

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART

BRIAN FERRAIOLI,

Plaintiff,

- against -

SLOMIN'S INC.,

Defendant.

Present:
Hon. Anthony W. Paradiso

Index No. 34528/07

**The following papers have been considered by the Court
on this motion:**

	Papers Numbered
Notice of Motion, Affirmation & Exhibits Annexed.....	1
Cross Motion/Opposition.....	2
Reply Affirmation.....	3

The defendant moves pursuant to CPLR 3124 for an order compelling the plaintiff to appear at its office for an examination before trial. The plaintiff opposes the motion and cross-moves, inter alia, for an order pursuant to CPLR 3104 and 3107 directing the parties to appear for depositions at the courthouse.

The action was commenced by the filing of a summons and complaint on September 19, 2007. The defendant submitted its answer on or about October 4, 2007, along with combined discovery demands which included a deposition notice. The plaintiff responded with discovery requests of his own, including a deposition notice dated November 4, 2007. To date, neither party has appeared for deposition despite alleged good faith efforts to resolve the impasse.

Plaintiff's counsel argues that there is a great deal of tension between the parties and that EBTs at the courthouse would expedite the depositions, prevent attorney distractions and facilitate prompt rulings in the event of a dispute. While this may be true, defendant has preserved its right to priority of deposition conferred by CPLR 3106(a) and has designated a proper location for said deposition as limited by CPLR 3110. There has been no motion for a protective order pursuant to CPLR 3103, and at this time there appears to be no grounds for same (*see Donnelly v. Donnelly*, 76 AD2d 879 [2d Dept 1980]). Accordingly, the motion is granted to the extent provided below and the cross motion is denied without prejudice to renew if circumstances warrant.

All parties are directed to appear and submit to oral examination at the office of Kirschenbaum & Kirschenbaum, P.C., 200 Garden City Plaza, Garden City, NY 11530 at 9:30 a.m. on November 10, 2008. Once commenced, the depositions shall not be adjourned for any reason but shall continue without interruption to conclusion. The parties, by written stipulation may alter the date, time or place of deposition, but in no event shall the adjourned date be subsequent to November 20, 2008.

Counsel for the parties are directed to appear before the undersigned in Civil Part 2 at 9:30 a.m. on November 21, 2008 for a status conference.

So Ordered:

A handwritten signature in cursive script, appearing to read "A. Paradiso".

District Court Judge

Dated: October 14, 2008

cc: Law Offices of Lance Grossman
Kirschenbaum & Kirschenbaum. PC