

AEN Hospitality Group LLC v Balcacer

2024 NY Slip Op 34359(U)

December 12, 2024

Supreme Court, New York County

Docket Number: Index No. 150396/2023

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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AEN HOSPITALITY GROUP LLC,
Plaintiff,

- v -

CHRISTOPHER BALCACER, ABC CORP.,
Defendant.

INDEX NO. 150396/2023
MOTION DATE 09/26/2024
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59 were read on this motion to/for ORDER OF PROTECTION and cross-motion

Upon the foregoing documents, this motion and cross-motion are decided as follows.

Defendant pro se moves for a protective order limiting plaintiff's discovery demands "to those documents and information directly relevant to the case where I am the defendant (Index No. 150396/2023)", to "[p]revent the plaintiff from prematurely seeking discovery for the second case (Index No. 155032/2023), where I am the plaintiff, as discovery has not yet been ordered by the court" and to "[p]rotect against discovery demands that are overly broad, irrelevant, or intended to cause undue burden or harassment." Defendant further seeks an order directing plaintiff to clarify their unspecified discovery requests.... as well as awarding defendant costs and fees for making this motion.

Plaintiff cross-moves (i) pursuant to CPLR §3126, striking the answer of defendant Christopher Balcacer for his blatant and continuing failure to comply with his discovery obligations or (ii) pursuant to CPLR §3216, precluding Mr. Balcacer from offering any evidence at trial, (c)

awarding costs and sanctions in favor of Plaintiff and against Mr. Balcacer based on his frivolous behavior as defined by 22 N.Y.C.R.R. §130-1.1, and (d) awarding Plaintiff such other and further relief as this Honorable Court deems just and proper.

After oral argument, the motion and cross-motion are decided as follows. Although defendant is self-represented, he still must comply with all the obligations that apply to any party in a civil litigation matter, including basic discovery obligations. Pursuant to CPLR Article 31, which is guided by the strong policy of this State favoring disclosure, provides that “[t]here shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action” (CPLR 3101[a]). 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 issues for trial” (*Roman Catholic Church of the Good Shepherd v. Tempco Systems*, 202 AD2d 257 [1st Dept 1994] citing *Allen v. Crowell–Collier Pub. Co.*, 21 NY2d 403 [1968] [internal quotations omitted]). The party opposing a discovery demand bears the burden of showing that the disclosure sought is improper. (*Id.*) Further, the fact that a litigant is self-represented does not deprive their adversary of the right to obtain pretrial disclosure (*see i.e. Abrams v. Renaissance Equity Holdings, LLC*, 43 Misc3d 57 [NY Sup, App Term 2014]).

To the extent that Mr. Bacacer seeks to preemptively limit discovery demands that have not yet been served, such arguments are not ripe. The remaining arguments raised by Mr. Balcacer are equally unavailing, as he has either not demonstrated that the information sought by plaintiff is improper or not material and necessary to plaintiff’s claims in this action. The court has reviewed the outstanding demand at issue and finds that plaintiff is properly seeking material and relevant

information pertinent to its claims and defendants' defenses in this action. However, at the conference with the court on December 3, 2024, plaintiff has agreed to withdraw portions of its discovery demand dated June 24, 2024, to wit number 9, 11, 12, 13 and 22.

Although plaintiff is self-represented, this action is at a nascent stage in terms of discovery. The protracted nature at which this case has proceeding, with paper discovery remaining outstanding after nearly two years of conferences and motion practices cannot be countenanced.

A response to plaintiff's demands served June 24, 2024 remains outstanding despite multiple good faith efforts to resolve this dispute. As a sanction for not complying with his discovery obligations, the court may strike Mr. Balcacer's answer. "Striking a defendant's answer is a drastic remedy which is inappropriate absent a clear showing that failure to comply with discovery demands was willful and contumacious" (*Argo v. Queens Surface Corp.*, 58 AD3d 656 [2d Dept 2009]). On this record, the court will grant defendant **ONE FINAL OPPORTUNITY** to provide a response to plaintiff's demands served June 24, 2024. The court will give plaintiff until January 17, 2025 to provide a full response to said demand. In the event that Mr. Balcacer fails to respond to said demand, plaintiff may settle an order on notice striking Mr. Balcacer's answer upon an affirmation attesting to Mr. Balcacer's noncompliance with this order.

The balance of the cross-motion is also denied. Although this litigation has not proceeded swiftly, and plaintiff is owed responses to the demands it served upon Mr. Balcacer, given Mr. Balcacer's status as a self-represented litigant and upon review of the papers submitted, the court


cannot say that Mr. Balcacer has engaged in frivolous conduct within the meaning of the court rules at this juncture.

Conclusion

Accordingly, it is hereby **ORDERED** that defendant’s motion is denied and plaintiff’s cross-motion is granted only to the extent that the court will grant defendant **ONE FINAL OPPORTUNITY** to provide a response to plaintiff’s demands served June 24, 2024. The court will give plaintiff until January 17, 2025 to provide a full response to said demand. In the event that Mr. Balcacer fails to respond to said demand, plaintiff may settle an order on notice striking Mr. Balcacer’s answer upon an affirmation attesting to Mr. Balcacer’s noncompliance with this order; and it is further

ORDERED that the parties are directed to appear for status conference on February 4, 2025 at 11:30am via Microsoft Teams.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.



 LYNN R. KOTLER, J.S.C.

12/12/2024

 DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER
 APPLICATION: SETTLE ORDER SUBMIT ORDER
 CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE