

93rd Bldg. Corp. v Hefti

2024 NY Slip Op 32885(U)

August 15, 2024

Supreme Court, New York County

Docket Number: Index No. 151920/2022

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

-----X

93RD BUILDING CORP.,

Plaintiff,

- v -

SUSAN KATHRYN HEFTI,

Defendant.

-----X

INDEX NO. 151920/2022

MOTION DATE 07/26/2024

MOTION SEQ. NO. 012

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 012) 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415 were read on this motion to/for DISCOVERY.

Upon the foregoing documents, it is

ORDERED that the part of defendant’s motion seeking to compel plaintiff to comply with the decision and order of the court dated May 30, 2024 (NYSCEF Doc No 376) is denied as moot, since the affidavit submitted in support of plaintiff’s opposition to the motion (NYSCEF Doc No 389) indicates that handyman Serva is not employed by plaintiff and therefore cannot be produced by plaintiff; and it is further

ORDERED that the part of defendant’s motion seeking to compel plaintiff to comply with the decision and order of the court dated March 22, 2024 (NYSCEF Doc No 377) is denied, as plaintiff was not ordered to make a supplemental production,¹ and in any event, any remaining questions defendant has may be posed at plaintiff’s deposition; and it is further

¹ The order denied plaintiff’s cross-motion for a protective order vacating the entirety of defendant’s demands since many of the demands were relevant and material. However, it did not yet order plaintiff to make a supplemental production because, as noted in that same decision, “defendant failed to identify the specific demands for which she seeks additional production and explain how plaintiff’s production for each such demand was deficient.” Thus, the order contemplated that, if defendant still sought additional production, she first would have to clearly indicate to

ORDERED that the part of defendant's motion seeking to compel plaintiff to disclose any and all insurance policies that could be applicable to any of defendant's 23 counterclaims is denied, as the Appellate Division severed plaintiff's personal injury and property damage claims (NYSCEF Doc No 400), and therefore there are no remaining counterclaims to which proof of insurance is relevant; and it is further

ORDERED that the part of defendant's motion seeking to compel the deposition of plaintiff's counsel, Steven Sperber Esq., is denied, as defendant appears to argue that the crime-fraud exception to the attorney-client privilege applies, yet she failed to "demonstrate that there is a factual basis for a showing of probable cause to believe that [Sperber acted] in furtherance of [a] fraud or crime" (*United States v Jacobs*, 117 F3d 82, 87 [2nd Cir 1997]); and it is further

ORDERED that the part of defendant's motion seeking to compel plaintiff and other witnesses to submit to virtual depositions is denied, as depositions are to take place in person unless the parties stipulate otherwise (CPLR § 3113[d]) or extenuating circumstances exist; and it is further

ORDERED that the part of defendant's motion seeking a stay of all depositions until plaintiff has complied with the decision and order of the court dated March 22, 2024 is denied since, as noted *supra*, plaintiff complied with same; and it is further

ORDERED that the part of defendant's motion seeking to dismiss or strike plaintiff's pleadings is denied, as "it is well settled that the drastic remedy of striking a party's pleading pursuant to CPLR 3126 for failure to comply with a discovery order . . . is appropriate only where the moving party conclusively demonstrates that the non-disclosure was willful,

plaintiff what she was looking for. From the letter correspondence defendant submits dated April 10, April 15, and April 17, 2024 (NSYCEF Doc Nos 380, 382, 384), it appears that she did not do so, and therefore plaintiff's obligation to provide a supplemental production was not triggered.

contumacious or due to bad faith” (*McGilvery v New York City Tr. Auth.*, 213 AD2d 322, 324 [1st Dept 1995]; *Youwanes v Steinbrech*, 193 AD3d 492, 493 [1st Dept 2021] [“Even if the proffered excuse is less than compelling, there is a strong preference in our law that matters be decided on their merits”]), and defendant has not done so; and it is further

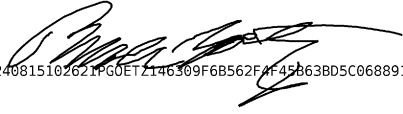
ORDERED that the part of defendant’s motion seeking sanctions against plaintiff and its attorney is denied; and it is further

ORDERED that the part of defendant’s motion seeking recusal of the undersigned is denied, as the fact “[t]hat the Justice has made decisions unfavorable to [defendant] hardly manifests conduct that ‘would lead a reasonable [person] knowing all the circumstances to harbor doubts about the [Judge’s] impartiality’” (*Goodman v Goodman*, 228 AD2d 388, 388 [1st Dept 1996], quoting *Scott v Brooklyn Hosp.*, 93 AD2d 577, 580 [2nd Dept 1983]; *Matter of Lew v Sobel*, 192 A.D.3d 799, 801 [2nd Dept 2021]; *Nationstar Mtge., LLC v Balducci*, 165 AD3d 959, 960 [2nd Dept 2018] [“Absent a legal disqualification under Judiciary Law § 14, the determination of a motion for recusal of the Justice presiding based on alleged impropriety, bias, or prejudice is within the discretion and the personal conscience of the court”]); and it is further

ORDERED that the part of plaintiff’s cross-motion seeking sanctions against defendant pursuant to 22 NYCRR 130.1 is denied, except that the parties are directed to not file any additional discovery-related motions without prior permission from the court; and it is further

ORDERED that the part of plaintiff’s cross-motion seeking to preclude defendant from offering testimony or evidence at trial and/or striking her defenses is denied, as these are drastic

remedies that are not adequately supported by plaintiff's moving papers.


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8/15/2024
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: