

<b>Kaplan v Gioia Props.</b>
2013 NY Slip Op 32206(U)
September 13, 2013
Supreme Court, New York County
Docket Number: 150445/2012
Judge: Louis B. York
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: York  
Justice

PART 2  
150445/12

Kaplan  
- v -  
Gloria Prop.

INDEX NO. 150445/12  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 3  
MOTION CAL. NO. \_\_\_\_\_

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

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

Dated: 9/13/13

Ray  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

Supreme Court of the State of New York  
County of New York  
Part 2

INDEX NO. 150445/2012

\_\_\_\_\_  
LISA KAPLAN and JUSTIN SPATES,

Decision/Order

Plaintiffs,

Present:  
Hon. Louis B. York  
Justice, Supreme Court

– against –

GIOIA PROPERTIES,

Defendant .

\_\_\_\_\_

This motion to strike defendant’s answer is denied for two reasons. One, movant did not comply with the preliminary conference order, which, in three sections, requires the parties to contact the court and schedule a telephone conference if a discovery dispute arises, not to resort directly to motion practice. The Court also notes that plaintiff brought this motion over two months after the problem arose. The Court requires timely applications or a showing of good cause for the delay.

Two, under NYCRR 202.7, an affirmation of good faith must accompany all discovery motions. Moreover, subsection (c) provides that this affirmation must “indicate the time, place and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held.” In the absence of a good faith affirmation, the court must deny the motion. *See Fulton v. Allstate Ins. Co.*, 14 A.D.3d 380, 382, 788 N.Y.S.2d 349, 351 (1<sup>st</sup> Dept. 2005). Denial of the motion is also appropriate where the motion is insufficiently detailed, does not show that the movant tried to

obtain ordered discovery prior to initiating the motion or is otherwise inadequate. *See, e.g., Chervin v. Mercura*, 28 A.D.3d 600, 602, 813 N.Y.S.2d 746, 748 (2<sup>nd</sup> Dept. 2006). Here, a single letter to defendant in March does not constitute a good faith effort to resolve the discovery problems. *See Amherst Synagogue v. Schuele Paint Co., Inc.*, 30 A.D.3d 1055, 1056-57, 816 N.Y.S.2d 782, 783 (4<sup>th</sup> Dept. 2006).

Moreover, it appears that the parties have ignored the July 11, 2013 Note of Issue deadline. The Court schedules the parties for a status conference at 2:00 pm on Wednesday, October 9, 2013 at 71 Thomas St. Room 205, and strongly advises the parties to be ready to file the Note of Issue at that time.

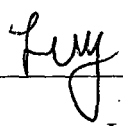
Therefore, it is

ORDERED that the motion is denied; and it is further

ORDERED that the parties shall appear for a status conference at 2:00 pm on Wednesday, October 9, 2013 at 71 Thomas St. Room 205.

ENTER:

Dated: 9/13/13



Louis B. York, J.S.C.

**LOUIS B. YORK  
J.S.C.**