

Casanas v Casanas

2022 NY Slip Op 31259(U)

April 14, 2022

Supreme Court, New York County

Docket Number: Index No. 153156/2016

Judge: Carol R. Edmead

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. CAROL EDMEAD PART 35

Justice

-----X

ALEIDA CASANAS,

Plaintiff,

- v -

RICHARD CASANAS, THE CARLEI GROUP, LLC,

Defendant.

-----X

INDEX NO. 153156/2016

MOTION DATE 03/03/2022

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 009) 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

ORDERED AND ADJUDGED that the application of Defendants Richard M. Casanas and The Carlei Group, LLC for an order pursuant to CPLR 3124 compelling disclosure, or, alternatively, seeking more severe sanctions pursuant to CPLR 3126 against Plaintiff Aleida Casanas (Motion Seq. 009) is partially granted to the extent that Plaintiff is directed to serve complete and full responses to Defendants' December 17, 2021 Combined Demands within thirty (30) days; and it is further

ORDERED that Plaintiff's application for leave to file a motion to stay this matter pending the resolution of the related actions in Surrogate's Court, New York County is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.

MEMORANDUM DECISION

In this Real Property proceeding, Defendants Richard M. Casanas and The Carlei Group, LLC seek an order pursuant to CPLR 3124 compelling Plaintiff Aleida Casanas to comply with and respond to Defendant’s Combined Demands for Discovery. Alternatively, Defendants seek an order granting more severe sanctions against Plaintiff, including but not limited to striking Plaintiff’s Amended Complaint (Motion Seq. 009).

Plaintiff opposes Defendants’ motion and seeks leave to file a motion to stay the instant proceeding pending the resolution of a related action in Surrogate’s Court, New York County.

BACKGROUND

Plaintiff commenced this action in 2016 seeking a judgment declaring that certain lease agreements for individual apartment residences in a building on Manhattan’s Upper West Side are valid and enforceable.¹

On July 9, 2021, this Court partially granted a motion by Plaintiff seeking leave to amend her complaint, allowing Plaintiff to add a second cause of action for breach of implied covenant of good faith and fair dealing (NYSCEF doc No. 383).

On August 9, 2021, Plaintiff filed her Amended Complaint (NYSCEF doc No. 384). Defendants filed their Answer with counterclaims on August 26, 2021 (NYSCEF doc No. 397). Plaintiff then filed a reply to the counterclaims on September 15, 2021 (NYSCEF doc No. 400).

On December 17, 2021, Defendants served Plaintiff with Combined Demands for Discovery (“the Combined Demands”) that are the subject of the instant application (NYSCEF doc No. 406). The Combined Demands include a Demand for the Names and Addresses of all Witnesses, Demand for Expert Discovery, Demand for Production of Documents, and Demand

¹ For a detailed history of the background of this proceeding, see this Court’s prior Decisions and Orders (NYSCEF doc Nos. 367 and 383).

for Responses to Interrogatories set forth therein (*id.*). Certain demands directed compliance by January 10, 2022, and others on January 13, 2022, in accordance with the CPLR.

On January 12, 2022, Plaintiff, who is representing herself *pro se*, emailed Defendant's counsel requesting "a reasonable time frame with which to complete the (Combined Demands)" (NYSCEF doc No. 407). Plaintiff stated that she did not receive the Combined Demands until December 21, 2021 and the January 10 and 13, 2022 return dates were "not possible given my schedule." In a response email dated January 12, 2022, Defendants' counsel wrote:

"First of all, I have proof that the papers were delivered to your residence on December 20th at 12:03 p.m. by FedEx. Hence, I believe that the times given in the Demands are in keeping with the applicable Sections of the Civil Practice Law and Rules. Thusly, I am not acting in bad faith.

As far as your schedule is concerned, that's your problem. I am well aware of your machinations and will not put up with any of them."

(*id.*).

On February 14, 2022, Defendants filed the motion now before this Court, requesting that the Court, at minimum, forthwith compel all demanded disclosure in the Combined Demands pursuant to CPLR 3124, or impose more severe sanctions pursuant to CPLR 3126 as a result of the unnecessary delay caused by Plaintiff's willful failure to disclose.

On March 3, 2022, Plaintiff filed her opposition, arguing that she made a good faith request for an extension of time and alleging that Defendant's counsel acted in bad faith by refusing to adjourn the disclosure deadlines (NYSCEF doc No 408). Plaintiff further argues that she believes the discovery sought by Defendants is "duplicative and overly burdensome" in light of the ongoing cases in Surrogate's Court, New York County that "may potentially be dispositive of Defendants (*sic*) Affirmative Defenses and Counterclaims" (*id.*). Plaintiff claims that the two proceedings related to the estates of her mother and father, Appearance Case Nos. 2021-3321

and 2018-1486, will resolve the issue of ownership of the building where the two apartments at issue in this action are located as Plaintiff has recently moved for a default judgment related to the building ownership.

Along with her opposition, Plaintiff also filed her responses to the Combined Demands on March 3, 2022 (NYSCEF doc No. 418). In her responses, Plaintiff objects to all the production demands and interrogatories as irrelevant, ambiguous, overbroad and/or unduly burdensome, as well as duplicative given Plaintiff's desire to stay this action. For many of the demands and interrogatories, Plaintiff states that notwithstanding her objections, she "is conducting a search of its records and will supply responses if necessary when responsive documents become available."

In reply, Defendants maintain that the return dates on the Combined Demands were proper in accordance with the CPLR, and further argue that Plaintiff's stay application should be denied.

DISCUSSION

Pursuant to CPLR 3124, "[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response."

When deciding whether to compel disclosure, the court weighs the relevancy of the documents sought and their availability from other sources against the burden of production (*Cynthia B. v New Rochelle Hosp. Medical Center*, 60 NY2d 452 [1983]). The party compelling production must specify the specific request that is at issue; broad references to the request for production are not sufficient as the court must be able to match the language in the motion to compel to a specific request that has been made (*Deutsche Bank Nat. Trust Co. v Brewton*, 142

AD3d 683 [2016]). Where a party denies being in possession of documents responsive to a request to produce, the party compelling production must present some proof that the documents actually exist and that they are being withheld. (*J.N.K. Machine Corp. v. TBW, Ltd.*, 155 AD3d 1611 [2017]).

If a party disregards an order compelling production pursuant to CPLR 3124, the court has discretion to issue sanctions against the noncompliant party pursuant to CPLR 3126 (§ 63:1. Scope note, 4B N.Y.Prac., Com. Litig. in New York State Courts § 63:1 [5th ed.]). The requesting party may also separately move for sanctions pursuant to CPLR 3126 to address a pattern of noncompliance on the part of the recalcitrant party with respect to discovery demands (*Figdor v City of New York*, 33 AD3d 560 (1st Dept 2006)).

Sanctions that may be issued pursuant to CPLR 3126 include “an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.” *Uniform Rule 202.20-f*

As a preliminary matter, the Court notes that this motion was improperly filed in violation of Uniform Rule 202.20-f, a rule of the New York State Courts’ Commercial Division that was incorporated into the Uniform Part Rules that govern this Court on February 1, 2021.

Uniform Rule 202.20-f is entitled “Disclosure Disputes” and provides as follows:

- “a) To the maximum extent possible, discovery disputes should be resolved through informal procedures, such as conferences, as opposed to motion practice.
- (b) Absent exigent circumstances, prior to contacting the court regarding a disclosure dispute, counsel must first consult with one another in a good faith effort to resolve all disputes about disclosure. Such consultation must take place by an in-person or telephonic conference. In the event that a discovery dispute cannot be resolved other than through motion practice, each such discovery motion shall be supported by an affidavit or affirmation from counsel attesting to counsel having conducted an in-person or telephonic conference, setting forth the date and time of such conference, persons

participating, and the length of time of the conference. The unreasonable failure or refusal of counsel to participate in a conference requested by another party may relieve the requesting party of the obligation to comply with this paragraph and may be addressed by the imposition of sanctions pursuant to Part 130. If the moving party was unable to conduct a conference due to the unreasonable failure or refusal of an adverse party to participate, then such moving party shall, in an affidavit or affirmation, detail the efforts made by the moving party to obtain such a conference and set forth the responses received.

(c) The failure of counsel to comply with this rule may result in the denial of a discovery motion, without prejudice to renewal once the provisions of this rule have been complied with, or in such motion being held in abeyance until the informal resolution procedures of the court are conducted.”

Here, Defendants failed to adhere to subsection (b) as the record reflects that no conference took place between the parties regarding Plaintiff’s request for an extension of time to respond to the Combined Demands. Even if the Court were to consider the email conversation that has been submitted an acceptable conference alternative, Defendants’ counsel’s hostile email exchange with Plaintiff hardly constitutes a good faith discussion. Defendants further violated Uniform Rule 202.20-f by failing to request a conference with the Court, where the instant matter could easily have been resolved, prior to filing the instant motion.

Notwithstanding the above determination, the Court has reviewed the March 3, 2022 Responses by filed by Plaintiff and will partially grant Defendant’s application by directing further responses *infra*.² However, any further discovery motions filed by either party in violation of Uniform Rule 202.20-f shall result in denial of the motion, and the Court will also consider possible sanctions for frivolous conduct pursuant to Part Rule 130-1.

² The Court will not impose sanctions on Plaintiff pursuant to CPLR 3126 at this juncture as Defendants have not demonstrated a pattern of noncompliance with discovery orders.

Plaintiff's March 3, 2022 Responses

Plaintiff's March 3, 2022 Responses are deficient as Plaintiff broadly objects to each of the demands and interrogatories as overbroad and burdensome without specifying the basis for her objections. Pursuant to Uniform Rule 202.20-c, entitled "Requests for Documents":

"(a) For each document request propounded, the responding party shall, in its Response and Objections served pursuant to CPLR 3122(a) (the "Response"), either:

- (1) state that the production is made as requested; or
- (2) state with reasonable particularity the grounds for any objection to production.

(b) Each Response shall state: (i) whether the objection(s) interposed pertains to all or part of the request being challenged; (ii) whether any documents or categories of documents are being withheld, and if so, which of the stated objection(s) forms the basis for the responding party's decision to withhold otherwise responsive documents or categories of documents; and (iii) the manner in which the responding party intends to limit the scope of its production."

Accordingly, the Court is directing that within thirty (30) days, Plaintiff shall file further Responses that *completely and fully* respond to each of Defendants' Combined Demands. Any objections shall be delineated with specificity pursuant to Uniform Rule 202.20-c. Plaintiff's Responses shall also include the production of all records in Plaintiff's possession that are responsive to the Demand for Production in the Combined Demands. Plaintiff shall note if any record production is being withheld or partially redacted based on her specified objections. To the extent any records are no longer in Plaintiff's possession, Plaintiff shall also produce an affidavit attesting that she has performed a diligent search of her records and that all documents in her possession responsive to the Combined Demands and not withheld based on a specified objection have been produced.

Regarding Plaintiff's application for leave to file a motion to stay this proceeding, the Court notes that Plaintiff may move to stay this proceeding at any time if she believes there is a

valid basis that the related Surrogate’s Court proceedings will resolve this matter. Plaintiff is alternatively free to request that this proceeding be dismissed without prejudice, to be restored upon notice to the Court. However, the Court will not stay discovery in the interim, and Defendants are entitled to prompt, complete responses to the Combined Demands.

CONCLUSION

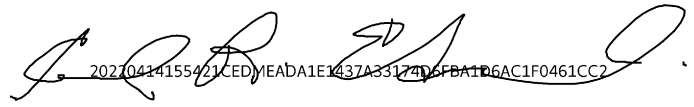
Based on the foregoing, it is

ORDERED AND ADJUDGED that the application of Defendants Richard M. Casanas and The Carlei Group, LLC for an order pursuant to CPLR 3124 compelling disclosure, or, alternatively, seeking more severe sanctions pursuant to CPLR 3126 against Plaintiff Aleida Casanas (Motion Seq. 009) is partially granted to the extent that Plaintiff is directed to serve complete and full responses to Defendants’ December 17, 2021 Combined Demands within thirty (30) days; and it is further

ORDERED that Plaintiff’s application for leave to file a motion to stay this matter pending the resolution of the related actions in Surrogate’s Court, New York County is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Defendants shall serve a copy of this order, along with notice of entry, on all parties within ten (10) days.



4/14/2022
DATE

CAROL EDMOAD, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: