

Hartman v Snellen

2014 NY Slip Op 34074(U)

September 12, 2014

Supreme Court, New York County

Docket Number: Index No. 653869/2013

Judge: Eileen Bransten

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**SUPREME COURT OF THE STATE OF NEW YORK -
NEW YORK COUNTY**

PRESENT: EILEEN BRANSTENPART 3Justice

HARTMAN, DAVID E.

INDEX NO. 653869/2013MOTION DATE 8/14/2014

- v -

SNELLEN, ERIC

MOTION SEQ. NO. 003

The following papers, numbered 1 to	<u>2</u>	, were read on this motion to/for	<u>stay discovery</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits		No(s)	<u>1</u>
Answering Affidavits - Exhibits		No(s)	<u>2</u>
Replying Affidavits		No(s)	<u>3</u>
Cross Motion			<u>No</u>

Upon the foregoing papers, it is ordered that this motion is

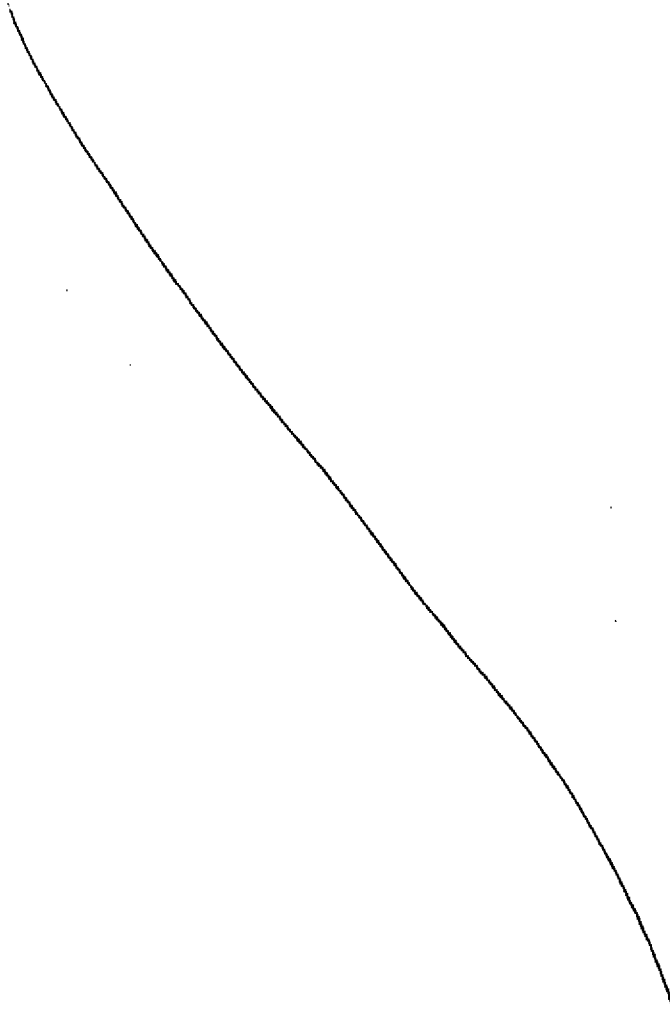
Defendant Lindblad Exposition, Inc.'s ("LEX") motion for a stay of discovery pending resolution of its motion to dismiss is denied.

LEX seeks a stay pursuant to CPLR § 3214(b) and Commercial Division Rule 11(d). Although CPLR § 3214(b) imposes an automatic stay of disclosure upon the making of certain dispositive motions, this presumptive stay has been eliminated in the Commercial Division. See Rules of the Commercial Division of the Supreme Court, § 202.70, Rule 11(d). Rule 11(d) of the Commercial Division Rules provide that "[t]he Court will determine, upon application of counsel, whether discovery will be stayed, pursuant to CPLR 3212(b), pending the determination of any dispositive motion."

The arguments offered by LEX fall far short of justifying the imposition of a stay. In short, LEX contends that a stay of discovery is warranted, since it feels that it has presented strong arguments in favor of dismissal. Such an argument is likely true of defendants in each and every case filed in the Commercial Division. Indeed, defendants filing motions to dismiss presumably deem them meritorious. Thus, if the filing of a motion to dismiss were sufficient to impose a stay, there would be no Rule 11(d). Instead, stays of discovery would be imposed automatically in the Commercial Division upon the filing of CPLR 3211 motion pursuant to CPLR § 3214(b). Of course, that is not the case.

LEX also argues that a stay of discovery should be imposed since Plaintiffs' document requests are allegedly overbroad. If that remains LEX's position, LEX should meet and confer with Plaintiffs regarding the requests. After review of the papers and arguments in this matter, the Court concludes that a stay on this basis alone is not warranted.

Accordingly, LEX's motion is denied.



DATED: 9/17/2014


EILEEN BRANSTEN, J.S.C.

- 1. CHECK ONE : CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE : MOTION IS : GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE : SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE