

Juncalito Meat & Produce, Inc. v Genest Props. LLC
2018 NY Slip Op 30585(U)
April 3, 2018
Supreme Court, New York County
Docket Number: 161359/2015
Judge: Robert R. Reed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 43

-----X
JUNCALITO MEAT & PRODUCE, INC.,

Plaintiff,

-against-

Index No. 161359/2015
DECISION/ORDER

GENEST PROPERTIES LLC

Defendant.

-----X
ROBERT R. REED, J.

In this action, a commercial tenant seeks declaratory and injunctive relief to prevent its landlord from terminating its lease, together with claims for money damages. Plaintiff seeks an order, pursuant to CPLR 3124, compelling defendant to provide supplemental responses to its documents demands dated June 16, 2016. Defendant, by way of a cross-motion, seeks an order, pursuant to CPLR 3124, compelling plaintiff to produce alleged construction drawings and government agency approvals, or, in the alternative, an order vacating the Yellowstone Injunction now in place. Plaintiff's motion is denied. Defendant's cross-motion is denied.

FACTUAL ALLEGATIONS

Plaintiff was initially a subtenant of a lease executed by and between defendant, the owner and landlord of the premises located at 2212-2224 Third Avenue, New York, New York, and non-party Associated Food Stores, LLC ("Associated"), which used the premises as a supermarket. On June 4, 2013, the parties and Associated entered into a Lease Modification and Extension Agreement ("Agreement"), that assured the assignment of the lease from Associated

to plaintiff. The Agreement acknowledges that plaintiff has been in occupancy of the premises and has been operator of the supermarket since December 21, 2004. In addition to the assignment, the Agreement extends the term of the lease for an additional 10-year period, from 2023 to 2033, and provides for payment of a security deposit upon assignment.

In its complaint, plaintiff asserts that the assignment occurred on July 23, 2015, and that, by letter, dated September 9, 2015, from defendant to plaintiff, defendant claimed that plaintiff was in default of the lease. According to the complaint, defendant had claimed plaintiff had performed alterations to the premises without defendant's consent. Plaintiff seeks an order, pursuant to CPLR 3124, compelling defendant to provide the following:

- a) all documents demanded in plaintiff's first notice to produce documents, dated June 16, 2016;
- b) an affidavit of diligent inquiry for any documents requested by plaintiff that defendant claims do not exist or are not within its possession, custody, and/or control;
- c) identity of the people and/or entities with possession, custody, and/or control over any responsive documents noticed for production by plaintiff that are not in defendant's possession, custody, and/or control and requiring defendant to provide written authorizations to such persons and/or entities directing the release of such documents to plaintiff inspection and copying.

Defendant, by way of a cross-motion, seeks an order, pursuant to CPLR 3124, compelling plaintiff to produce alleged construction drawings and government agency approvals, or, in the alternative an order vacating the current Yellowstone Injunction.

DISCUSSION

CPLR 3101 (a) provides that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The words "material and necessary" are "liberally interpreted to require disclosure, upon request, of any facts bearing on the controversy which will assist in sharpening the issue for trial" (*Roman Catholic Church of Good Shepherd v*

Tempco Sys., 202 AD2d 257, 258). A disclosure request is “palpably improper” if it is not relevant to the case at issue, is of a confidential and private nature, is overbroad, or is overly burdensome to produce (*Zimmer v Cathedral Sch. of St. Mary & St. Paul*, 204 AD2d 538, 539; *Spancrete Ne., Inc. v Elite Assocs., Inc.*, 148 AD2d 694, 696; *Muller v Sorensen*, 138 AD2d 683, 684). Further, “[w]here discovery demands are overbroad, the appropriate remedy is to vacate the entire demand rather than to prune it” (*Berkowitz v 29 Woodmere Blvd. Owners', Inc.*, 135 AD3d 798, 799 [internal citations omitted]). Notices for discovery and inspection are overly broad where they fail to specify the documents sought with “reasonable particularity” (*see* CPLR 3120 [2]; *Degliuomini v Degliuomini*, 308 AD2d 501; *Finn v Town of Southampton*, 266 AD2d 429; *Fascaldi v Fascaldi*, 209 AD2d 578; *Fallon v CBS Inc.*, 124AD2d 697).

In support of its motion to compel, plaintiff argues that defendant produced answers to plaintiff’s demand for documents that were basically non-responsive. Plaintiff sent defendant 97 document requests. For requests numbers 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 36, 37, 38, 39, 40, 43, 44, 45, 46, 50, 51, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 85, 88, 89, 90, 93, 94, 95, 96, and 97, defendant responded in the following manner:

“Defendant objects to this document demand on the grounds that is overly broad, unduly burdensome, vague, vexatious, harassing, beyond the scope of discovery permitted under, and lacks the specificity required by, the CPLR and is not tailored to lead to the discovery of relevant and/or admissible evidence.”

(Plaintiff’s Affirmation in Support of Plaintiff’s Motion to Compel, Exhibit F).

In opposition to plaintiff's motion, defendant argues that plaintiff's requests are either not relevant to this action or are matters of public record.

The court has reviewed defendant's responses, and, the responses are sufficient. Here, plaintiff's twenty-two-page Request for Documents, which is replete with the terms "any" and "all," is overly broad as drafted and, therefore, palpably improper (*Fallon v CBS Inc.*, 124 AD2d 697). The principle of full disclosure during discovery does not give a party the right to uncontrolled and unfettered disclosure, and it is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery on information bearing on the claims.

Defendant cross-moves to compel plaintiff to produce alleged construction drawings and government agency approvals. In opposition, plaintiff argues that defendant seeks an order to compel plaintiff to make disclosures regarding newly alleged conditions at the premises that were not included in defendant's notice to cure. Plaintiff also argues that the documents were not noticed for disclosure in defendant's first notice for discovery and inspection.

Defendant sent plaintiff 172 discovery and inspection requests. For each request, plaintiff provided a response. Defendant does not identify a specific deficiency in plaintiff's responses. Instead, defendant simply asserts in a conclusory manner that plaintiff failed to produce construction drawings and government agency approvals. Defendant's motion makes no specific reference to the discovery and inspection paragraph that sought the documents in question. The court will not prune defendant's discovery demand. The burden of serving a proper discovery demand rests with counsel, and it is not for the courts to correct a palpably bad one (*see Bell v Cobble Hill Health Center, Inc.*, 22 AD 3d 620). The court has considered defendant's remaining

contentions and finds them to be without merit.

CONCLUSION AND ORDER

Therefore, in accordance with the foregoing, it is hereby:

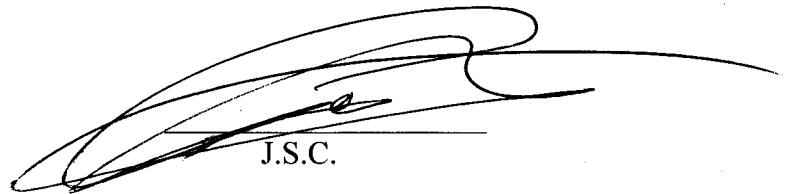
ORDERED that plaintiff's motion to compel defendant to provide supplemental responses to its documents demand is denied; and it is further

ORDERED that defendant's cross-motion to compel plaintiff to produce alleged construction drawings and government agency approvals is denied; and it is further

ORDERED that the parties appear for a status conference in Part 43, Room 581, at 111 Centre Street, New York, NY 10013, on June 7, 2018 at 11 a.m.

Dated: April 3, 2018

ENTER:



J.S.C.