

Caputo v IESI NY Corp.
2022 NY Slip Op 31662(U)
May 23, 2022
Supreme Court, New York County
Docket Number: Index No. 150594/2018
Judge: Frank P. Nervo
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 04

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FREDERICK CAPUTO,

Plaintiff,

- v -

IESI NY CORPORATION, WASTE CONNECTIONS,
INC., CHARLES MAHONEY, FRANK LINO,

Defendant.

INDEX NO. 150594/2018

MOTION DATE 02/05/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

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IESI NY CORPORATION

Plaintiff,

-against-

CENTURY WASTE SERVICES LLC

Defendant.

Third-Party
Index No. 595237/2018

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HON. FRANK NERVO:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 145

were read on this motion to/for DISCOVERY.

The below applications were adjourned pending mediation on January 7, 2022. By letter dated May 13, 2022, counsel advises that mediation was unsuccessful and seeks a determination on the adjourned applications.

IESI NY Corporation (hereinafter “IESI”) seeks an order, inter alia, compelling production of certain discovery. Plaintiff opposes contending the information is, inter alia, irrelevant and cross-moves for summary judgment dismissing defendants’ claims for breach of contract, tortious interference, breach of fiduciary duty, unjust enrichment, and conversion and further compelling defendants appear for depositions. Century Waste likewise cross-moves for summary judgment.

Uniform Rule § 202.20-f requires that motions seeking discovery relief include an affidavit or affirmation attesting that counsel have conferred, either in-person or telephonically, regarding the dispute prior to filing the discovery motion (22 NYCRR § 202.20-f). The failure to submit an affidavit or affirmation in compliance with the Uniform Rules is fatal to a discovery motion (*Amato v. Verizon New York Inc.*, 2022 NY Slip Op 02939 [1st Dept 2022]).

Here, the affirmation submitted by IESI includes various written efforts related to discovery; however, it does not detail efforts to confer and resolve the issue via telephone or in-person. This omission is fatal to IESI’s application (*id.*). Likewise, to the extent plaintiff’s cross-motion seeks discovery relief, it

too fails to include an affirmation of good faith of any kind and must, therefore, be denied (*id.*).¹

Turning to the cross-motions for summary judgment, Uniform Rule § 202.8-b requires an attorney certify the number of words in their motion papers in chief do not exceed 7,000 (22 NYCRR § 202.8-b).² “Page limits on submissions are appropriate, as is the rejection of papers that fail to comply with those limits” (*Macias v. City of Yonkers*, 65 AD3d 1298 [2d Dept 2009]). Likewise, Uniform Rule § 202.8-g requires a statement of material facts to which there is no genuine issue to be tried. The cross-motions submitted by plaintiff and Century Waste fail to provide the requisite certifications and statements of material facts. Accordingly, the cross-motions are likewise denied for failure to comply with the Uniform Rules.

The parties, and counsel, are advised that further discovery applications may be referred to a Discovery Referee with costs for same to be borne equally

¹ Public comment on Uniform Rule 202.20-f was sought in August 2020, the Rule was published via Administrative Order 270/20 in December 2020, and the Rule became effective February 15, 2021, prior to the return date of the instant motion and cross-motions.

² Public comment on Uniform Rule 202.8-b was sought in August 2020, the Rule was published via Administrative Order 270/20 in December 2020, and the Rule became effective February 15, 2021, prior to the return date of the instant motion and cross-motions.

by the parties, subject to reallocation upon further application following determination on applications to confirm/reject the Referee's report, pursuant to CPLR § 4403.

Accordingly, it is

ORDERED that IESI's motion is denied without prejudice to seeking further relief upon papers which comply with the Uniform Rules; and it is further

ORDERED that plaintiff's motion seeking discovery relief is denied, without prejudice to seeking further relief upon papers which comply with the Uniform Rules; and it is further


ORDERED that plaintiff's motion seeking summary judgment is denied for failure to comply with the Uniform Rules; and it is further

[continued on following page]

ORDERED that Century Waste’s motion seeking summary judgment is denied for failure to comply with the Uniform Rules.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

5/23/2022
DATE



HON. FRANK P. NERVO
J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION

APPLICATION:

SETTLE ORDER

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE