

Azmi v Mutual Redevelopment Houses, Inc.
2022 NY Slip Op 34007(U)
November 28, 2022
Supreme Court, New York County
Docket Number: Index No. 152225/2018
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MARIAM AZMI,

Plaintiff,

- v -

MUTUAL REDEVELOPMENT HOUSES, INC.,

Defendant.

-----X

MUTUAL REDEVELOPMENT HOUSES, INC.

Plaintiff,

-against-

KRISHNA KUMARI LLC

Defendant.

-----X

INDEX NO. 152225/2018

MOTION DATE 11/22/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595772/2020

The following e-filed documents, listed by NYSCEF document number (Motion 001) 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 93

were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE.

Defendant’s motion to strike the note of issue and to compel discovery is granted as described below.

Background

In this slip and fall case, defendant seeks to vacate the note of issue on the ground that plaintiff and the third-party defendant have not sufficiently responded to outstanding discovery demands. Specifically, defendant claims that plaintiff must provide various authorizations, a supplemental bill of particulars and contact information for two potential non-party witnesses (see NSYCEF Doc. No. 81 [good faith letter to plaintiff]). With respect to the third-party

defendant, defendant seeks responses to post-EBT demands from November 2021 (NYSCEF Doc. No. 82).

The Court observes that it ordered a note of issue to be filed given that the most recent discovery order, dated September 1, 2022, appeared to reflect that discovery was nearly complete in this four-year-old case.

In opposition, plaintiff contends that she has now responded to all of defendant's outstanding demands and attaches a copy of the response (NYSCEF Doc. No. 88).

Third-party defendant also submits responses to the outstanding discovery in connection with its opposition.

In reply, defendant claims that the authorizations submitted by plaintiff are improper because they do not release the entire medical record and asks the Court to direct plaintiff to serve "proper authorizations." Defendant also raises issues with the third-party defendant's response. It argues that it is entitled to the payroll records, the response to demand number 4 is deficient as it only includes emails when all communications were requested, and takes issue with the response to request number 7.

Discussion

As an initial matter, the Court is baffled by the instant motion practice. It seems that no party was particularly interested in moving this case along until the Court gave a note of issue deadline. The third-party defendant should have responded to the *November 2021* responses a long, long time ago and defendant should have made a motion to compel a response *before* the note of issue was filed.

In any event, now that the parties are focused on the case, the Court will decide the instant discovery disputes. Plaintiff clearly responded to the outstanding demands. Defendant,

in reply, only offered a vague complaint that the authorizations were not “proper” but did not explain exactly what it wants the Court to order despite asking the Court to direct plaintiff to submit proper authorizations. The Court declines to order plaintiff to do anything further; of course, plaintiff should respond to future requests for authorization as the case nears trial (as any plaintiff must in a personal injury matter).

With respect to the third-party defendant, the Court declines to strike this party’s answer as requested by defendant. While the responses by this defendant are absolutely late, defendant did not make a motion to compel prior to the instant application. Striking an answer is not appropriate under these circumstances.

The Court finds that the third-party defendant must produce the payroll records sought by defendant. The objections raised by the third-party defendant are not timely and so defendant was limited to raising objections solely based on the grounds that the demands are “palpably improper” or “privileged” (*Khatskevich v Victor*, 184 AD3d 504, 505, 124 NYS3d 178 (Mem) [1st Dept 2020]). The third-party defendant did not rely on either ground in its response (NYSCEF Doc. No. 90, ¶) and so the Court finds that these records must be produced on or before December 15, 2022.

With respect to request number 4 (which sought all communications, including emails and texts) between the third-party defendant and various individuals, the Court finds that the third-party defendant must produce any remaining documents it possesses on or before December 15, 2022. Any documents not produced by this deadline cannot be used at trial or in a subsequent motion. The Court observes that the third-party defendant only produced emails when the request asked for all communications and specifically cited “texts.” If the third-party

defendant has no more records to disclose, then it shall produce a Jackson affidavit for this request on or before December 15, 2022.

The same directive applies to request no 7, for which the third-party defendant claims it is “currently conducting a search for documents and information.” The deadline to finish that search is December 15, 2022 and a Jackson affidavit must be sent only if nothing is disclosed (again, this affidavit must also be submitted by December 15, 2022).

The Court declines to force the third-party defendant to disclose the name of the investigator who allegedly took photographs. The third-party defendant identified the third-party entity that employed the investigator but claimed it does not know the individual’s name. That response satisfies this request.

The Court declines to strike the note of issue or extend the dispositive motion filing deadline, which remains four months after the filing of the note of issue. As stated above, the items in dispute have allegedly remained pending for quite some time and defendant did nothing to compel plaintiff or the third-party defendant to respond. The Court ordered that a note of issue be filed in connection with a discovery order uploaded on September 2, 2022. That should have motivated defendant to do something to get the discovery it desired. Instead, plaintiff filed the note of issue on October 7, 2022 and defendant waited until October 26, 2022 to make a motion. And, for some reason, defendant did not move by order to show cause either. Clearly, defendant was not concerned with its ability to file a dispositive motion as it let weeks pass by after the note of issue was filed. Plus, defendant should have more than enough time to file a timely dispositive motion as the note of issue was only filed on October 7, 2022.


Accordingly, it is hereby

ORDERED that defendant’s motion is granted only to the extent that the third-party defendant is directed to disclose the payroll records sought by defendant in the post-EBT demand by December 15, 2022; and it is further

ORDERED the third-party defendant must produce all responsive records it possesses in response to request number 4 and, if no records exist, it must submit a Jackson affidavit to defendant for this request all by December 15, 2022; and it is further

ORDERED that the third-party defendant must produce all responsive records it possesses in response to request number 7 or, if no records exist, then it must submit a Jackson affidavit to defendant for this request all by December 15, 2022; and it is further

ORDERED that any documents not produced by the third-party defendant by December 15, 2022 cannot be used at trial or in a subsequent motion.

<u>11/28/2022</u> DATE		 ARLENE P. 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 checked="" type="checkbox"/> GRANTED IN PART <input 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