

Antolini v Ruisi-Raiola
2024 NY Slip Op 35597(U)
April 19, 2024
Supreme Court, Nassau County
Docket Number: Index No. 607431/22
Judge: James P. McCormack
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**SUPREME COURT - STATE OF NEW YORK
TRIAL/IAS TERM, PART 8 NASSAU COUNTY**

PRESENT:

Honorable James P. McCormack

Justice

SUZANNE RAIOLA ANTOLINI as attorney-in-
fact for ARTHUR RAIOLA,

Plaintiff(s),

-against-

FRANCINE RUISI-RAIOLA,

Defendant(s).

x

Index No.: 607431/22

Motion Seq. No.: 004 & 005

Motion 004 Submitted: 2/23/24

Motion 005 Submitted: 4/1/24

The following papers read on this motion:

Notices of Motion/Supporting Exhibits.....XX
Affirmations in Opposition/Supporting Exhibits.....XX
Reply Affirmations.....XX

Defendant, Francine Ruisi-Raiola (Francine), moves this court (Motion Seq. 004) for an order striking the complaint of Plaintiff, Suzanne Raiola Antolini (Antolini) as attorney-in-fact for Arthur Raiola (Arthur), for failure to comply with discovery. In the alternative, Francine moves to vacate the note of issue to allow discovery to continue. Antolini opposes the motion and moves separately (Motion Seq. 005) for summary judgment. Francine opposes the motion.

Before a motion relating to discovery or a bill of particulars can be brought, the movant is required to submit an affirmation of good faith indicating “that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion.” 22 NYCRR 202.7(a). The affirmation of good faith is supposed to indicate that the parties consulted over the discovery issues and the “time, place and nature of the consultation and the issues discussed...,” unless it would have been futile to do so. 22 NYCRR 202.7(c). The parties are to make a diligent effort to resolve the discovery dispute. (*Deutsch v. Grunwald*, 110 A.D.3d 949 [2nd Dept. 2013]; *Murphy v. County of Suffolk*, 115 A.D.3d 820 [2nd Dept. 2014]; *Chichilnisky v. Trustees of Columbia University in City of New York*, 45 A.D.3d 393 [1st Dept. 2007]). Herein, Francine does not offer an affirmation of good faith. While that would normally render the motion defective, the court finds that, in light of Antolini’s actions in this matter thus far, any further conferral would have been futile.

Arthur and Francine are husband and wife, and own a home together in Massapequa, County of Nassau. Francine, who is 17 years younger than Arthur, lives in the house. Arthur currently lives in a nursing facility and memory center in Florida, near where Antolini lives. Antolini is Arthur’s daughter and Francine’s step-daughter. Arthur and Francine have been married for over 20 years at this point, but they bought the house together 10 years prior to marriage, and the house has remained theirs in joint tenancy. It was never converted to a tenancy by the entirety.

Arthur left the marital residence, though the parties differ as to how that occurred. Antolini claims Arthur required better care than Francine was providing, and that

Francine had no objection to Arthur leaving. Francine, who claims Antolini never liked her, states that Antolini came to get Arthur to take him for a vacation in Florida, and that Arthur never returned. In December, 2020, soon after Antolini brought Arthur to Florida, Arthur signed a power of attorney giving Antolini complete control over his finances and affairs. Francine states that since Arthur left, Antolini diverted his income to herself, and that Francine has been left to care and support the house solely on her own. Antolini apparently sold another property that Arthur owned in Florida and put the proceeds in an account for Arthur's grandchildren. Antolini brought this action to partition and sell the Massapequa home and split the proceeds with Francine. Francine argues that Arthur was not competent when he signed the power of attorney, resulting in Antolini having neither capacity nor standing to bring this proceeding.

Antolini commenced this partition action by summons and complaint dated June 8, 2022. Issue was joined by service of an answer dated July 8, 2022. The case certified ready for trial on September 7, 2023, and a note of issue was filed on January 5, 2024. The certification order extended the deadline to file the note of issue to 120 days, and directed Antolini to not file the note of issue prior to the 90th day due to Antolini's delay in providing discovery responses, some of which were served the day before the certification conference was scheduled.

**FRANCINE'S MOTION TO STRIKE THE COMPLAINT
OR VACATE THE NOTE OF ISSUE (MOTION SEQ. 004)**

During the September 7, 2023 certification conference, the court expressed its frustration at Antolini's counsel due to the late discovery responses, something counsel blamed on the client. The court was clear that due to the court's Standard and Goals deadline, the case had to certify, but if Antolini's discovery responses were insufficient, Francine would not be prejudiced as a result. Part of the basis for this motion is Francine's complaint that the discovery responses were, indeed, insufficient. The court, having reviewed them, agrees.

Initially, the court notes that because the discovery responses were late, Antolini waived all objections except privilege and palpably improper. (*Marino v County of Nassau*, 16 AD3d 628 [2d Dept 2005]). Ignoring this rule, Antolini made a number of improper objections.

The demands in question were a Notice to Produce, Defendant's First Set of Interrogatories, and First Notice for Discovery and Inspection, all of which were served in May, 2023, four months prior to when the responses were offered. The Notice to Produce sought four HIPAA-compliant authorizations. These authorizations were needed to obtain Arthur's medical and pharmaceutical records. No authorizations were provided. Some of the document demands were duplicative of the records being sought by the authorizations, but it did not matter because Antolini turned over none of the records claiming to not have them in her possession or control. Some of the documents she did

state she was providing, she still did not provide. Then there were the objections.

Document demands 18, 19, 22, and 23 sought the following information, respectively:

18. Copies of Arthur Raiola's federal and state income tax returns for the years 2020 and 2021.
19. Copies of Ms. Antolini's federal income tax returns for the years 2020 and 2021.
22. Copies of all documents and communications concerning or affecting the Property, including correspondence concerning ownership or sale of the Property, from 1992 to the present.
23. Copies of all communications and correspondence between or among any of the parties to this action from 2020 to the present.

In response, Antolino offered the same boilerplate language as an objection:

Plaintiff objects to this request as it seeks irrelevant information. Said demand is overly broad, onerous and burdensome and would not produce information relevant or reasonably calculated to lead to the discovery of information bearing on the claims in this litigation¹.

CPLR §3124 provides that the court has the discretion to compel discovery or to strike a pleading for failure to abide with discovery and disclosure orders. At the discretion of the court, a party's failure to comply with such requests may result in sanctions, pursuant to CPLR § 3126. "Although actions should be resolved on the merits where possible, a court may strike [a pleading] for failure to comply with court-ordered discovery where there is a clear showing that the noncompliance is willful and contumacious" (*Rawlings v. Gillert*, 78 AD3d 806 [2d Dept 2010]; *see also* CPLR

¹Despite the objection, Antolini did provide a copy of a deed to the subject premises in response to demand 23.

3126[3]; *Moray v. City of Yonkers*, 76 AD3d 618 [2d Dept 2010]; *Palomba v. Schindler El. Corp.*, 74 AD3d 1037 [2d Dept 2010]; *Rini v. Blanck*, 74 AD3d 941 [2d Dept 2010]).

Parties to litigation are entitled to “full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof” (CPLR § 3101[a]). This provision has been liberally construed to require disclosure “of any facts bearing on the controversy which will assist the parties’ preparation for trial by sharpening the issues and reducing delay (*Allen v. Crowell–Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). “If there is any possibility that the information is sought in good faith for possible use as evidence-in-chief or in rebuttal or for cross-examination, it should be considered evidence material ... in the prosecution or defense” (*Id.* at 407, quoting CPLR § 3101). Nonetheless, litigants do not have carte blanche to demand production of any documents or other tangible items that they speculate might contain useful information (*see Geffner v. Mercy Med. Ctr.*, 83 AD3d 998 [2d Dept 2011]; *Foster v. Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]; *Gilman & Ciocia, Inc. v. Walsh*, 45 AD3d 531 [2d Dept 2007]; *Vyas v. Campbell*, 4 AD3d 417 [2d Dept 2004]).

The court finds Antolini’s actions were wilful and contumacious. Her responses to demands were late, waiting until the literal eve of the certification conference to serve them. At least some of the responses were misleading, wherein she indicated authorizations would be forthcoming, but were never provided. Other documents that were promised also were not provided. Antolini also lodged improper objections that had been waived. All the foregoing would justify the court striking the complaint, but the court believes Antolini should be given one more opportunity to comply with discovery.

Therefore, the court will vacate the note of issue and direct Antolini to provide responses to those demands she failed to properly respond to.

ANTOLINI'S MOTION FOR SUMMARY JUDGMENT (MOTION SEQ. 005)

This is Antolini's second summary judgment motion for the identical relief. In general, the court should not allow successive summary judgment motions. (*Verizon N.Y., Inc. v. Supervisors of Town of N. Hempstead*, 169 AD3d 740 [2d Dept 2019]). An exception to this rule is where the second motion is "substantively valid", and granting the motion will "further the ends of justice" while eliminating burdens on the court. (*Id.*, quoting *Kolel Damsek Eliezer, Inc. v. Schlesinger*, 139 AD3d 810 [2d Dept 2016]). Herein, the exception does not apply. To the contrary, it would offend the interests of justice to allow Antolini to move for summary judgment while at the same time improperly withholding discovery.

Accordingly, it is hereby

ORDERED, that Francine' motion (Motion Seq. 004) is GRANTED in part and DENIED in part. It is GRANTED to the extent that the note of issue will be vacated, and is DENIED as to striking the complaint; and it is further

ORDERED, that within 15 days of being served with notice of entry of this order, Antolini will provide each and every HIPAA-compliant authorization in the May, 2023 demands. This includes the four authorizations sought in the Notice to Produce, and every other authorization promised in the responses to the interrogatories and the Notice

for Discovery and Inspection to the extent they are different. Failure to comply will result in the complaint being dismissed; and it is further

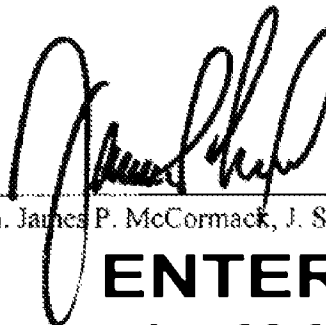
ORDERED, that within 30 days of being served with notice of entry of this order, Antolini will provide full and complete responses to the Notice for Discovery and Inspection including Demands 18, 19, 22, and 23. The court finds demands 18, 19, 22, and 23 proper and rejects any further objections. Failure to comply will result in the complaint being dismissed; and it is further

ORDERED, that the note of issue is vacated. It may not be re-filed prior to August 19, 2024 unless the parties consent to doing so in writing. The note of issue will be re-filed no later than September 19, 2024; and it is further

ORDERED, that Antolini's motion (Motion Seq. 005) for summary judgment is **DENIED**. Antolini is precluded from bringing any further summary judgment motions.

This constitutes the Decision and Order of the Court. Any relief not specifically granted is denied. The court has considered the remaining arguments of the parties and finds them to be moot or without merit.

Dated: April 19, 2024
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.
ENTERED
Apr 23 2024
NASSAU COUNTY
COUNTY CLERK'S OFFICE