

Goldstein v Southgate Owners Corp.

2024 NY Slip Op 30498(U)

February 15, 2024

Supreme Court, New York County

Docket Number: Index No. 131344/2022

Judge: Paul A. Goetz

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL A. GOETZ PART 47

Justice

LINDA GOLDSTEIN, Plaintiff, - v - SOUTHGATE OWNERS CORP., TOMMY TUNE, TOMMY TUNE, INC., JOHN DOE, JANE DOE, XYS CORP Defendant.
INDEX NO. 131344/2022
MOTION DATE 12/18/2023, 12/18/2023
MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 109, 111, 112, 114, 115, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 146, 147

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 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, 110, 113, 116, 117, 136, 137, 138, 139, 140, 141, 142, 143, 145, 148

were read on this motion to/for DISCOVERY

Upon the foregoing documents, it is

In Motion Sequence 002, defendant, Southgate Owners Corp. ("Southgate") moves for a protective order to strike plaintiff's discovery demands dated January 3rd, 2023. Southgate also seeks to compel plaintiff and co-defendant Tommy Tune, Inc. ("Tune") to provide responses to outstanding discovery. Southgate also seeks attorney's fees and costs incurred in bringing this motion. In Motion Sequence 003, plaintiff moves to strike the defendants answers or in the alternative to compel Southgate and Tune to provide outstanding discovery in January 3rd, 2023 demands served on each party. Plaintiff also moves to compel both defendants to supply a Verified Bill of Particulars. Finally, plaintiff also seeks attorney's fees and costs incurred in bringing this motion.

Turning to the January 3rd, 2023 demands (NYSCEF Doc No 96) and Southgate's response (NYSCEF Doc No 97) the documents sought are material and necessary to the case and are not overly broad. With respect to Demand:

(1) Southgate will produce any such documents in their possession;

(3) – (16); (19) – (22) Southgate will produce any such documents in its possession as documents relating to the Booster Pump and the Mechanical Room are material and necessary to the case. If Southgate is not in possession of these records, it shall provide a *Jackson* affidavit stating so;

(23) Southgate's response is sufficient

(24) Southgate will produce any such documents in their possession or if Southgate is not in possession of these records, it shall provide a *Jackson* affidavit stating so;

(25) – (27) Southgate will produce any such documents in its possession of the Minutes of the Board Meetings to the extent that they relate to the Booster Pump, the water leak, the alteration agreement, and references to the plaintiff and her apartment that are relevant to the current case. If Southgate is asserting that these documents are privileged they shall provide a privilege log stating the privilege they are asserting.

(28) Southgate will produce any such documents in their possession;

(29) Southgate will produce any such documents in their possession. If Southgate is asserting that these documents are privileged they shall provide a privilege log stating the privilege they are asserting;

(30) – (33) Southgate will produce any such documents in their possession or if Southgate is not in possession of these records, it shall provide a *Jackson* affidavit stating so;

(34) Southgate's response is sufficient;

(35) – (36) Southgate will produce any such documents in their possession. If Southgate is asserting that these documents are privileged they shall provide a privilege log stating the privilege they are asserting;

(37) – (46) Southgate's response is sufficient.

Turning to plaintiff's January 3, 2023 demands towards Tune (NYSCEF Doc No 99) and Tune's Response (NYSCEF Doc 101), Tune shall provide an affidavit stating that the documents it claims are not in its possession are also not in its "possession, custody or control" as required by CPLR § 3120.

Turning to Southgate's outstanding demands, plaintiff shall provide the authorizations and documentation to the extent they have not already been provided in the email dated October 27, 2023 (NYSCEF Doc No 126). If the link that plaintiff provided has expired as Southgate alleges, plaintiff shall provide a working link.

Defendant Tune shall provide responses to Southgate's outstanding discovery demands dated September 14, 2023 (NYSCEF Doc No 76).

Accordingly it is,

ORDERED that plaintiff's motion to compel (Motion Sequence 003) is granted to the extent indicated; and it is further

ORDERED that defendants shall provide Verified Bills of Particulars to plaintiff in the demands dated September 1, 2023 (NYSCEF Doc Nos 102 & 104); and it is further

ORDERED that defendants shall produce to plaintiff on or before March 14, 2024 the documents listed above; and it is further

ORDERED that the portion of Southgate’s motion (Motion Sequence 002) that seeks to compel outstanding discovery is granted to the extent indicated; and it is further

ORDERED that plaintiff and Tune shall produce to Southgate on or before March 14, 2024 the documents listed above; and it is further

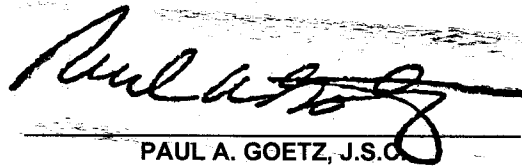
ORDERED that the portions of both motions which seek to strike the parties answers, and preclude the opposing parties from presenting evidence is denied “in furtherance of the policy favoring resolution of actions on the merits” (*Cigna Prop. and Cas. Co. v Decoration and Design Bldg. Partnership*, 268 AD2d 223 [1st Dept 2000]); and it is further

ORDERED that the parties’ application for sanctions and attorneys’ fees is denied; and it is further

ORDERED that the discovery conference scheduled for February 22, 2024 is adjourned until March 21, 2024 to allow for compliance with this order.

2/15/2024

DATE


PAUL A. GOETZ, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: