

Bishop v 59 W. 12th St. Condominium
2007 NY Slip Op 34582(U)
May 26, 2007
Supreme Court, New York County
Docket Number: 101683/04
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK Justice PART 2

-----X
RANDA BISHOP,
Plaintiff,
-against-

59 WEST 12TH STREET CONDOMINIUM, ET AL
Defendants.

FILED

JUN 06 2007

NEW YORK COUNTY CLERK'S OFFICE

Index No. 101683/04
Motion Date 05/16/07
Motion Seq. No. 05
Motion Cal. No. _____

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The following papers, numbered 1 to _____ were read on this motion for Reargument

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

| PAPERS

Cross-Motion: [] Yes [] No

This cross-motion designated as a reargument of the rulings in the Compliance Order dated October 18, 2006 is in reality a motion to modify that order as there was never an argument but, according to cross-movant, a give and take between the parties' attorneys and the justice's law clerk.

Plaintiff has brought this action, inter alia, to allow her to alter two maids' rooms, turning them into a residential apartment which the defendants have currently refused to do.

Plaintiff alleges that the Board of Directors has violated its fiduciary obligation to not engage in disparate treatment of the owners of the condominium's apartments. Plaintiff, although having submitted its application for the alterations since 1994, has been blocked by the Board of Directors from continuing the alterations.

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Plaintiff's discovery request is to seek the records of all requests made from two years before plaintiff was stopped from doing the alterations; i.e., 1992. Defendant states that first the formula is not sufficiently tailored to include those who were actually in a similar situation as plaintiff. Those would be, according to plaintiff, all condo owners who sought to convert their apartments from commercial use (i.e., the maids' rooms to apartments (residential use)). The plaintiff counters that that is a false description. She states that this is a residential premises seeking to convert two maids' rooms into a residential apartment. Defendant also states that the period of comparison should be three years before 2004, the date this action was commenced; to wit, 2001. They claim that that is the time period for the statute of limitations in this action. Consequently, any evidence before that period is irrelevant.

The Court modifies the discovery order to require the condominium to produce the alteration files for all residential apartments from 1992 to the present. For the purposes of discovery, the tenants similarly situated to plaintiff are those owners who have sought permission from the condominium to alter their apartments. The time period for this information starts at 1992 because that is a reasonable period when many, if not most or all of the board members who rejected plaintiff's request were rejecting or granting such requests. Whether the Statute of Limitations is three years as defendant maintains or six years as plaintiff maintains is irrelevant for this discovery issue. The Statute of Limitations

only limits the period of time that a lawsuit may be brought after an event that starts its running. It has nothing to do with this discovery issue. Whether or not any of these records will be admissible at trial will be determined at trial, but they should be revealed in discovery, where the rules on admissibility are far more flexible than at trial.

Defendant's motion seeks to bring back the plaintiff for approximately two more hours of examination. At the start of the deposition, counsel told defendant that plaintiff was in town for only one day, after which she was flying back home to Las Vegas. Counsel for plaintiff suggested that the deposition begin promptly at 9:00 a.m. Defendant's counsel insisted on 10:00 a.m. and arrived at 10:15 a.m. It is undisputed that counsel suggested an abbreviated lunch of about 30 minutes. Defendant's counsel insisted on a full hour, and took a little longer than that. At 5:30 defendant's counsel stopped the deposition which, he stated had about two hours to go. Defendant's counsel refused to do so, insisting that plaintiff needed to fly back to New York for the remaining two hours.

The behavior of counsel appears more to inconvenience and harass plaintiff than to obtain legitimate discovery. A slight effort on his part would have concluded the deposition. The Court does not countenance such incivility and will do nothing to assist the perpetrator of such uncivil behavior. The motion to require plaintiff to appear for the continuance of her deposition is denied.

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Finally, defendant's motion to compel production of discovery material is denied as moot. The parties both agreed that these documents had finally, if belatedly, been produced. This constitutes the Order and Decision of the Court.

FILED

JUN 06 2007

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COUNTY CLERK'S OFFICE**

Dated: 5/24/07

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Louis B. York, J.S.C.
**LOUIS B. YORK
J.S.C.**

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