

Dass v Dormitory Auth. of the State of N.Y.

2024 NY Slip Op 32093(U)

March 20, 2024

Supreme Court, Bronx County

Docket Number: Index No. 23921-2018E

Judge: Myrna Socorro

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This opinion is uncorrected and not selected for official publication.

#7,8

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA9

-----X
KRISHNA DASS and JACKEE MEADOW,

Plaintiff,

-against-

DECISION AND ORDER

Motion Seq. #7 & 8

THE DORMITORY AUTHORITY OF THE
STATE OF NEW YORK (DASNY),

Index No. 23921-2018E

Defendant.

-----X

Hon. Myrna Socorro, J.S.C.

Recitation as required by CPLR §2219 of the papers filed by plaintiffs in motion sequence no. 7:

Plaintiff's Motion to Compel	NYSCEF #202-207
Defendant's Opposition Papers	NYSCEF #208-213

Recitation as required by CPLR §2219 of the papers filed by defendants in motion sequence no. 8:

Defendant's Motion for a Protective Order	NYSCEF #214-226
Plaintiff's Opposition Papers and Plaintiff's Cross-Motion to Strike defendant's answer	NYSCEF #227-232
Defendant's Reply and Opposition to Plaintiff's Cross-Motion	NYSCEF 237-240

Plaintiff commenced the above captioned matter on April 4, 2018, to recover for damages for pulmonary issues allegedly caused by the negligence of defendant. Plaintiff now moves for an order to compel in motion sequence no. 7. In motion sequence no. 8, defendant moves for a protective order and plaintiff cross-moves to strike defendant's

answer. Because both motions relate to the same discovery issue (to wit: 56 boxes of defendant's records), the Court is resolving the motions as follows.

Motion Sequence no. 7

In motion sequence no. 7, plaintiffs move for an order to compel defendant to produce 56 boxes of records at DASNY's archive in Albany, New York, which are potentially responsive to plaintiff's discovery demands. Said records were the subject, in part, of a previous motion (motion sequence no. 6), which resulted in an order dated January 23, 2023, by the Honorable Julia I. Rodriguez. In said order, Justice Rodriguez noted "[r]egarding DASNY's (46-56) boxes located in Albany, counsel were advised to complete the review of the documents by February 24, 2023."

Plaintiffs note that after Justice Rodriguez's order, plaintiff's counsel requested that defendant mail the contents of the 56 boxes to its offices. However, defendant refused to mail the boxes due to the volume of the records, and instead offered for plaintiffs to do an in-person inspection of the boxes on three consecutive days between the hours of 10:00am to 5:00pm. Even though they initially agreed to this and attempted to travel to Albany to conduct the inspection, plaintiffs realized that traveling to Albany for such an inspection would be unduly costly and burdensome. Thus, they informed defendant that they would not be doing the in-person inspection. In support of the instant motion, plaintiff argues that the burden of producing responsive documents should be on defendant as the producing party. Thus, plaintiffs are now requesting that defendant search the boxes and produce the responsive documents. In opposition, defendant notes that they are willing to search the 56 boxes and produce the responsive documents instead of mailing all 56 boxes.

Because defendant, as the producing party, is the party responsible for searching, retrieving and producing relevant documents (see U.S. Bank Nat. Ass'n v GreenPoint Mtge. Funding, Inc., 94 AD3d 58, 62 [1st Dept 2012]), and without opposition by defendant, this Court hereby **grants plaintiff's motion to compel only to the extent** that defendant is directed to review the 56 boxes of records at issue and produce by mail any responsive documents to plaintiff's attorney's office within fifteen (15) days of this Decision and Order.

Motion Sequence No. 8

In motion sequence no. 8, defendant moves for a protective order and requests an order denying plaintiffs' request that defendant mail the 56 boxes to plaintiffs' counsel's office. Plaintiffs cross-move to strike defendant's answer on the ground that the 56 boxes have not been produced despite Honorable Julia I. Rodriguez's January 23, 2023 Order.

Plaintiff's cross-motion to strike defendant's answer is DENIED. While Justice Julia Rodriguez ordered that "counsel were advised to complete the review of the documents by February 24, 2023," it appears that the parties did in fact attempt to review the documents (that is, plaintiff initially agreed to defendant's proposition to travel to Albany to review the documents, however, plaintiff then realized that the trip would be costly and burdensome). Thus, this Court does not find any ground to entertain plaintiff's request to strike defendant's answer.

As to defendant's motion for a protective order in **motion sequence no. 8, this motion is deemed MOOT** as the issue has been resolved by this Court's decision in motion sequence no. 7.

CONCLUSIONS

It is hereby

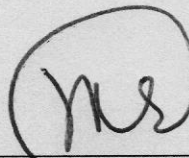
ORDERED that motion sequence no. 7 is **GRANTED ONLY TO THE EXTENT** that defendant is directed to review the 56 boxes of records at issue and produce by mail any responsive documents to plaintiffs' attorney's office within thirty (30) of this Decision and Order; it is further

ORDERED that defendant's motion for a protective order in motion sequence no. 8 is **DENIED AS MOOT**; and it is further

ORDERED that plaintiffs' cross-motion to strike in motion sequence no. 8 is **DENIED**.

This constitutes the Decision and Order of the Court.

Dated: March 20, 2024



Hon. Myrna Socorro, J.S.C.