40 Broad Assoc. No. 3 LLC v 40 Broad Commercial LLC
2022 NY Slip Op 31165(U)
April 6, 2022
Supreme Court, New York County
Docket Number: Index No. 651920/2020
Judge: Arlene Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE BLUTH** **PART** **14**

Justice

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40 BROAD ASSOCIATES NO. 3 LLC

Plaintiff,

- v -

40 BROAD COMMERCIAL LLC,

Defendant.

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INDEX NO. 651920/2020

MOTION DATE 04/04/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74

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 on November 16, 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 13, 2020 (NYSCEF Doc. No. 65 [First D&I] and November 23, 2021 (NYSCEF Doc. No. 66 [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 at this time, the Court directs 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. 72 [requiring the parties to upload a discovery update by May 17, 2022]).

4/6/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE