

**Charles v Raymour & Flanigan Props., LLC**

2024 NY Slip Op 30990(U)

March 26, 2024

Supreme Court, New York County

Docket Number: Index No. 101124/2012

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58**

*Justice*

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SHALIKA CHARLES,

Plaintiff,

- v -

RAYMOUR & FLANIGAN PROPERTIES, LLC, RAYMOURS  
FURNITURE COMPANY, INC., RAYMOUR & FLANIGAN  
FURNITURE, STANLEY FURNITURE COMPANY, INC.

Defendants.

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INDEX NO. 101124/2012

MOTION DATE 12/11/2023

MOTION SEQ. NO. 014

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 014) 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189

were read on this motion to/for LEAVE TO FILE.

In this personal injury/product liability action, defendants Raymour & Flanigan Properties, LLC, Raymours Furniture Company, Inc., and Raymour & Flanigan Furniture (collectively, Raymour) moves pursuant to CPLR 5701(a), (b), and (c) for leave to appeal this Court’s November 30, 2022 Order to the Appellate Division, First Department. Plaintiff opposes, while defendant/third-party defendant Stanley Furniture Company supports Raymour’s request.

**PERTINENT BACKGROUND**

The November 30, 2022 decision arose from two motions filed by the parties. In motion sequence 10, plaintiff, as aunt and natural guardian of Torique Charles, moved for a protective order preventing Torique from appearing for a second deposition or, alternatively, allowing him to appear for a limited deposition. Stanley cross-moved for an order denying the protective order and compelling Torique to appear for a deposition, while Raymour cross-moved for an order compelling plaintiff and Torique to appear for further depositions, unlimited as to time or scope.

In motion sequence 11, Stanley moved to compel plaintiff to appear for a deposition and to respond to certain questions, and Raymour cross-moved for the same relief, asked that sanctions be imposed if plaintiff did not comply, and requested an order compelling Torique to appear for a further deposition (NYSCEF 179).

In the November 2022 decision, the motions were granted to the extent that plaintiff and Torique were directed to appear for a further deposition limited to questions related to Family Court records unsealed since Torique's first deposition, with Raymour and Stanley each permitted to examine Torique for four hours. Stanley's motion to compel plaintiff to appear for a deposition was granted, and it was permitted to depose her for up to seven hours, including any questions related to the unsealed records. Raymour's cross-motion to compel was granted to the extent of permitting it to question plaintiff about the unsealed records for no more than four hours (*id.*).

In January 2023, Raymour moved for an order granting it leave to reargue the decision, while Stanley moved for leave to reargue in February 2023. Both motions were denied on August 25, 2023 (NYSCEF 164).

Thereafter, on August 23, 2023, plaintiff served notice of entry of the August 2023 decision denying the reargument motions (NYSCEF 165, 166), and on August 29, 2023, Raymour filed notice of entry of the November 2022 decision (NYSCEF 167, 168). On September 5, 2023, Raymour filed a notice of appeal of the November 22 decision (NYSCEF 169, 170).

### **ANALYSIS**

CPLR 5701 pertains to when an appeal may be taken to the appellate division from a supreme court order. Subsection a provides when an appeal may be taken "as of right," while

subsection b describes when an order is not appealable as of right. Subsection c provides that an appeal “may be taken to the appellate division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of a judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be taken, upon refusal by the judge who made the order or upon direct application.”

Raymour contends that it believes that the November 2022 order “involves some part of the merits” and/or “affects a substantial right,” thus permitting it to appeal as of right pursuant to CPLR 5701(a) and without the necessity of obtaining leave to appeal. However, as some discovery orders are not appealable as of right, it seeks leave to appeal out of “an abundance of caution” pursuant to CPLR 5701(c). It argues that the court should not have placed any time or topic restrictions on plaintiff’s and Torique’s further depositions (NYSCEF 172).

Plaintiff maintains that Raymour may not appeal as of right, as the November 2022 order does not limit its ability to defend the case on the merits or denies them a substantial right (NYSCEF 185).

In reply, Raymour again argues that the order is appealable as of right, citing numerous cases that it believes supports its position, but also requests leave to appeal (NYSCEF 187).

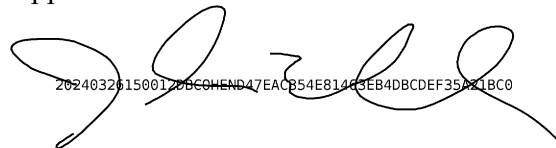
It appears that Raymour is essentially asking this court to issue an advisory opinion as to whether the November 2022 decision is appealable as of right or not. The court does not issue advisory opinions – it is counsel’s job to figure out how to appeal a decision (*see Kroemer v Pensgen*, 38 AD3d 1239 [4th Dept 2007] [New York courts do not issue advisory opinions]).

Moreover, having already denied Raymour’s motion to reargue the decision as lacking a legal basis, this Court declines Raymour’s request that I grant it leave to appeal pursuant to CPLR 5701(c).

I do not consider Stanley’s papers in support of the motion as they were filed late and after the other parties had already filed their opposition and reply. In any event, Stanley’s arguments would not have changed the outcome here. While plaintiff’s opposition was also untimely, Raymour was able to respond to it in its reply papers, thereby waiving any claimed prejudice (*see Edwards v Devine*, 111 AD3d 1370 [4th Dept 2013] [even though plaintiff’s opposition papers were not timely served, defendants were not prejudiced as they were able to submit reply affidavit]).

Accordingly, it is hereby

ORDERED, that Raymour’s motion for leave to appeal is denied.



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3/26/2024  
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: