

CPLR 3122: Failure to Promptly Move for a Protective Order Not Fatal Where Adverse Party Fails to "Designate with Reasonable Particularity"

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CPLR 3122: Failure to promptly move for a protective order not fatal where adverse party fails to "designate with reasonable particularity."

CPLR 3122 provides that a party may, within five days after being served with a notice under CPLR 3120 or 3121, move for a protective order specifying his objections.

In *Hable v. Anderson*,¹⁵⁰ a personal injury action, plaintiff sought discovery and inspection of, *inter alia*, "any and all statements signed by the defendant . . . relating to the accident . . ." and "any inter-departmental and inter-office statements or reports or records . . . made contemporaneously and in the regular course of said defendant's business."¹⁵¹ The court stated that plaintiff's demand was truly a "fishing expedition" since it did not specifically designate any particular document sought to be inspected—disclosure was consequently disallowed. Thus, although failure to move promptly will require the party served to comply with his opponent's requests even though improper, this rule does not apply where, as here, such opponent has failed to designate, with reasonable particularity, the items sought to be inspected.

Although a demand for discovery and inspection is too broad, a party is not thereby barred from ever obtaining the items sought. He must narrow the scope of his demand to remove it from the realm of the vague and unreasonable. This can be accomplished through the use of an EBT as was pointed out by the instant court.

CPLR 3132: Defendant's right to serve interrogatories without leave of court five days after receiving complaint sustained where counterclaim interposed.

CPLR 3132 provides that before interrogatories may be served, leave of court *must* be obtained: (1) by plaintiff if he serves them within twenty days after service of the summons and complaint; and (2) by defendant if he serves them within five days thereafter. "The chief effect of the time sequence . . . is to provide the defendant with a priority in utilizing interrogatories similar to that in CPLR 3106."¹⁵² That is, the defendant is afforded an opportunity to serve interrogatories *without leave of court* before the plaintiff.

In *Rolnick v. Rolnick*,¹⁵³ plaintiff sued her husband for separation, and he interposed two counterclaims. Pursuant to CPLR 3130, he then served interrogatories upon plaintiff more than five

¹⁵⁰ 47 Misc. 2d 318, 262 N.Y.S.2d 555 (Sup. Ct. Monroe County 1965).

¹⁵¹ *Id.* at 320, 262 N.Y.S.2d at 556.

¹⁵² 3 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 3132.01 (1965).

¹⁵³ 46 Misc. 2d 1012, 261 N.Y.S.2d 414 (Sup. Ct. Kings County 1965).