

Khozissova v Ralph Lauren Corp.

2023 NY Slip Op 33938(U)

November 4, 2023

Supreme Court, New York County

Docket Number: Index No. 159860/2020

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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ANASTASSIA KHOZISSOVA,	INDEX NO.	<u>159860/2020</u>
Plaintiff,	MOTION DATE	<u>N/A</u>
- v -	MOTION SEQ. NO.	<u>008 009</u>
RALPH LAUREN CORP. and HOME BOX OFFICE INC.,		
Defendants.	DECISION + ORDER ON MOTION	

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 231, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 280, 281, 282, 283, 288 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 236, 237, 238, 239, 240, 241, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 284, 285, 286, 287, 289 were read on this motion to/for VACATE/STRIKE - NOTE OF ISSUE/JURY DEMAND/FROM TRIAL CALENDAR.

In motion seq. no. 008, defendant Ralph Lauren Corp. (RLC) moves pursuant to CPLR 3124 to (1) compel the production of documents responsive to RLC’s discovery requests and relevant to the parties’ claims and defenses, which plaintiff referred to as her “Archives” and confirmed the existence of during her deposition but has not produced in accordance with the parties’ ESI Stipulation; (2) preclude plaintiff’s use of any documents, images, videos or other things to support her claims that have not been produced; and (3) direct plaintiff to pay RLC’s costs and attorneys’ fees incurred in connection with this motion to compel.

Plaintiff cross moves¹ pursuant to “N.Y. Comp. Codes R. & Regs. tit. 22 § 100.3 (B)(4), [to recuse] the Court from this action based upon manifest bias resulting from judicial vindictiveness.” (NYSCEF 242, Notice of Cross-Motion.)

In motion seq. no. 009, RLC moves to (1) vacate the note of issue; (2) vacate the portion of the court’s September 7, 2023 order setting the deadline for dispositive motions October 16, 2023; (3) adjourn the deadline to file dispositive motion to 30 days after the note of issue has been re-filed; and (4) direct plaintiff or her counsel pay RLC’s costs and attorneys’ fees incurred in connection with this motion.

Again, plaintiff moves by cross motion to extend the time, nunc pro tunc, for plaintiff to notice and to conduct the respective depositions of Kristen Bowman and Sara Olinger, both of whom RLC has designated as fact witnesses.

For the reasons stated on the record on October 11, 2023, the court grants RLC’s motion to compel plaintiff to produce the metadata for the 20 images and 5 videos that plaintiff produced on September 8, 2023. The parties agreed that all discovery productions would include metadata, but plaintiff’s September 8, 2023 production did not. The court also grants the portion of RCL’s motion seeking to preclude plaintiff from using documents, images, videos or other things if they are not produced by October 25, 2023. The court also grants RCL’s motion to vacate the note of issue and vacate the current dispositive motion deadline.

RLC’s motion for an order directing plaintiff to reimburse RLC for the cost of motions 008 and 009 is granted because these motions are entirely unnecessary.

¹ Counsel is referred again to the Part 48 Procedure 7 – “All cross motions to orders to show cause shall be made by a new proposed order to show cause bearing a different motion sequence number.”

Plaintiff agreed to produce metadata with all discovery productions. (NYSCEF 105, ESI Stip.) At argument, counsel for plaintiff had no objections to producing metadata, and yet, he failed to do so as of the date of the argument. Likewise, plaintiff agreed that the note of issue should be vacated as there was outstanding discovery. (See NYSCEF 291, tr. at 10:3-4; NYSCEF 232, Note of Issue.) And yet, he failed to stipulate to vacate the note of issue.

Plaintiff failed to notice any depositions by the deadline. After the deadline plaintiff's new counsel requested a deposition of Sara Olinger, Kristen Bowman² and Foster Witt. (NYSCEF 268, Letter to Court at 4 [June 29, 2023].) The court ordered that plaintiff could take the deposition of a corporate representative deposition. (NYSCEF 273, Conference Order [August 14, 2023].) On September 8, 2023, plaintiff's counsel conducted the deposition of Foster Witt, RCL's designated corporate representative and one of the witnesses new counsel requested. (NYSCEF 257, Letter to the Court [September 13, 2023].) As of October 11, 2023, plaintiff had yet to produce the deposition transcript. (NYSCEF 291, tr at 11:2-17.) At argument, counsel informed the court that the court reporter is nonresponsive. (*Id.* at 11:14-24.) On the record, the court directed plaintiff to produce the deposition transcript by October 25, 2023. (*Id.* at 16:16-18.) Otherwise, if plaintiff wishes to retake the deposition, plaintiff was directed to re-notice the deposition by October 31, 2023 (*id.* at 18-24), which shall be taken by November 17, 2023. Plaintiff shall pay RLC's attorneys' fees and costs incurred in retaking the deposition.

² Kristen Bowman is no longer an RLC employee. (NYSCEF 289, RCL Reply Memo at n 2 [mot. seq. nos. 008 and 009].)

Again, plaintiff requests the depositions of Kristen Bowman and Sara Olinger. Plaintiff's time to notice depositions expired long ago. Moreover, Bowman no longer works for RLC, and plaintiff never subpoenaed her. Therefore, plaintiff's cross-motion is denied.

For the reasons stated on the record on October 11, 2023, plaintiff's cross-motion to recuse is denied. Plaintiff's hypothesis that the court is vindictive is wrong. Rather, the court shortened the note of issue deadline from September 22, 2023 to August 11, 2023 because the parties did not need an extra 40 days to take, at that time, the only remaining deposition – the plaintiff's. Further, the note of issue was extended to permit plaintiff the opportunity to conduct a deposition of a RCL corporate witness which was never noticed. (See NYSCEF 273, Conference Order [August 14, 2023].)

Accordingly, it is

ORDERED that RLC's motion 008 is granted; and it is further

ORDERED that RLC's motion 009 is granted; and it is further

ORDERED that plaintiff's cross-motion to 008 is denied; and it is further

ORDERED that plaintiff's cross-motion to 009 is denied; and it is further

ORDERED that the note of issue shall be filed by November 27, 2023; and it is further

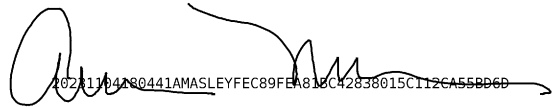
ORDERED that plaintiff was to produce metadata by October 25, 2023; and it is further

ORDERED that plaintiff was to produce all relevant archive images not already produced but referenced in her deposition by October 25, 2023. Otherwise, plaintiff is

precluded from using any unproduced images for summary judgment or at trial; and it is further

ORDERED that plaintiff may submit (filed in NYSCEF and email) written opposition to the amount of attorneys' fees and costs sought by RCL by November 9, 2023. The court will notify the parties if a hearing is necessary.

ORDERED that plaintiff was to provide RLC with the deposition transcript of Foster Witt by October 25, 2023. If plaintiff failed to produce the transcript to plaintiff and plaintiff wishes to redo the deposition, then plaintiff was to re-notice the deposition by October 31, 2023 and take the deposition by November 17, 2023. Plaintiff shall pay RLC's attorneys' fees and costs to redo the deposition. Otherwise waived.



11/4/2023
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE