

New Hampshire Ins. Co. v Adami Restoration, Inc.

2013 NY Slip Op 31412(U)

June 19, 2013

Supreme Court, New York County

Docket Number: 103495/08

Judge: Milton A. Tingling

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

MON. MILTON A. TRYTLING

PRESENT: _____
J.S.C. Justice

PART 44

Index Number : 103495/2008
NEW HAMPSHIRE INSURANCE
vs.
ADAMI RESTORATION
SEQUENCE NUMBER : 002
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE 4/1/13
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____

Answering Affidavits — Exhibits _____ No(s). _____

Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the next decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S): _____

FILED

JUL 03 2013

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 6/19/13

maf, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

NEW HAMPSHIRE INSURANCE COMPANY a/s/o
ROBERT ADAMI,

Plaintiff(s)

-against-

ADAMI RESTORATION, INC., M. ADAMI STONE
RENOVATING CO., INC. and MARK ADAMI d/b/a
ADAMI RESTORATION, INC.,

Defendant(s)

DECISION AND ORDER

Index No.:103495/08

FILED

JUL 03 2013

**COUNTY CLERK'S OFFICE
NEW YORK**

The Plaintiff moves to vacate the prior discovery orders dated September 24, 2012 and November 19, 2012. The defendants oppose this motion.

This motion arises from a subrogation action in which Plaintiff New Hampshire Insurance Company seeks to recover monies for substantial damages caused by a fire that occurred on the premises of its insured Robert Adami on February 21, 2006. Pending the restoration and repairs of the premises following the fire, subsequent water damage occurred as a result of alleged improper tarping of the roof. Plaintiff filed two subrogation actions against Mark Adami and his company Adami Restoration, seeking to recover monies paid to Robert Adami in the amount of \$374,201.51 for the initial fire damage and \$49,387.44 for the subsequent water damage. Although there are two separate subrogation actions, conferences and discovery for both actions have proceeded under the initial action bearing the index number of No. 103495/08. A preliminary conference was held on January 20, 2009 outlining the initial discovery schedule for the parties. Following the preliminary conference, several status and compliance conferences were held. The Plaintiff alleges an estimate of fourteen (14) status and

compliance conferences. During the conferences numerous orders extended discovery dates for conducting depositions, and responding to demands and filing Note of Issue. Prior to the September 24, 2012 conference the parties had complied with all prior discovery orders. During the September 24, 2012 conference parties agree to stipulate that Plaintiff's would direct their clients New Hampshire Insurance Company and Robert Adami to be re-deposed on the issue of the subsequent water damage. New Hampshire Insurance Company to be deposed on November 6, 2012 and Robert Adami to be deposed on November 13, 2012. Plaintiff did not comply with this order. During the next conference on November 19, 2012, the parties again stipulated to conduct deposition of New Hampshire Insurance Company and Robert Adami by February 15, 2013 and March 15, 2013 respectively.

In accordance with CPLR §2221 a motion for leave to renew or to reargue a prior motion, for leave to appeal from, or to stay, vacate or modify, an order shall be made, on notice, to the judge who signed the order, unless he or she is for any reason unable to hear it. A motion made to an improper judge under this rule shall be transferred to the proper judge.

A court as an exercise of discretion has the power to set aside a stipulation where the action is within the court's jurisdiction. *Thompson Medical Co. v. Benjamin Pharmaceuticals, Inc.*, 4 A.D.2d 504. Settlements and stipulations openly agreed to should not be vacated or modified in the absence of compelling reasons. *Thompson, supra.*

Plaintiff alleged that Defendant had the entire file related to the subsequent water damage claim in its possession since May of 2010. This was almost nine months (9) prior to Robert Adami's deposition and more than two (2) years prior to Richard Sparacia's deposition.

Therefore it is Plaintiff's contention that Defendant had more than enough time to examine the file and ask Robert Adami and Richard Sparacia about the subsequent water damage issue at their initial depositions, as he did. Plaintiff further alleges that Mr. Magee, counsel for the Defendants, opened up a line of questioning related to the subsequent water damage claim at the initial depositions of both Robert Adami and Richard Sparacia, and did not request further depositions at the close of the prior examinations. Defendants did not request further deposition until the September 24, 2012 compliance conference.

Defendants allege the file pertaining to the subsequent water damage was not complete, as it was agreed to by the parties that Plaintiff would produce the first-party claim file within 45 days at the July 2012 conference. Defendants further allege that Plaintiff agreed to further deposition of Robert Adami and Richard Sparacia in a stipulation signed by the parties during a September 2012 compliance conference. Plaintiff did not comply and again agreed at a November 2012 conference to produce both Robert Adami and Richard Sparacia to be re-deposed in another stipulation signed by a judge.

In looking at the record in its entirety, Plaintiff has not stated a compelling reason for the stipulations to be vacated or modified. Although Robert Adami and Richard Sparacia were both deposed, neither were thoroughly questioned on the subsequent water damage claim. Robert Adami questioning of the water damage claim consist of several lines on five (5) pages of a one hundred twenty (120) page deposition. Richard Sparacia questioning on the subsequent water damage claim consist of several lines on three (3) pages of a fifty eight (58) page deposition. Plaintiff argues Defendants' wish to re-depose plaintiff's witnesses is a tactic to stall the proceedings. This is an unfounded allegation. Plaintiff freely signed the September stipulation agreeing to allow Robert Adami and Richard Sparacia to give further deposition, without

contesting the order, and when Plaintiff failed to comply they agreed again during a November 2012 conference for their witnesses to be re-deposed. Both orders of discovery were freely agreed upon, uncontested by both parties when they were signed, and therefore the Court finds no compelling or valid grounds for either order to be vacated or modified.

Accordingly, Plaintiff's motion to modify or vacate the prior discovery orders dated on September 24, 2012 and November 19, 2012 is **DENIED**. Discovery should continue as scheduled.

June 19, 2013

MAT

**MON. MILTON A. TINGLING
J.S.C.**

FILED

JUL 03 2013

**COUNTY CLERK'S OFFICE
NEW YORK**