

Goldstein v Orensanz Events LLC

2018 NY Slip Op 31199(U)

June 12, 2018

Supreme Court, New York County

Docket Number: 651706/2014

Judge: Robert R. Reed

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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**

LISA GOLDSTEIN

Plaintiff,

-against-

ORENSANZ EVENTS LLC, ANGEL ORENSANZ
FOUNDATION, INC. and ARBOL 172 CORP.

Defendants,

Index No. 651706/2014
DECISION/ ORDER

Motion Seq. 002

ROBERT R. REED, J.:

In this action stemming from a rescheduled wedding, plaintiff Lisa Goldstein (“Goldstein”) moves, pursuant to CPLR 3124, to compel defendants Orensanz Events LLC, Angel Orensanz Foundation, Inc. and Arbol 172 Corp. (“Orensanz”) to comply with outstanding discovery requests plus attorneys’ fees. Orensanz opposes, arguing that the discovery requests are overbroad and improper.

Factual Background and Procedural History

Orensanz owns and operates an event space. As alleged in the complaint, plaintiff was scheduled to be married in April 2014 at the Orensanz event space, but five days before the chosen date the building was issued a full vacate order by the Department of Buildings due to a structural defect in the building. Goldstein was forced to secure an alternate venue for her wedding, and filed this action to recover the full value of her rental payments plus consequential damages equal to the value of costs related to her rescheduled wedding.

This court granted Orensanz’ summary judgment motion dismissing the complaint. Goldstein appealed and the Appellate Division reversed and remanded the action for further discovery. During the pendency of the appeal, Al Orensanz, one of the principals of Orensanz Events, LLC, died. Goldstein did not have an opportunity to depose Al Orensanz before his death. Subsequently, his brother, Angel Orensanz, assumed sole control of the business here in

New York. Plaintiff now moves, pursuant to CPLR 3124, to compel Orensanz to comply with multiple discovery requests and, pursuant to CPLR 3126, for attorneys' fees and other costs.

Defendants oppose.

Discovery

"Trial courts have broad discretion in supervising disclosure and [in] limiting or denying discovery, especially when compliance would be unduly burdensome" (*see Kavanagh v. Ogden Allied Maintenance Corp.*, 92 NY2d 952). Here, Goldstein moves, pursuant to CPLR 3124, to compel (1) a bill of particulars; (2) interrogatories; (3) production of documents and (4) depositions. Orensanz opposes, arguing that CPLR 3130 does not permit all four discovery mechanisms at once in this type of action. Goldstein withdraws the portion of her motion demanding a bill of particulars, however, and argues that CPLR 3130 does not prohibit the use of both depositions and interrogatories in actions rooted in breach of contract.

The prohibition against the use of both depositions and interrogatories applies only to actions to recover damages for personal injury, injury to property or wrongful death, *i.e.*, in cases predicated solely on a cause of action for negligence (*see Buxton v. Ruden*, 12 AD3d 475). An action that is not for "personal injury, injury to property, or wrongful death" does not fall within the limited scope of CPLR 3130(1) (*see id.* at 477). Absent evidence that a party intended to abuse discovery, a court may permit interrogatories and conduct a deposition in the same action, notwithstanding the wording of CPLR 3130(1) (*see Gotlin v. City of New York*, 90 AD3d 605). To the extent that a motion to compel seeks both interrogatories and depositions, a denial, in any event, is within this court's discretion (*see O'Hara v. New York City Transit Authority*, 248 AD2d 138) Here, as this action is rooted in breach of contract, the motion to compel both interrogatories and a deposition is permissible. This court will exercise its discretion in

plaintiff's favor and grant plaintiff's motion to compel both a response to the interrogatories and depositions.

Orensanz's counsel indicates that Angel Orensanz, despite being in Paris at the time of the building incident, is available for a deposition. Accordingly, plaintiff's motion to compel deposition of Angel Orensanz is granted.

Plaintiff also moves to compel discovery of Fire Department of New York (FDNY) records related to the closure of the building at issue. An unopposed subpoena seeking these documents was granted in motion sequence 003. Accordingly, this portion of the motion is denied as moot.

Finally, Goldstein moves, pursuant to CPLR 3126, for attorney's fees and costs associated with making this motion. The imposition of CPLR 3126 sanctions is within the sound discretion of the court (*see Gross v. Edmer Sanitary Supply Co., Inc.*, 201 AD2d 390). The court is not prepared to exercise its discretion in favor of ordering attorney's fees and costs on this motion at this time – the record before the court displaying no clear pattern of discovery abuse by defendants. Accordingly, the portion of the motion seeking attorney's fees and costs in association with making this motion is denied without prejudice.

Accordingly, it is hereby

ORDERED that plaintiff's motion to compel defendants to comply with outstanding discovery is granted in part and denied in part; and it is further

ORDERED that defendants must provide a response to plaintiff's interrogatories within 60 days; and it is further

ORDERED that plaintiff's motion to compel deposition of Angel Orensanz is granted; and it is further

ORDERED that plaintiff's motion to compel defendant to comply with the bill of particulars is denied as moot in light of plaintiff's withdrawal of this request; and it is further

ORDERED that plaintiff's motion to compel defendants to provide all records regarding any FDNY closure of the building is denied as moot, in light of motion sequence number 003; and it is further

ORDERED that plaintiff's request for sanctions and attorney's fees related to the filing of this motion is denied without prejudice.

Dated: June 12, 2018

ENTER:

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J.S.C.