

Kent v Gisante
2024 NY Slip Op 35676(U)
March 20, 2024
Supreme Court, Rockland County
Docket Number: Index No. 035359/2022
Judge: Keith J. Cornell
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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MARIA KENT	:	DECISION & ORDER
Plaintiffs,	:	
	:	Index No.: 035359/2022
-against-	:	(Motion #2)
	:	
TINA S. GISANTE and AMADEU E. STIO, as	:	
Ancillary Administrators of the Estate of Raul C. Stio,	:	
	:	
Defendants.	:	X

Keith J. Cornell, A.J.S.C.

Before the Court is the motion, made pursuant to CPLR § 2304, by the Co-Administrators of the Defendant estate (“Co-Administrators”), seeking to quash the subpoenas served by Plaintiff upon Tina Gisante and Amadeu Stio in their individual capacities (the “Subpoenas”).

The Court considered the following papers electronically filed on NYSCEF as documents 44-58 in making its decision: Notice of Motion; Lewis Affirmation in Support; Gisante Affidavit in Support; Stio Affidavit in Support Exhibit A; Affirmation in Opposition; Exhibits A-B; Kent Affidavit in Opposition; Coffey Affirmation in Opposition; Exhibits 1-3.

Background

Plaintiff commenced this action in December 2022, requesting that the Court recognize her equitable interest by constructive trust in the residence located at 100 River Road, Grandview, New York. The residence was purchased, individually, by Raul Carlos Stio, (“Raul”) shortly before his sudden death on December 21, 2021. She alleges that she lived together with Raul beginning in 2016 and that the couple planned to reside together in the subject residence, marry and start a family together. (Complaint ¶ 4) (NYSCEF 2).

Plaintiff moved into the residence and there is a pending motion (Seq. 1) filed by Raul's estate seeking *inter alia* to evict Plaintiff and permit the sale of the residence.

Regarding the discovery process, Plaintiff states that she has provided extensive documentation to the Defendant estate in response to its discovery demands, whereas the Co-Administrators have provided only one document in response to Plaintiff's demands. She argues further that the Co-Administrators have consistently taken an obstructionist position with regard to all discovery in this case.

In essence, the Defendant's motion seeks to limit the document production sought by Plaintiff in the parallel Schedule A's annexed to the deposition Subpoenas served on each Co-Administrator in their individual capacities.

The Subpoenas direct that each Co-Administrator bring to the deposition "...the documents and records in your custody, reflected, referred to or described in Schedule A annexed hereto..." Schedule A in each instance delineates a period of January 1, 2016 through the present for the nine categories of documents requested.

Of the nine categories of documents requested the Co-Administrators have consented to provide the documents listed in items 5, 6, 7, and 8, for the period September 1, 2021 through December 21, 2021. Lewis Affirmation ¶ 32 (NYSCEF 45).

Discussion

CPLR 3101(a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." However, "[a] party is not entitled to unlimited, uncontrolled, unfettered disclosure" (C. B. v New York City Tr. Auth., 219 AD3d 1397, 1398, quoting Geffner v Mercy Med. Ctr., 83 AD3d 998, 998, ; see Fox v Roman Catholic

Archdiocese of N.Y., 202 AD3d 1061, 1062). "Pursuant to CPLR 3103(a), the Supreme Court may issue a protective order striking a notice for discovery and inspection that is palpably improper" (Lombardi v Lombardi, 190 AD3d 964, 966, 140 N.Y.S.3d 264; see Fox v Roman Catholic Archdiocese of N.Y., 202 AD3d at 1062). A notice for discovery and inspection is palpably improper if it is overbroad, burdensome, fails to specify with reasonable particularity many of the documents demanded, or seeks irrelevant or confidential information (see CPLR 3120[2]; Lombardi v Lombardi, 190 AD3d at 966). C.B. v. New York City Tr. Auth., 219 A.D.3d 1397 (2d Dept. 2023).

The Co-Administrations have failed to establish that the items required to be produced herein are utterly irrelevant, or that that the futility of the process to uncover anything legitimate is inevitable or obvious. Wells Fargo Bank, N.A. v Confino, 175 A.D.3d 533 (2d Dept 2019).

Regarding item 1 on Schedule A, the Court finds that the requested information could yield information material and relevant to Plaintiff's claims. Therefore, the Co-Administrators are directed to provide same for the period of January 1, 2019 through the present, to the extent that the demanded records are in their possession or over which they have control, and produce same at least 5 days before the continued depositions of the Co-Administrators.

Regarding item 2 on Schedule A, the Court finds that the requested information could yield information material and relevant to Plaintiff's claims. Therefore, the Co-Administrators are directed to provide same for the period of January 1, 2019 through the present, to the extent that the demanded records are in their possession or over which they have control, and produce same at least 5 days before the continued depositions of the Co-Administrators.

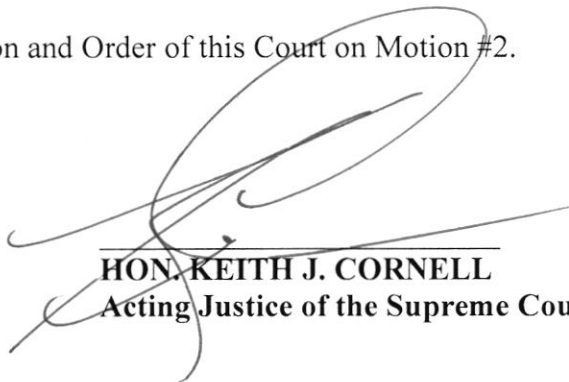
Regarding items 3 and 4 on Schedule A, the Court finds that the demand is unduly vague and further that communications between Plaintiff and third parties should be in Plaintiff's own possession or control. Therefore, the Court strikes these demands.

Regarding items 5 through 8 on Schedule A, the Court finds that the requested information could yield information material and relevant to Plaintiff's claims. Therefore, the Co-Administrators are directed to provide same for the period of January 1, 2019 through the present, to the extent that the demanded records are in their possession or over which they have control, and produce same at least 5 days before the continued depositions of the Co-Administrators.

Regarding item 9 on Schedule A, the Court finds that the requested information could yield information material and relevant to Plaintiff's claims. Therefore, the Co-Administrators are directed to provide same to the extent that the demanded records are in their possession or over which they have control, and produce same at least 5 days before the continued depositions of the Co-Administrators.

The foregoing constitutes the Decision and Order of this Court on Motion #2.

Dated: March 20, 2024



HON. KEITH J. CORNELL
Acting Justice of the Supreme Court

To: All parties via NYSCEF