

James v Harriet Tubman Gardens Apt. Corp.

2023 NY Slip Op 33548(U)

October 11, 2023

Supreme Court, New York County

Docket Number: Index No. 652541/2020

Judge: Lisa S. Headley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LISA S. HEADLEY PART 28M

Justice

-----X

VENITA L JAMES,

Plaintiff,

- v -

HARRIET TUBMAN GARDENS APARTMENT CORPORATION, KYROUS REALTY GROUP, INC., NICHOLAS GROSS, JULIA GROSS,

Defendant.

-----X

NICHOLAS GROSS, JULIA GROSS

Plaintiff,

-against-

BUCKMILLER AUTOMATIC SPRINKLER CORP., ATLAS & DESIGN CONTRACTORS INC.

Defendant.

-----X

DECISION + ORDER ON MOTION

Third-Party Index No. 595938/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 116, 117, 118

were read on this motion to/for ORDER OF PROTECTION.

Defendants, Harriet Tubman Gardens Apartment Corporation ("The Co-op") and Kyrous Realty Group, Inc. ("Realty Group") (herein after collectively "movant-defendants"), move this Court, pursuant to CPLR §3122 and CPLR §3103 for a Protective Order to vacate Plaintiff Venita L. James' ("Plaintiff") "Notice to Admit" and "First Set of Documents Demands" on the grounds that said documents are objectionable and palpably improper. Plaintiff filed opposition, and the movant-defendants filed a reply.

Background

Plaintiff commenced this action against the defendants for breach of the proprietary lease. Plaintiff's complaint alleges, inter alia, that her apartment was damaged on July 16, 2018, by a sprinkler head in the apartment occupied by Nicholas and Julie Gross located at 2235 Frederick Douglas Boulevard, Unit 8F, New York, New York ("Unit 8F Apartment"). A third-party action was filed by co-defendants/third-party plaintiffs Nicholas and Julia Gross against third-party defendants Buckmiller Automatic Sprinkler Corp. and Atlas & Design Contractors Inc. (See, Exhibit C, NYSCEF Doc No. 99). Thereafter, third-party defendant Atlas & Design Contractors

Inc., moved to join this action with the matter brought by Fireman's Fund Ins. Co. under Index Number: 155390/2020, which was granted for the purposes of discovery and a joint trial on liability only, as the matters involve causes of action also arising out of the same incident that occurred on July 16, 2018 (*See, Exhibit E, NYSCEF Doc No. 101*).

On March 2, 2021, Plaintiff served a Bill of Particulars on defendants. Then on October 4, 2022, plaintiff served a Supplemental Bill of Particulars. (*See, Exhibits F, NYSCEF Doc No. 102*). Defendants claim their counsel responded to plaintiff's discovery demands, which is annexed as *Exhibit G* to their papers. (*See, Exhibit G, NYSCEF Doc No. 103*). Plaintiff Venita James' deposition took place on November 3, 2022 (*See, Exhibit H, NYSCEF Doc No. 104*). During the period of discovery, plaintiff retained new counsel who served upon the Defendants the "Notice to Admit" and "Plaintiff's First Set of Discovery Demands" on March 10, 2023, which is subject of the instant motion. In the Notice to Admit, Plaintiff sought forty-eight (48) admissions from Defendants. (*See, Exhibit I, NYSCEF Doc No. 105*).

Movant-Defendant's Affirmation in Support

In support of the motion, the movant-defendants argue that the Plaintiff's Notice to Admit is palpably improper because it seeks admissions or denials regarding matters that are disputed and completely unrelated to the subject matter. Movant-defendants argue, *inter alia*, the suggested admissions were specifically taken from a proceeding regarding an unrelated prior lawsuit, involving circumstances that allegedly transpired at least a decade before the subject incident, which is the sole occurrence as to the subject matter, or pled by plaintiff in the complaint. Additionally, movant-defendants assert Plaintiff's First Set of Document Demands are also improper because the material sought is irrelevant to the issue on controversy, as well as, overly broad and unduly burdensome. Movant-defendants argue the demands sought are highly prejudicial to the parties and non-parties of an unrelated lawsuit, which could have an adverse binding effect when there is no material basis for said discovery. (*See, NYSCEF Doc. No. 95*).

Plaintiff's Opposition

In opposition, Plaintiff argues, *inter alia*, that the discovery demands are reasonable and not prejudicial because she is seeking that the Co-op defendant admit its position in a 2014 action, which is not fundamental to this case, but is an ancillary fact that assists plaintiff in establishing Co-op's negligence. Further, plaintiff argues that she offered to withdraw the Notice to Admit to Co-op's counsel, if Co-op conceded to all the elements of its negligence, however, Co-op instead filed the instant motion. Plaintiff contends that Co-op's judicial admissions are relevant and material to this case because the condition of the building exacerbated the water damage caused to plaintiff's apartment, which required her to renovate the subject premises. Plaintiff also argues that the water damage to the apartment caused by the sprinkler is related to Co-op's claim of defective construction in the 2014 action because the purported defective construction caused more damage to her apartment than the subject incident.

Plaintiff also argues that the doctrine of judicial estoppel prevents the Co-op from contradicting their prior judicial admissions contained within the 2014 action because Co-op has already admitted that the building was defectively constructed, in addition to a various defects within both the common area and inside the apartments. Plaintiff argues that a Notice to Admit is the least prejudicial device to movant-defendants because plaintiff's demands are not unlimited, unreasonable, embarrassing, or prejudicial since these demands only seek admissions the Co-op already made. Lastly, plaintiff asserts that there is no prejudice to the nonparties mentioned by defendants because those nonparties have no standing in the present action. (*See, NYSCEF Doc. No. 116*).

Movant-Defendants' Reply

In reply, movant-defendants argue, *inter alia*, that plaintiff failed to demonstrate the relevance of the forty-eight (48) requests within her Notice to Admit, and that any prior structural damage to the building caused the plaintiff's current property damage. Movant-defendants further assert the Plaintiff's Bill of Particulars confirmed there were no other incidents which caused damage to her apartment and there was no notice to the movant-defendants that any such conditions existed before the date of loss. Movant-defendants contend that the requests within the Notice to Admit are not judicial admissions, as argued by plaintiff's counsel because the alleged factual claims and/or legal terms that plaintiff seeks movant-defendants to admit to are questions of fact or issues that are in substantial dispute, which are going to be decided by the finder of fact.

Movant-defendants contend that plaintiff's new demands are well beyond permissible discovery because Defendants and the Defendants' corresponding insurance carrier Fireman's Fund, in the joined matter for discovery, have disclosed hundreds of pages of documents in a good faith discovery exchange. Lastly, the movant-defendants argue that plaintiff's application compelling discovery responses, or in alternative, striking movant-defendants' answer is improper because Plaintiff never cross-moved for said relief, nor did plaintiff make any kind of good faith application for the same pursuant to *CPLR* § 3126, *CPLR* § 3124 and *NYCRR* 202.7. (See, *NYSCEF Doc. No. 118*).

DISCUSSION

The Court has broad discretion in supervising pretrial discovery. See, *Duracell International v. American Employers' Ins. Co.*, 187 A.D.2d 278 (1st Dep't 1992). *CPLR* §3103(a) allows the court to issue a protective order denying, limiting, conditioning, or regulating the use of any disclosure device. *CPLR* §3103(a); *London v. The Mount Sinai Hosp.*, No. 805333/2021, 2023 WL 4706644 (N.Y. Sup. Ct. July 24, 2023). *CPLR* §3122(a)(1) provides, in relevant part, "the party or person to whom the notice... is directed, if that party or person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection[.]" *CPLR* §3122(a)(1); *Greenfield v. Scriva*, 15 Misc. 3d 1131(A) (Dist. Ct. 2007).

The purpose of the Notice to Admit is "to be used only for disposing of uncontroverted questions of fact or those that are easily provable, and not for the purpose of compelling admission of fundamental and material issues or ultimate facts that can only be resolved after full trial." *Hawthorne Group v. RRE Ventures*, 7 A.D.3d 320, 321 (1st Dep't 2004); see also, *New Image Construction, Inc. v. TDR Enterprises, Inc.*, 74 A.D.3d 680, 681 (1st Dep't 2010). For example, the Notice to Admit should address and is "designed to elicit admissions on matters which the requesting party 'reasonably believes there can be no substantial dispute'." *National Union Fire Insurance, Co. v. Allen*, 232 A.D.2d 80, 85 (1st Dep't 1997) [quoting, *CPLR* §3123(a)]. A Notice to Admit, may seek, for example, an admission that a party owned and controlled the premises, and that it had a duty to install and maintain certain safety features. See, *Villa v. New York City Hous. Auth.*, 107 A.D.2d 619 (1st Dep't 1985) [request to admit ownership, control, duty to install and maintain is permitted].

A Notice to Admit is not intended to cover ultimate conclusions, or seek admissions that go "to the heart of the matters at issue." See, *Genna v. Klempner*, 195 A.D.3d 444 (1st Dep't 2021) [notice seeking ultimate and conclusory facts is improper]; *Meadowbrook-Richman, Inc. v. Cicchiello*, 273 A.D.2d 6 (1st Dep't 2000) [improper to seek admissions on disputed matters]. A Notice to Admit, may not seek admission as to liability. See, *Altman v. Kelly*, 128 A.D.3d 741, 742 (2d Dep't 2015). A Notice to Admit may not seek causation, or something that requires expert

proof. See, Berg v. Flower Fifth Ave. Hosp., 102 A.D.2d 760 (1st Dep’t 1984). A Notice to Admit may not seek an interpretation of law or legal conclusion. See, Matter of Luthmann v. Gulino, 131 A.D.3d 636, 637 (2d Dept 2015); Villa v. New York City Hous. Auth., 107 A.D.2d 619, 621 (1st Dep’t 1985). In addition, a Notice to Admit may not seek admission to a hotly contested issue. Fein v. Cook, 153 A.D.3d 1168 (1st Dep’t 2017). Furthermore, requests to admit are intended to eliminate from the issues in litigation matters which will not be in dispute at trial, not to obtain information in lieu of other disclosure devices. Offshore Expl. & Prod., LLC v. De Jong Cap., LLC, 79 Misc. 3d 1219(A) (N.Y. Sup. Ct. 2023).

“Where interrogatories are improper or unduly broad, burdensome, or oppressive, the remedy is not for the court to attempt to prune questions, but rather to vacate the entire set.” Dykowsky v. New York City Transit Auth., 124 A.D.2d 465 (1st Dep’t 1986). This Court finds that Notice to Admit paragraph numbers 2 through 48 seek admissions of either liability or a highly contested issue, which defendants claim to be highly prejudicial in the Notice to Admit. For example, paragraph 2 asks to “admit that the building known as Harriet Tubman Gardens Apartment Corporation was defectively constructed as alleged in attached Exhibit A, ¶1 of Your complaint.” Here, this Court finds that the movant plaintiff is not entitled to have such issues be admitted because they include contested issues and ultimate facts in the case. See, Echevarria v. 158th St. Riverside Drive Hous. Co., 113 A.D.3d 500 (1st Dep’t 2014). Therefore, the Court finds that the Notice to Admit is improper, and should be vacated in its entirety.

Lastly, this Court finds the First Set of Document Demands are also palpably improper. Here, each one of plaintiff’s demands contain overbroad language seeking “any” and “all” documents related to nonparty companies, contracts, and communications. These demands, without proper tailoring as to time place and scope, are palpably improper.” ASM Cap., LP v. Four Wood Cap. Partners LLC, 78 Misc. 3d 1230(A) (N.Y. Sup. Ct. 2023). As such, the movant defendants’ motion for a protective order to vacate Plaintiff’s Notice to Admit and First Set of Document Demands is granted.

Accordingly, it is hereby

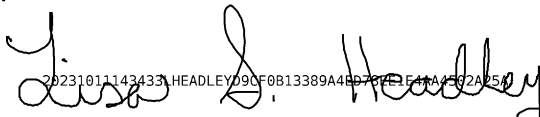
ORDERED that Defendants Harriet Tubman Gardens Apartment Corporation and Kyrour Realty Group, Inc.’s, motion for a protective order to vacate Plaintiff’s Notice to Admit and First Set of Documents Demands is GRANTED; and it is further

ORDERED that within 30 days of entry, moving defendants shall serve a copy of this Decision and Order upon all parties with notice of entry; and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered.

This constitutes the Decision/Order of the Court.

10/11/2023
DATE


LISA HEADLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<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