

**Champion 221 LLC v Madave Prop. SPE, LLC**

2013 NY Slip Op 30616(U)

March 25, 2013

Sup Ct, New York County

Docket Number: 103558/12

Judge: Donna M. Mills

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SUPREME COURT OF THE STATE OF NEW YORK— NEW YORK COUNTY

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

CHAMPION 221 LLC,

Plaintiff,

-v-

MADAVE PROPERTIES SPE, LLC,

Defendant.

INDEX No. 103558/12

MOTION DATE \_\_\_\_\_

MOTION SEQ. No. 03

MOTION CAL No. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for \_\_\_\_\_.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits 2,3

Replying Affidavits \_\_\_\_\_

CROSS-MOTION: \_\_\_\_\_ YES  NO

**FILED**

**APR 01 2013.**

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/25/13

*Donna M. Mills*  
J.S.C.

Check one: \_\_\_\_\_ FINAL DISPOSITION

NON-FINAL DISPOSITION

**DONNA M. MILLS, J.S.C.**

\* 2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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CHAMPION 221 LLC,

Plaintiff,

- against -

MADAVE PROPERTIES SPE, LLC,

Defendant.

DECISION/ORDER

**FILED**  
INDEX NO.  
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APR 01 2013

NEW YORK  
COUNTY CLERK'S OFFICE

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Donna M. Mills, J.:

In this action regarding the prospective termination of a commercial lease, defendant Madave Properties SPE, LLC ("Landlord"), move, by order to show cause, seeking: (a) an order pursuant to CPLR § 3214(b) lifting the automatic stay of discovery; and (b) a conditional order pursuant to CPLR § 3214 and/or § 3216 directing plaintiff Champion 221 LLC ("Tenant") to produce requested disclosure. Tenant opposes the motion on the grounds that the request for disclosure is not warranted in order for Landlord to oppose Tenant's pending application for a Yellowstone injunction.

This case is a commercial landlord/tenant dispute in which Tenant has allegedly violated applicable laws and the parties' lease. Among the issues currently being litigated by the parties pending motions is whether Tenant violated the parties' lease by assigning an interest in the lease to a third party who now supposedly controls operation of the garage premises at issue. Landlord, in an effort to prove Tenant's incurable violation of the lease, served a formal discovery demand as well as deposition notices upon Tenant. On January 7, 2013, Landlord served its motion to dismiss Tenant's motion for Yellowstone relief.

Under CPLR 3214 (b), service of a notice of motion pursuant to CPLR 3211, 3212 or section 3213 stays disclosure until determination of the motion unless the court orders otherwise. The stay in CPLR §3214(b) is automatic but statutorily the court may,

SUPREME COURT OF THE STATE OF NEW YORK  
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COUNTY CLERK'S OFFICE

- against -

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\* 4]

of course, direct otherwise. See, McKinney's Consolidated Laws of New York, Book 7B, Rule 3214, Practice Commentaries, David D. Siegel, p536. Despite far reaching consequences there is little case law activity on CPLR §3214. See, McKinney's Consolidated Laws of New York, Book 7B, Rule 3214, Practice Commentaries, David D. Siegel, p536. The scant precedents and CPLR §3214 (b) itself authorizes the court to order discovery notwithstanding the automatic stay of CPLR §3214 (b). Hence, despite the automatic stay provision of CPLR §3214 (b) the trial court may direct otherwise if there is a legitimate need for discovery (see Reilly v Oakwood Heights Community Church, 269 AD2d 582 (2nd Dept., 2000)).

In the instant action, Landlord seeks an emergency request for the requested discovery as they believe it is essential to its defense of Tenant's second motion for Yellowstone relief, which is scheduled for oral argument on April 11, 2013. Landlord's motion to compel discovery specifically requests materials and documents evidencing transactions between the Tenant and the third-party to which partial ownership was purportedly transferred in violation of the lease.

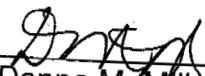
This Court does not find, that at this juncture of the proceeding where there has been no preliminary conference, that there is a legitimate need for discovery warranting the lifting of the automatic stay provision of CPLR §3214(b). While Landlord may be entitled to some or all of the discovery it requests, the Court will decide the Yellowstone motion, and then schedule a preliminary conference so that reciprocal disclosure can proceed in the ordinary course of litigation.

Accordingly, it is

ORDERED that defendant's motion to lift the automatic stay of discovery and compelling plaintiff to produce requested disclosure is denied.

Dated: 3/25/13

So Ordered

  
Donna M. Mills, J.S.C.

DONNA M. MILLS, J.S.C.

**FILED**

**APR 01 2013**

**NEW YORK  
COUNTY CLERK'S OFFICE**