

Bruce v Solny

2025 NY Slip Op 31823(U)

May 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 510162/20

Judge: Lawrence Knipel

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At an IAS Term, Part 57 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 13th day of May, 2025.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X
JANET BRUCE,

Plaintiff,

-against-

Index No. 510162/20

SANFORD SOLNY, SHANDELLE SOLNY IN HER PERSONAL CAPACITY, SHANDELLE SOLNY IN HER CAPACITY AS PRESIDENT OF A TO Z MANAGEMENT I. CORP., E 29 ST REALTY INC., A TO Z MANAGEMENT I CORP., ABRAHAM HOSCHANDER, ABRAHAM HOSCHANDER & ASSOCIATES PLLC, AVINOAM ROSENFELD, and THE ROSENFELD LAW OFFICE PLLC,

Defendants.

-----X
The following e-filed papers read herein:

NYSCEF Nos.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed_____

895-896_____

Opposing Affidavits (Affirmations)_____

914, 929_____

Affidavits/ Affirmations in Reply _____

946_____

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Upon the foregoing papers, plaintiff Janet Bruce moves (in Motion Sequence [MS] # 36) for an order: (1) pursuant to CPLR 3124 and 3126, compelling defendants Sanford Solny, Shandelle Solny in her personal capacity, Shandelle Solny in her capacity as President of A to Z Management I. Corp., E 29 St Realty Inc., and A to Z Management I Corp. (collectively, the Solny Defendants) to supply documents in response to plaintiff's

second notice for discovery and inspection (NDI) (filed at NYSCEF Doc. No. 880), as well as those documents they failed to provide in response to prior orders of this court, including the Preliminary Conference Order (NYSCEF Doc No 382) and the order dated October 3, 2023 (NYSCEF Doc No 606), or face sanctions: (2) pursuant to CPLR 3103 (c) suppressing any responses by plaintiff to questions from the Solny Defendants during her examination before trial (EBT); (3) pursuant to CPLR 2221 (e), renewing the order dated September 10, 2024 (NYSCEF Doc No 869), which denied, inter alia, plaintiff's motion for sanctions pursuant to CPLR 3126, and upon renewal, sanctioning the Solny Defendants; and (4) pursuant to CPLR 3103 (a), issuing a protective order barring defendants Abraham Hoschander, Abraham Hoschander & Associates PLLC, Avinoam Rosenfeld and The Rosenfeld Law Office PLLC (H&R Defendants) from taking plaintiff's EBT on the ground that the H&R Defendants have been precluded from offering evidence at trial and all of their defenses were dismissed as a sanction for their willful misconduct.

Plaintiff commenced this action to set aside a deed and recover damages as the result of a fraudulent "foreclosure rescue" scheme allegedly perpetrated by defendants. In sum and substance, plaintiff alleges that she was facing foreclosure of her residence at 161 E. 29th Street in Brooklyn when she was introduced to Sanford Solny, who promised to arrange a short sale of the property, thereby extinguishing plaintiff's mortgage debt with the mortgagee. Plaintiff alleges that Sanford Solny, along with the other Solny Defendants, induced plaintiff to transfer title of her property for a paltry consideration but did not thereafter arrange a short sale or otherwise pay off the mortgage debt. Plaintiff

contends, in essence, that the Solny Defendants had no intention of satisfying the mortgage (leaving plaintiff liable for the underlying debt), but instead embarked on a plan to prolong the foreclosure proceedings as long as possible in court while collecting rental income from tenants placed at the property. Plaintiff maintains that the H&R Defendants were the attorneys who were retained by the Solny Defendants during the course of the foreclosure action to intentionally delay and prolong the proceedings in court, falsely and fraudulently representing to the court that they represented plaintiff.

Plaintiff filed her amended complaint on January 11, 2021. On March 23, 2021, the H&R Defendants filed a verified answer setting forth several affirmative defenses with a cross claim. On August 24, 2022, Justice Robin K. Sheares issued a decision and order dismissing all of the H&R Defendants' affirmative defenses with prejudice, and precluding the H&R Defendants from offering any evidence at trial concerning the items listed in plaintiff's demand for a verified bill of particulars. This decision was upheld on a subsequent motion to reargue.

Plaintiff previously brought a cross motion (MS # 25) for a protective order striking certain document demands by the H&R Defendants. In its order dated October 3, 2023, this court found that a substantial part, if not most of the items demanded in the H&R Defendants' demands were relevant only to potential affirmative defenses which may have been asserted against plaintiff at trial, and that because the H&R Defendants' affirmative defenses have been stricken with prejudice by the order of Justice Sheares, the demands were overbroad under the circumstances. Plaintiff argues that because the H&R Defendants may not interpose any affirmative defenses and are precluded from offering

evidence as to the items in plaintiff's demand for a verified bill of particulars, H&R likewise does not establish that any testimony to be provided by plaintiff at an EBT would be material and necessary.

As to that part of the motion to suppress the testimony given at her EBT conducted by the Solny Defendants, plaintiff argues that on the night of October 7, 2024, the day before her EBT was scheduled, she was first served with redacted minutes containing her grand jury testimony in a criminal case against Sanford Solny, and did not have a sufficient opportunity to review the minutes before testifying at the EBT. After receipt of the grand jury minutes, plaintiff filed a prior motion (MS # 34) seeking a protective order against being deposed by the Solny Defendants and the H&R Defendants. Plaintiff's motion was based on her argument concerning the inability to review the grand jury minutes prior to the EBT. Plaintiff did not raise any other ground (e.g., the preclusion order against the H&R defendants) in her motion for a protective order. Requests by plaintiff for an adjournment of the EBT were rejected by the other parties.

Upon arriving at the EBT on the morning of October 8, 2024, counsel for the parties held a teleconference with Justice Rupert Barry with regard to the motion for a protective order. After hearing the parties' arguments, Justice Barry directed that the EBT proceed that afternoon at 1:00 PM. By order dated January 16, 2025, the motion for a protective order (MS # 34) was denied in the Central Compliance Part by Justice Leon Ruchelsman. The court stated, in relevant part:

“Plaintiffs motion (mot. seq. 34) for a protective order preventing *defendants* from taking her deposition is denied. Even assuming that plaintiff[']s counsel learned about the

grand jury minutes containing plaintiff[']s testimony on the eve of the deposition, plaintiff already sat for a deposition on October 8, 2024 and November 6, 2024, per plaintiff[']s reply. Moreover, should plaintiff sit for another deposition, plaintiff will now have had more than three months to look at the grand jury minutes. In other words, plaintiff will have had ample time to prepare” (emphasis added).

The instant motion is not identified as one to reargue the January 16, 2025 order. Because plaintiff was denied a protective order by Justice Ruchelsman as against both the Solny Defendants and the H&R Defendants, that part of her motion for a protective order preventing the H&R Defendants from examining plaintiff (which she states has yet to occur) is essentially a collateral attack of Justice Ruchelsman’s January 16, 2025 order. Accordingly, that part of plaintiff’s motion for a protective order preventing an EBT by the H&R Defendants is denied.

CPLR 3103 (c) provides that “[i]f any disclosure under this article has been improperly or irregularly obtained so that a substantial right of a party is prejudiced, the court, on motion, may make an appropriate order, including an order that the information be suppressed.” Here, plaintiff has not shown that the testimony she gave on October 8, 2024 was affected by the inability to review the grand jury minutes beforehand, or otherwise that a “substantial right” of hers was prejudiced by proceeding with the EBT (CPLR 3103 [c]).

As a result, that part of plaintiff’s motion seeking to suppress her EBT testimony is denied.

In her second NDI, dated October 15, 2024, plaintiff seeks documents and records including the complete and unredacted grand jury minutes, any documents relating to

when and how defendants received the grand jury minutes, documents provided by the Kings County District Attorney relating to the criminal proceeding, and documents sent and received under a certain email address apparently set up and used by defendants. The court finds that the Solny Defendants did not sufficiently demonstrate in their opposing papers, beyond conclusory statements, that the demands are unduly burdensome and/or broad.

Accordingly, that part of plaintiff's motion seeking to compel discovery from the Solny Defendants is granted to the extent that: (1) within 60 days of the filing of this order on NYSCEF, the Solny Defendants shall serve responses to plaintiff's second NDI (NYSCEF Doc No 880), or a proper Jackson affidavit as to those items which are found not to be in possession of the Solny Defendants after a diligent search; (2) the Solny Defendants shall further reply to any outstanding discovery directed by prior orders and, as a courtesy, plaintiff shall serve a demand upon the Solny Defendants identifying any outstanding discovery within 30 days of the filing of this order on NYSCEF; (3) the Solny Defendants shall respond to any outstanding discovery within 30 days after receipt of plaintiff's demands; and (4) any failure to comply may result in CPLR 3126 sanctions upon further motion.

Any relief not expressly granted herein, including renewal of the September 10, 2024 order, has been considered and is denied.

The forgoing constitutes the decision and order of the court.

ENTER.



J.S.C.

Justice Lawrence Knipel