



in his affirmation in opposition, discovery relating to the prosecution of, and/or defense of, the first and third causes of action for conversion was stayed pursuant to the stipulation, while discovery was to proceed concerning the second and seventh causes of action as well as with respect to defendants' seventh and eighth counterclaims. In addition, subsequent to the service of the subject discovery demands, the issues for discovery were further narrowed by two decisions of the Appellate Division, Second Department, which, among other things, dismissed the seventh cause of action insofar as asserted against defendant David Unterberg and Alayne Real Estate, Inc., and determined certain contentions made by plaintiff concerning the claim asserted against defendant Cheryl Unterberg in the seventh cause of action. The only remaining issues identified by the Appellate Division as to the seventh cause of action are the reasonableness of the terms of the note given to plaintiff by defendant Cheryl Unterberg in payment for the exercise of an option to purchase 24% of Setam Realty Associates, LLC, and whether plaintiff, in any event, accepted the exercise of the option by accepting certain prepayments under the note. (See, Hoffman v Unterberg, 9 AD3d 398 [2004]; Hoffman v Unterberg, 9 AD3d 386 [2004].) As a result, discovery demands previously served by the parties contain items which are no longer relevant. Since the court will not prune the numerous items contained in the demands, both plaintiff's demand dated April 22, 2004 and defendants' fifth request for documents are vacated. In addition, the nonparty subpoenas served by plaintiff upon Harvey Werblowsky, Gary Karch and Adelsberg are quashed. The parties are granted leave to serve further demands and subpoenas properly framed to reflect the effect of both the stipulation and the Appellate Division decisions as provided herein.

To avoid certain disagreements and objections which arose with regard to the prior discovery demands, the parties are advised as follows concerning their responses to the demands. All parties should clearly identify the documents being produced and the item of the demand to which each document corresponds. Discovery demands encompass documents in the possession, custody or control of the party to whom it is directed. (CPLR 3120[1].) In the event a party objects to any disclosure, the party should follow the procedures set forth in CPLR 3122. Furthermore, although the stipulation provides that defendants will have priority in receiving documents, they are not entitled to refuse to respond to a discovery demand served by plaintiff based on their own judgment as to the adequacy of plaintiff's prior response to defendants' demand. Defendants are obligated to seek a protective order (CLR 3103) or comply with the demand. Nor is it appropriate for counsel for defendants to unilaterally advise nonparties not to respond to plaintiff's subpoenas for the production of documents.

Plaintiff and defendants shall serve their amended requests for the production of documents within 10 days of service of a copy of this order with notice of entry. Plaintiff shall serve his response to defendants' request within 30 days of service of a copy of this order with notice of entry. Defendants shall serve their response to plaintiff's demand within 40 days of service of a copy of this order with notice of entry. Subpoenas for nonparty production of documents shall be served no later than 30 days following service of a copy of this order with notice of entry and the time for discovery thereunder shall be no less than 60 days from service of a copy of this order with notice of entry. Depositions of the nonparty witnesses shall be scheduled to be held within 30 days of the completion of the parties' depositions.

All other requests for relief are denied.

Dated: March 2, 2005

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J.S.C.