

**213 W. 23rd St. LLC v Crunch Holdings LLC**

2023 NY Slip Op 34253(U)

November 20, 2023

Supreme Court, New York County

Docket Number: Index No. 652882/2022

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*

-----X

213 WEST 23RD STREET LLC,

Plaintiff,

- v -

CRUNCH HOLDINGS LLC, CRUNCH WEST 23RD STREET, LLC

Defendant.

-----X

**INDEX NO.** 652882/2022

**MOTION DATE** 11/17/2023

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 68, 69, 70, 71, 72, 73, 84, 85, 86

were read on this motion to/for PROTECTIVE ORDER.

Defendants’ motion for a protective order with respect to plaintiff’s notices to admit is denied.

**Background**

This action arises from a breach of contract claim by plaintiff (the landlord) against defendants (the guarantor and tenant) who operated a gym at the premises. Plaintiff and defendants entered into a lease agreement in 2013 for a fifteen-year period. The lease included a Good Guy Guaranty clause recognizing Crunch Holdings, LLC (“Crunch Holdings”) as the guarantor, and that if the tenant, Crunch West 23rd Street, LLC (“Crunch West”) wanted to surrender the lease, it would need to give notice at least 10 months in advance subject to written consent by the landlord.

In this motion, defendants seek a protective order that they need not respond to plaintiff’s notice to admit on the ground that this Court prevented plaintiff from seeking more discovery in

a prior order. They observe that plaintiff previously filed a note of issue while discovery was clearly still pending and without this Court's permission. Defendants then moved to strike the note of issue and the Court granted that motion. They point out that in that decision, the Court barred plaintiff from seeking further discovery and that directive prevented plaintiff from serving a notice to admit.

In opposition, plaintiff points out that, at a conference held after that decision barring plaintiff from seeking more discovery, the parties signed a stipulation that provided for notices to admit to be served by both parties. It emphasizes that this discovery order did not limit the use of a notice to admit to defendants. Plaintiff also argues that a notice to admit is not a discovery device in the classic sense, as it can be served well after the note of issue is filed and up to 20 days before trial.

In reply, defendants argue that this discovery stipulation did not grant plaintiff any relief from the Court's prior decision. They argue that the references in that stipulation are only to discovery sought by defendants. Defendants also maintain that the requests for admission are improper as they do not seek admissions on issues about which there can be no reasonable dispute.

### **Discussion**

The Court's decision must begin with its prior decision striking the note of issue dated June 26, 2023 (NYSCEF Doc. No. 55). In that decision, the Court found that "As plaintiff has certified that discovery is completed (by filing the note of issue), it may not seek any more discovery" (*id.* at 3). Thereafter, at a conference held on July 27, 2023, the parties stipulated that "Notices to admit to be served by October 13, 2023" (NYSCEF Doc. No. 62, ¶ 4).

This language, to which the parties consented and which was so-ordered by the Court, does not limit notices to admit to one party. In fact, this language is in stark contrast to the two preceding paragraphs, which explicitly directed *plaintiff* to produce certain discovery (*id.*). No such modifier was included in the language about a notice to admit. It did not state, for instance, that only defendants were to serve a notice to admit by a date certain. That compels the Court to find that, despite this Court's prior order, the parties stipulated and agreed that plaintiff could serve a notice to admit.

It may be that defendants forgot about the Court's prior decision cutting off plaintiff's discovery. Or it may be that defendants, at the time of the conference (and contrary to the position taken on this motion), did not consider a notice to admit the type of discovery covered by the prior order. Or there could be other explanations as to why the parties stipulated to allowing notices to admit. Frankly, the reasons for why defendants stipulated to the above language do not matter because the fact is that any plain reading of this paragraph yields the conclusion that both parties were permitted to serve notices to admit. The Court sees no reason to modify a clear discovery stipulation. Defendants should have insisted on specific language permitting only them to serve notices to admit if they wanted, or thought, they were entitled to such a restriction.

To the extent that defendants argue that the notices to admit are substantively improper (i.e., that plaintiff seeks admissions on issues that are in dispute), that argument cannot be considered on this motion because it was raised for the first time in reply.

The Court also denies plaintiff's request that the notices to admit be deemed admitted. In its discretion, the Court will permit defendants until December 21, 2023 to respond to the subject notice to admit.

Accordingly, it is hereby

ORDERED that defendants' motion for a protective order is denied and defendants shall have until December 21, 2023 to respond to plaintiff's notice to admit.

11/20/2023

DATE



ARLENE F. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE