 3122(a)(1) provides that a party must raise objections to discovery demands within 20 days. The demands at issue here are dated November 6, 2020 (NYSCEF Doc. No. 92 [First D&I] and November 23, 2021 (NYSCEF Doc. No. 94 [interrogatories]). It is undisputed that plaintiff did not raise any objections within 20 days and so the Court finds that plaintiff waived its right to raise objections "based on any ground other than privilege or palpable impropriety" (*Khatskevich v Victor*, 184 AD3d 504, 505, 124 NYS3d 178 (Mem) [1st Dept 2020]).

Rather than dismiss this case, the Court finds that plaintiff shall draft new responses to the interrogatories and the D&I demand that substantively respond to these discovery devices. To the extent that plaintiff raises privilege as an objection, it must draft a privilege log where appropriate. The Court also cautions plaintiff that it should be judicious about raising an objection based on palpable impropriety—such an objection is not an excuse to avoid answering.

In the next response, plaintiff must also not group responses together. The “lumping” of responses might be more convenient for plaintiff but this Court’s review of that type of response leaves more questions than answers. It is simply confusing and not sufficiently responsive. Even if the responses to multiple demands are similar, each request should have a separate answer.

Plaintiff must send its revised responses on or before April 26, 2022. The failure to do so (or the failure to adequately respond) may result in the Court striking plaintiff’s complaint. The Court declines to strike the complaint at this time because plaintiff did, in fact, make an effort to respond although its responses were lacking.

Plaintiff’s argument that the Court’s January 2022 discovery order somehow restarted its time to raise objections is without merit. There is no basis to find that defendant waived its right to receive a response within 20 days nor is there an explicit finding that plaintiff could wait more than a year (in the case of the D&I) and then suddenly raise boilerplate objections. Certainly, this Court has, from time to time, overlooked the 20-day deadline to respond where there is good cause shown or the delay is relatively minor. But that is not the case here. Plaintiff ignored its obligations for many, many months and then gave defendant very little. The Court declines to condone that type of litigation strategy.


Accordingly, it is hereby

ORDERED that the motion by defendant to strike plaintiff’s complaint is denied; however, it is further

ORDERED that plaintiff must substantively and separately respond to defendant’s discovery demand and interrogatories on or before April 26, 2022 and these responses cannot

raise objections except those based on privilege or palpable impropriety, and a privilege log must be produced if objections based on privilege are raised.

Next Conference: May 24, 2022 (NYSCEF Doc. No. 100 [requiring the parties to upload a discovery update by May 17, 2022]).

4/6/2022 DATE		 ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE