

Commonwealth of Massachusetts

Barnstable, ss

Superior Court No.
2011-690

Susan Sheehan,
Plaintiff

vs.

Balanced Health and Fitness, Inc. et al.,
Defendants

Memorandum and Order

Introduction

The matter comes before the Court on the plaintiff, Susan Sheehan's, Motion to Compel Production of Documents. Specifically, the plaintiff moves the court to order the defendants, Clive B. Gummow and Diane D. Gummow, to produce all documents requested in Request Nos. 37, 38, 39, 40, 41 and 42 of Plaintiff's Fourth Request for Production of Documents.

Background

This is a personal injury action in which the plaintiff claims that she was seriously injured while on the property owned by the defendants, Clive B. Gummow and Diane D. Gummow, which they rented to the co-defendant, Balanced Health and Fitness, Inc. (Balanced Health). Plaintiff alleges that an unreasonably dangerous condition of the stairway caused her to fall and sustain severe injuries.

The Gummows own a multi-unit, multi-story strip mall located at 634 N. Falmouth Hwy., North Falmouth, Massachusetts and at the time of the accident, rented basement space to Balanced Health for use as a health club. The plaintiff is alleged to have fallen on rear entrance stairs to the health club. At the time of the accident, there were approximately 11 tenants of the

mail.

On November 20, 2012, plaintiff served a Fourth Request for Production of Documents upon the defendants. Requests 37, 38, 39, 40, 41 and 42 were objected to by the defendants. For the reasons set forth below the motion is **ALLOWED** in part and **DENIED** in part. The requests and objections are discussed in turn.

Discussion

A. Requests Numbers 37 and 38.

Request Number 37 seeks:

"Copies of any schedules, and attachments and/ or other pages from any Federal Income Tax Returns filed on behalf of the Defendant, Clive B. Gummow, and /or the Defendant, Diane D. Gummow, during the years 2009, 2010, and 2011 reflecting any expenses incurred in connection with "the complex" and/ or in connection with any of the space within the "the complex".

Request Number 38 seeks:

"Copies of any schedules, attachments and/ or other pages from any Federal Income Tax Return filed on behalf of the Defendant, Clive B. Gummow, and /or the Defendant, Diane D. Gummow during the years 2009, 2010, and 2011 reflecting any revenue received as landlord of the "the complex" and/or of any of the space within the "the complex".

To Requests Numbers 37 and 38 the defendants interposed identical objections. The defendants objected as follows:

" Defendant objects to... to the extent it is compound, overbroad in time and subject matter and exceeds the scope of permissible discovery and that it is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to the extent Request 37 seeks tax return information that is confidential and protected by a qualified privilege against discovery .

See *Town Taxi, Inc. v. the Police Commissioners of Boston*, 377 Mass. 576 (1979); A. C. Vaccaro Inc. v. Vaccaro , 80 Mass. App Court 635 (2011); 26 U.S.C. § 6103 (A) and M.G.L. c. 62 § 21. Defendant further objects to Request 37 to the extent it seeks personal identifying information protected by 201 C.M.R. 17.00.

"A taxpayer who is a party to litigation can [only] be compelled to produce federal tax returns upon a showing of substantial need by the party seeking to compel production." Mass. G. Evid. § 519(b)(2) (2011). See *Finance Commn. of Boston v. McGrath*, 343 Mass. 754, 767 (1962) (Federal tax returns are discoverable "if substantial necessity for production of the copies ha[s] been established"). Federal tax returns are conditionally privileged against discovery because, "[u]nless taxpayers are assured that the personal information contained in their tax returns will be kept confidential, they likely will be discouraged from reporting all of their taxable income . . . [and] from using all of the tax-saving measures to which they are lawfully entitled." *Town Taxi Inc. v. Police Commr. of Boston*, 377 Mass. 576, 587 (1979).

The plaintiff has not demonstrated a substantial need for the defendants' federal tax returns. The plaintiff's fall took place upon a stairway in a discrete part of the complex . The revenue and the expenses for the entire complex are not highly material and further there is no showing that this information could not be obtained elsewhere. Accordingly the Motion to Compel is **DENIED** with respect to Requests 37 and 38.

B. Requests 39 and 40.

Request Number 39 seeks:

"Any and all documents, including, but not limited to, billing statements, receipts, and invoices, and/or canceled checks, excluding those specifically prepared in anticipation of the instant litigation or in preparation for trial, reflecting payment of bills in connection with then "the

complex" and/or "the premises" at any time during 2011."

Request Number 40 seeks:

"Any and all documents, including, but not limited to, billing statements, receipts, and invoices, and/or canceled checks, excluding those specifically prepared in anticipation of the instant litigation or in preparation for trial, reflecting payment of bills in connection with then "the complex" and/or "the premises" at any time during 2010."

To Request Numbers 39 and 40, the defendants interposed identical objections. They provided as follows:

"Defendant objects to Request... in that it is compound, overbroad in time and subject matter and not reasonably calculated to leave to the discovery of admissible evidence. Defendant further objects to the extent Request... duplicates, in form and/or in substance request which formed the basis of for production of documents # 1, #2, and/or #3 previously directed by Plaintiff to Defendant, Clive B. Gummow, and/or directed to Defendant, Diane D. Gummow. See also Response 37 and 38."

Here I find that the request is overbroad as it concerns the "complex" but properly focused as it concerns the "premises." Accordingly, the Motion to Compel is **ALLOWED** with respect to "any and all documents, including, but not limited to, billing statements, receipts and invoices, and/or canceled checks, excluding those specifically prepared in anticipation of the instant litigation or in preparation for trial, reflecting payment of bills in connection with "the premises," including the stairway or stairs upon which the plaintiff claims to have fallen, for the years 2010-2011. Otherwise the motion is **DENIED**.

C. Requests Numbers 41 and 42.

Request Number 41 seeks:

"Any and all documents retained to document the amounts reflected in any schedules, attachments and/or other pages from any Federal Income Tax Return produced in response to Request No 37 above."

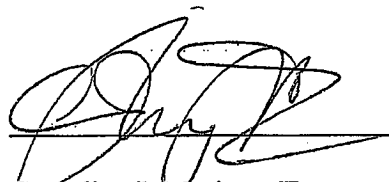
Request Number 42 seeks:

"Any and all documents retained to document the amounts reflected in any schedules, attachments and/or other pages from any Federal Income Tax Return produced in response to Request No. 38 above."

Given the court's ruling with respect to Requests 37 and 38, the Motion to Compel is **DENIED** with respect to Requests 41 and 42.

SO ORDERED.

April 9, 2013



Cornelius J. Moriarty II
Justice of the Superior Court