

Minkin v Board of Directors of the Cortlandt Ridge Homeowners Assoc., Inc.

2012 NY Slip Op 33927(U)

November 26, 2012

Supreme Court, Westchester County

Docket Number: 3235/11

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

FILED
AND
ENTERED
ON 11-28 2012
WESTCHESTER
COUNTY CLERK

-----X
GREGG MINKIN and CONNIE MINKIN,

Plaintiffs,

-against-

BOARD OF DIRECTORS OF THE CORTLANDT
RIDGE HOMEOWNERS ASSOCIATION, INC., and
McGRATH MANAGEMENT SERVICES, INC.,

Defendants.

-----X
LEFKOWITZ, J.

DECISION & ORDER

Index No. 3235/11
Motion Date: 11/26/12

Seq. No. 2, 3

FILED
NOV 28 2012
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The following papers numbered 1 to 58 were read on this motion by plaintiffs for an order compelling defendants to provide responses to plaintiffs' first notice for discovery and inspection demands 7, 8, 20, 34, 37, 38, 39, responses to plaintiffs' first set of interrogatories 5(e), verifications to defendants' first and second interrogatory responses, emails and email attachments that were identified in documents produced by defendants. Defendants move for a protective order vacating plaintiffs' third set of interrogatories and fourth notice for discovery and inspection.¹

Order to Show Cause - Good Faith Affidavit - Affirmation in Support	
- Exhibits	1-23
Affirmation in Opposition	24
Order to Show Cause - Affirmation of Dean Jarmel - Exhibits	25-50
Plaintiffs' Opposition to Motion for a Protective Order - Exhibits	51-58

Upon the foregoing papers, these motions are determined as follows:

Plaintiffs, single-family homeowners in the Cortlandt Ridge community in Cortlandt Manor, allege that beginning in 2007 the Board began to act outside the scope of its authority by entering into unauthorized contracts with landscapers to perform landscaping and snow removal services on plaintiffs' private property. It is alleged the Board misrepresented to plaintiffs that it is authorized to compel single-family homeowners to use defendants' landscaper. Plaintiffs allege one or more of the landscapers hired by the Board is affiliated with McGrath Management Services, the managing agent for the Homeowners' Association. It is alleged that following the

¹ The Court waived the appearance of defense counsel on the motions and no oral argument was heard on November 26, 2012.

2008 annual meeting, defendants engaged in a pattern of harassment and retaliation against plaintiffs for objecting to defendants' actions and to compel plaintiffs to agree to use defendants' landscaper. Plaintiffs assert causes of action for fraud, breach of fiduciary duty, and negligence.

CPLR 3101(a) requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." The phrase "material and necessary" is "to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason" (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, "a party does not have the right to uncontrolled and unfettered disclosure" (*Merkos L'Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept, 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). "It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Pursuant to CPLR 3103[a], "[t]he court may at any time on its own initiative, or on motion of any party... make a protective order denying, limiting, conditioning or regulating the use of any disclosure device to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any person or the courts."

Plaintiffs argue defendants rejected plaintiffs' request for approval of an exterior modification. The Board allegedly approved plaintiffs' request to plant trees on their property, then fined plaintiffs \$100 per week for purported rule violations after the work was completed. The total amount of fines assessed against the plaintiffs was \$38,639. Plaintiffs served a first notice for discovery and inspection and first set of interrogatories dated May 20, 2011 (Exhibits E, F). Plaintiffs seek all documents related to requests for approval of exterior modifications submitted to the Board by any homeowner in Cortlandt Ridge, all documents related to fines levied by the Board against any homeowner in Cortlandt Ridge, and all documents related to requests for approval of exterior modifications received by the homeowners association (Exhibit E, first notice for discovery and inspection, demands 7, 8, 34). Plaintiffs argue such documents are relevant to demonstrate the Board is retaliating against them and treating them differently than other homeowners by denying plaintiffs' request for approval of exterior modifications and imposing excessive fines. The demands at issue are overbroad, are not limited in time, and are of questionable relevance.

Plaintiffs seek documents relating to McGrath's involvement in the bid process for selecting landscapers, and defendants' disclosure to homeowners of McGrath's relationship to the landscapers hired by the Board (Exhibit E, first notice for discovery and inspection, 37, 38, 39). Defendants argue plaintiffs did not object to defendants' responses to these demands in the September 15, 2011 deficiency letter. Defendants argue directing further disclosure at this point would require a new document review and impose an unreasonable expense on the defendants. Defendants are directed to provide responses to these demands, as they are relevant to the allegations in this matter. Insofar as plaintiffs seek disclosure of documents relating to payments

received by the McGrath affiliates owners and officers, including McGrath's President, for landscaping and snow removal services, this request is denied. Plaintiffs fail to point to a written discovery demand for such documents and the demand is overbroad.

Plaintiffs also seek disclosure of the work the landscapers performed on board members' private property (Exhibit F, plaintiffs' first set of interrogatories, 5(e)). Defendants argue an adequate response was provided (Plaintiffs' Exhibit K). The Court finds interrogatory 5(e) seeks information that is overbroad and not relevant. Plaintiffs argue defendants' responses to plaintiffs' first and second set of interrogatories are not verified. Defendants agree to provide verifications to the interrogatory responses. Defendants shall serve amended responses to plaintiffs' first and second set of interrogatories verified by an officer, director, member, agent or employee having the information (CPLR 3133(b)).

Plaintiffs argue emails bates stamped 00239 and 00247 refer to attachments and the attachments should be produced (Plaintiffs' Exhibit S). Defendants are directed to disclose the attachment referenced in the October 15, 2007 email from Michele McGovern (Plaintiffs' Exhibit S, p. 2). Bates stamped page 00239 references an attached pdf file of a summons and complaint filed with the courts in a foreclosure proceeding "for 9 Sassinoro." Plaintiffs fails to demonstrate that this attachment is relevant to the claims in this matter. Plaintiffs contend that emails bates stamped 00266 and 00293 are incomplete email strings and the entire emails should be produced (Plaintiffs' Exhibit T). Contrary to defendants position, it appears additional emails should have been disclosed with the string of emails on bates stamped pages 00266 and 00293. Defendants are directed to produce the entire string of emails on these pages.

Defendants move for a protective order vacating plaintiffs' third set of interrogatories and fourth notice for discovery and inspection (Defendants' Exhibits V, W). Defendants argue the discovery demands at issue seek documents and information that are of no relevance to plaintiffs' claims. Plaintiffs argue the demands at issue are relevant because they relate directly to the steps defendants took to determine whether the Board is authorized to compel homeowners to use landscapers hired by the Board. Plaintiffs seek further discovery related to two Board members who had landscaping work performed on their private property by the same landscapers..

Defendants are directed to provide responses to interrogatories 1, 2, 3(a)-(d), 4, 5, and 6. Defendants are directed to provide responses to plaintiffs' fourth notice for discovery and inspection demands 1, 2, 3, and 9. Plaintiffs fail to demonstrate interrogatories 3(e), 7, and 8 and discovery demands 4, 5, 6, 7, and 8 are relevant to the allegations in this matter.

In view of the foregoing, it is

ORDERED that plaintiffs' motion is granted to the extent that defendants are directed to provide on or before December 10, 2012 responses to plaintiffs' first notice for discovery and inspection demands 37, 38, and 39; and it is further

ORDERED that defendants shall serve on or before December 10, 2012 amended

responses to plaintiffs' first and second set of interrogatories verified by an officer, director, member, agent or employee having the information; and it is further

ORDERED that defendants are directed to provide on or before December 10, 2012 the attachment referenced in the October 15, 2007 email from Michele McGovern and the entire string of emails on bates stamped pages 00266 and 00293; and it is further

ORDERED that defendants motion for a protective order vacating plaintiffs' third set of interrogatories and fourth notice for discovery is granted to the extent that interrogatories 3(e), 7, and 8 and discovery demands 4, 5, 6, 7, and 8 are vacated; and it is further

ORDERED that defendants are directed to provide on or before December 10, 2012 responses to plaintiffs' third set of interrogatories as to interrogatories 1, 2, 3(a)-(d), 4, 5, and 6 and responses to plaintiffs' fourth notice for discovery and inspection demands 1, 2, 3, and 9; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on December 20, 2012 at 9:30 a.m.; and it is further

ORDERED that plaintiffs shall serve a copy of the order with notice of entry within ten (10) days of entry.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York
November 26, 2012


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