

TJ Global Mgt., LLC v KT Med. Mgt., Inc.

2022 NY Slip Op 33139(U)

September 16, 2022

Supreme Court, Kings County

Docket Number: Index No. 503035/2016

Judge: Lawrence Knipel

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At an IAS Term, Part Comm 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of September, 2022.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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TJ GLOBAL MANAGEMENT, LLC,

Index No. 503035/2016

Plaintiff,

(Mot. Seq. 6)

- against -

KT MEDICAL MANAGEMENT, INC., DR. JOSEPH PUMA, SORIN MEDICAL, P.C., SALVATORE PUMA and TERRI PUMA,

Defendants.

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KT MEDICAL MANAGEMENT, INC., JOSEPH PUMA and SORIN MEDICAL, P.C.,

First Third-Party Plaintiffs,

- against -

VLADIMIR GRESSEL and KARINA TILIS,

First Third-Party Defendants.

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SALVATORE PUMA AND TERRI PUMA,

Second Third-Party Plaintiffs,

- against -

VLADIMIR GRESSEL and KARINA TILIS,

Second Third-Party Defendants.

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<u>The following e-filed papers read herein:</u>	<u>NYSCEF Doc Nos.</u>
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) _____	<u>173-208, 209</u>
Opposing Affidavits (Affirmations) _____	<u>211-213, 215</u>
Reply Affidavits (Affirmations) _____	<u>217</u>

Upon the foregoing papers, defendants/third-party plaintiffs KT Medical Management, Inc. (KT Medical), Joseph Puma (Puma), Sorin Medical, P.C. (Sorin), Salvatore Puma (Salvatore) and Terri Puma (Terri) (collectively Movants) move (in motion sequence [mot. seq.] six) for an order:

“(i) granting an Order of Preclusion, precluding the plaintiff, and first and second third-party defendants, from offering testimony, affidavits, or evidence, at a trial, hearing, in the above-entitled action that which Movants’ demanded in their previously filed (a) Demand for Bill of Particulars, directed at Plaintiff’s allegations in the Second Amended Complaint and its reply to counterclaim; (b) Demand for Bill of Particulars, directed at third-party defendants affirmative defenses contained in its answer to second third-party complaint, or in the alternative, (c) directing Plaintiff and Third-Party Defendants to respond to Movants’ Demand for Discovery & Inspection; (d) directing Plaintiff and Third-Party Defendants to appear for Third-Party Plaintiff’s examination before trial and for such other and further relief as to this Court seems just and proper.”

Background and Procedural History

Plaintiff TJ Global Management, LLC (TJ Global) brings this action for rental arrears allegedly due under a lease agreement for two medical condominium units that it owns located at 8686 Bay Parkway in Brooklyn. The nature of the proceeding and parties’ allegations are detailed in the court’s decision and order dated June 29, 2020 (*see* NYSCEF

Doc. No. 143), familiarity with which is assumed.

In its June 29, 2020 order, the court granted TJ Global's motion (mot. seq. five) for leave to file and serve a second amended complaint. On December 4, 2020, KT Medical, Puma, Sorin, Salvatore and Terri filed a second verified answer with counterclaims. On December 23, 2020, TJ Global filed a reply to counterclaims. On January 19, 2021, Salvatore and Terri filed a second third-party summons and verified complaint. On February 19, 2021, second third-party defendants Vladimir Gressel and Karina Tilis filed an answer to the second third-party complaint.

Meanwhile, prior to filing the second amendment complaint, the parties had engaged in certain discovery, including depositions of parties and non-parties in both this case and a related case pending in this court, *Puma v Gressel, et al.*, Index No. 503789/16. On March 10, 2021, Salvatore and Terri filed and served a Second Third-Party Plaintiffs' Demand for a Bill of Particulars directed at Gressel and Tilis (*see* NYSCEF Doc. No. 164). On March 15, 2021, Salvatore and Terri noticed the depositions of TJ Global, Gressel and Tilis (*see* NYSCEF Doc. No. 165). On April 15, 2021, KT Medical, Puma, Sorin, Salvatore and Terri filed and served a Demand for a Verified Bill of Particulars Directed at Plaintiff's Second Amended Verified Complaint and Reply to Counterclaims (*see* NYSCEF Doc. No. 166). On April 22, 2021, KT Medical, Puma, Sorin, Salvatore and Terri filed and served Defendants' Combined Demands, including Demand for Discovery and Inspection and Additional Materials (*see* NYSCEF Doc. No. 167). On January 19, 2022, Gressel and Tilis filed and served a Bill of Particulars in response to Salvatore and Terri's Demand for a Bill

of Particulars (*see* NYSCEF Doc. No. 171).

The court also previously issued several discovery orders. Most recently, on October 4, 2019, the court issued a compliance conference order directing depositions and the filing of a note of issue by January 15, 2020. On January 8, 2020, the court issued an order extending the note of issue date to May 8, 2020 and adjourning the compliance conference to May 6, 2020. Thereafter, the compliance conference was adjourned due to the parties' inability to work out a discovery order.

Parties' Contentions

In support of their motion to preclude and/or compel, Movants' counsel directs the bulk of his affirmation to discussing the procedural history of the action and to summarizing the facts that Movants allege have been adduced in discovery. Of relevance to the instant discovery motion, Movants' counsel contends that the January 19, 2022 Bill of Particulars filed by Gressel and Tilis was unresponsive to their demand and "particularized nothing."

In the supporting memorandum of law, Movants' counsel argues that Movants are entitled, pursuant to CPLR 3101, to responses to their Bill of Particulars and discovery demands, which concern new allegations in the Second Amended Complaint, including fraud and conspiracy claims made against them. Movants further contend that TJ Global, Gressel and Tilis did not, at any time, move for a protective order with respect to the sought discovery. As a result, Movants contend that the pleadings of TJ Global and Gressel and Tilis should be stricken, pursuant to CPLR 3126, for failure to respond to discovery.

In opposition, TJ Global, Gressel and Tilis contend that there has not been any preliminary conference in the Second Third-Party action, and no discovery schedule has been set. They also contend that the demands which are sought to be compelled are unreasonable, unduly burdensome, and that Movants attempt to relitigate the prior six years as a “do-over.” Nonetheless, TJ Global, Gressel and Tilis state that they consent to the instant motion being treated as a motion for a preliminary conference as to the Second Amended Complaint and Third-Party actions.

Discussion

Movants’ motion to preclude and/or compel is granted only to the following extent:

- (1) To the extent that the documents sought therein have not previously been provided, TJ Global shall respond to Movants’ Combined Demands, including Demand for Discovery and Inspection and Additional Materials, filed on April 22, 2021, *on or before November 11, 2022*;
- (2) TJ Global shall respond to Movants’ Demand for a Verified Bill of Particulars Directed at Plaintiff’s Second Amended Verified Complaint and Reply to Counterclaims, filed on April 15, 2021, *on or before November 11, 2022*;
- (3) Gressel and Tilis have filed and served a Bill of Particulars in response to Salvatore and Terri’s Demand for a Bill of Particulars (*see* NYSCEF Doc. No. 171), and, as a result, that branch of Movants’ motion to preclude and/or compel based on the failure to provide a Bill of Particulars is denied as moot;
- (4) Gressel and Tilis shall appear for EBTs *on or before January 13, 2023*. As

Gressel and Tilis were previously deposed in this action on July 21, 2017 and July 27, 2017, these additional depositions shall be limited to new matters only relating to allegations in the Second Amended Complaint, and the first and second Third-Party Complaints or responsive pleadings, as such items were not in existence at the time of the earlier depositions;

- (5) All other party depositions, *as to new matters only*, shall be completed *on or before February 3, 2023*. EBTs shall be conducted either in person, pursuant to current guidelines, or virtually via remote videoconferencing; and
- (6) The note of issue date is extended. TJ Global is to file a note of issue *on or before October 27, 2023*.

Failure to comply with this order will result in the non-complying party being precluded from offering evidence, testifying at trial, or submitting an affidavit in response to any dispositive motion, upon further motion for same, pursuant to CPLR 3126 (2).

Any relief not expressly granted herein, has been considered, and is denied.

This constitutes the decision and order of the court.

E N T E R

J. S. C.

HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE