

Reintsema v Johnson
2018 NY Slip Op 33612(U)
October 4, 2018
Supreme Court, Saratoga County
Docket Number: 20162107
Judge: Thomas D. Nolan
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ORIGINAL

STATE OF NEW YORK

SUPREME COURT

COUNTY OF SARATOGA

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SCHOPF LAW, PLLC

LYNN REINTSEMA,

Plaintiff,

DECISION AND ORDER

RJI No. 45-1-2016-1136

Index No. 20162107

-against-

DEBORAH JOHNSON, HARMONY VETERINARY CLINIC,
and DR. STEPHANIE TODD,

Defendants.

**PRESENT: HON. THOMAS D. NOLAN, JR.
Supreme Court Justice**

**APPEARANCES: SCHOPF LAW, PLLC
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Attorneys for Defendant Deborah Johnson
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**CORRIGAN, MCCOY & BUSH, PLLC
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Harmony Veterinary Clinic and Dr. Stephanie Todd
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SARATOGA COUNTY
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FILED

In 2010, plaintiff and defendant Deborah Johnson started, without benefit of a written agreement, what plaintiff alleges was to be a commercial dog breeding enterprise but what defendant Johnson contends was to be a co-ownership arrangement. Plaintiff and defendant Johnson acquired three purebred dogs of the Vizla breed - males named "Szivi" and "Tryker" and a female named "Tokaj". Defendant Johnson, a veterinarian technician employed at

defendant Harmony Veterinary Clinic, initially kept possession of the three dogs and continued her possession until “Tryker” and “Tokaj” were transferred to plaintiff after this action was commenced.

At this juncture, it is unclear how this commercial enterprise or co-ownership arrangement operated between 2010 and 2015 except that the dogs participated in numerous “show” competitions. According to plaintiff’s complaint, in July 2015, defendant Johnson “ousted” her from the enterprise and thereafter exercised exclusive control of the “business”, and barred plaintiff, under threat of arrest for trespass, from her property where the three dogs were then housed.

In her complaint filed in August 2016, plaintiff seeks to dissolve the partnership, to compel an accounting from defendant Johnson, and seeks damages on allegations of Johnson’s breach of fiduciary duty. Plaintiff alleges that defendant Johnson harvested and preserved the semen of the two males for future breeding. Shortly after commencement, the court granted, inter alia, a preliminary injunction barring defendant Johnson from euthanizing Szivi, transferring or selling any of the three dogs, and directing that all of the semen of Szivi and Tryker be preserved and retained at the Harmony Veterinary Clinic.

Since commencement, the plaintiff has changed counsel; five court conferences have been held and five scheduling orders issued. The action has progressed slowly. Depositions have not yet been held because the parties have not completed paper discovery and have been unable to agree to proceed with depositions or even schedule deposition dates according to plaintiff.

Now pending is a motion by plaintiff to preclude defendant Johnson from offering at trial

testimony or other proof on matters which should have been disclosed in her response to plaintiff's demand for a bill of particulars and or, alternatively, to compel defendant Johnson to comply with plaintiff's demand for bill of particulars and other discovery demands and, in particular, to produce her income tax returns for the years 2014, 2015, and 2016.

After the motion was made, defendant Johnson provided a verified bill of particulars in which she answered certain demands and objected to others. In opposition to the motion, defendant submits her attorney's affidavit which did not address the long delay in complying with the defendant's bill of particulars demand but which objects to the production of income tax returns.

In reply, plaintiff's counsel details the defendant's lack of compliance with her demand, points out the defendant's non-responsiveness to paragraphs 6-14 of the demand for bill of particulars, and her refusal to provide income tax returns.

Defendant's attorney subsequently submitted a "supplemental" attorney's affidavit in which he avers that an initial bill of particulars had been served by his office in October 2017, but he concedes that he is unable to verify that it was ever received by the plaintiff's attorneys¹ and further contends that the recently served bill of particulars is responsive to the plaintiff's demands and adequately outlines the substance of the defendant's affirmative defenses and counterclaims. Counsel further urges that since no business transactions, either breeding or semen sales involving the dogs, ever took place, defendant's personal tax returns are not relevant. Counsel further explains that he is a sole practitioner, and any delay in scheduling depositions on defendant's part was not intentional or designed to hinder the advancement of the action.

¹A copy of that bill of particulars is not included in the motion papers.

Plaintiff's counsel, by letter, objects to the court's consideration of defendant's counsel's "supplemental" affidavit as an improper surreply while arguing that defendant's delays and unresponsiveness relating to discovery have prejudiced his client and increased her litigation expenses.

As a starting point and considering the nature of this discovery related dispute, and based on the court's prior involvement leading to five scheduling orders, the court considers, over plaintiff's objection, the defendant's "supplemental" affidavit and also considers plaintiff's letter in reply.

Next, although the court recognizes acrimonious feelings exist between plaintiff and defendant Johnson, the legal issues raised are not complex; and once discovery has been concluded, the action ought to be ready for trial. Having said that, the court is, of course, vested with broad, discretionary power to control and supervise discovery and when necessary, to determine whether the discovery requested seeks information material and necessary to the issues - legal and factual in the case - and to resolve any disputes in a fair and efficient manner.

Palmatier v Mr. Heater Corp., 156 AD3d 1167 (3rd Dept 2017). Open and full disclosure is favored, yet restrictions can be imposed when appropriate. Herbenson v Carrols Corp., 101 AD3d 1220 (3rd Dept 2012); Geffner v Mercy Med. Center, 83 AD3d 998 (2nd Dept 2011). In regard to bills of particulars, their primary purpose is to "amplify the pleadings, limit the proof and prevent surprise at trial". Neissel v Rensselaer Polytechnic Institute, 30 AD3d 881 (3rd Dept 2006). And, the scope of discovery of personal financial records and specifically income tax returns, is narrow, and such records to be disclosed, must be found indispensable to a party's claim and unavailable from other sources. DivComInc. v Tousignant, 116 AD3d 1118 (3rd Dept

2013). Courts do not allow an adversary to “freely roam” through an opponent’s financial records, JFK Family Ltd. Partnership v Millbrae Natural Gas Dev. Fund 2005, L.P., 132 AD3d 731, 734 (2nd Dept 2015), except in certain limited circumstances for example when income diversion is alleged and again the relevant information is not available from any other source. Levine v City Med. Assoc., P.C., 108 AD3d 746 (2nd Dept 2013); Kay v Kay, 223 AD2d 684 (2nd Dept 1996).

In this case, defendant contends that no income was ever generated by either breeding the dogs or from the sale of their semen during the years she had exclusive possession of the three dogs. Plaintiff contends otherwise and wants access to defendant’s income tax returns to verify whether or not any such income was produced. Here, the court is unable to determine on this record whether the defendant’s income tax returns should be delivered to plaintiff. Defendant Johnson is hereby ordered to produce to the court within twenty (20) days hereof her complete Federal income tax returns for the years 2014, 2015 and 2016 for in camera review. The court will then be in a position to decide whether the returns or any part thereof are relevant and should be made available to plaintiff. The court reserves decision on this aspect of defendant’s motion.

Next, defendant’s bill of particulars dated July 18, 2018 does not answer demands “6”, “7”, “8”, “9”, “10”, “12”, and the second “13” of plaintiff’s demand for a bill of particulars dated March 14, 2017. Plaintiff’s motion is granted to the extent that defendant Johnson shall answer the above demands in a supplemental or amended bill of particulars within twenty (20) days of service of a copy of this decision with notice of entry on her attorney or her counterclaims shall be stricken.

Further and on the court’s own motion, the parties are ordered to complete depositions no

later than December 8, 2018. If the parties are unable to agree on a date or date(s), the depositions shall be held on December 3, 2018 and continue on consecutive days thereafter until completed.

This constitutes the decision and order of the court. The original decision and order is returned to counsel for plaintiff. All original motion papers are delivered to the Supreme Court Clerk/County Clerk for filing. Counsel for plaintiff is not relieved from the applicable provisions of CPLR 2220 relating to filing, entry, and notice of entry of the decision and order.

So Ordered.

DATED: October 4, 2018
Saratoga Springs, New York

ENTERED
Craig A. Hayner
Craig A. Hayner
Saratoga County Clerk

Thomas D. Nolan

HON. THOMAS D. NOLAN
Supreme Court Justice

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ENTERED