

Board of Mgrs. of 252 Condominium v World-Wide Holdings Corp.

2024 NY Slip Op 31420(U)

April 13, 2024

Supreme Court, New York County

Docket Number: Index No. 652387/2022

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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THE BOARD OF MANAGERS OF 252 CONDOMINIUM,
ON BEHALF OF THE UNIT OWNERS,

Plaintiff,

- v -

WORLD-WIDE HOLDINGS CORP., SNOWFLOW LH 2
LLC, JAMES STANTON, DAVID LOWENFELD, ADAM R.
ROSE, NEAL COHEN, and SNOWFLOW LH LLC,

Defendants.

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SNOWFLOW LH 2 LLC, SNOWFLOW LH LLC

Plaintiffs,

-against-

LEND LEASE (US) CONSTRUCTION LMB INC., SLCE
ARCHITECTS, LLP, SKIDMORE, OWINGS & MERRILL LLP,
DESIMONE CONSULTING ENGINEERS PLLC, WSP USA
BUILDINGS INC. F/K/A WSP FLACK KURTZ, INC.
STRUCTURAL ENGINEERS, and GMS, LLP F/K/A GILSANZ
MURRAY STEFICEK LLP,

Defendants.

-----X

LEND LEASE (US) CONSTRUCTION LMB INC.

Plaintiff,

-against-

ASM MECHANICAL SYSTEMS, BENSON INDUSTRIES, LLC,
EPIC MECHANICAL CONTRACTORS, LLC, FD
SPRINKLERS, INC., ISLAND ACOUSTICS, LLC, JANTILE
INC., L&L PAINTING CO., INC., L.I.F. INDUSTRIES, INC.,
LYNBROOK GLASS & ARCHITECTURAL METALS CORP.,
MARTIN ASSOCIATES, INC., MENT BROS IRON WORKS
CO., INC., NAVILLUS TILE, INC., PARKVIEW PLUMBING
AND HEATING CORP., SJ ELECTRIC, INC., WOLKOW
BRAKER ROOFING CORP., WOODWORKS
CONSTRUCTION COMPANY INC., and JOHN DOES,

Defendants.

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INDEX NO. 652387/2022

MOTION DATE --

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595920/2022

Second Third-Party
Index No. 595359/2024

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 203, 204, 205, 247, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 306

were read on this motion to/for DISCOVERY.

In motion sequence 005, plaintiff The Board of Managers of 252 Condominium (Board) moves pursuant to CPLR 3124: (i) to compel defendant Adam R. Rose to produce documents in response to the Board’s document demands, (ii) to compel nonparty Rose Associates, Inc. (Rose Associates) to produce documents in response to a subpoena, (iii) to the extent Rose claims he is not in possession, custody or control of Rose Associates’ documents, to require each of Rose and Rose Associates to provide a sworn affidavit explaining the basis of such assertion, including as to all ownership or interests Rose has directly or indirectly in Rose Associates, and (iv) to the extent Rose or Rose Associates claim they are not in possession of non-privileged responsive documents, to require each to provide a sworn affidavit explaining the basis of such assertion, including all collection and preservation efforts.¹ (NYSCEF 179, OSC.)

Rose Associates cross-moves by notice of motion (i) for reasonable attorneys’ fees, cost and expenses incurred in complying with the subpoena pursuant to CPLR 3111 and 3122 (d) and Rules of the Commercial Division of the Supreme Court (22 NYCRR 202.70) and (ii) for sanctions against the Board and its counsel pursuant to Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1 for the costs and

¹ Although the board also seeks to require all defendants to substantially complete discovery, the Board’s briefing on the issue of other defendants’ noncompliance is insufficient. (See NYSCEF 180, MOL at 18 [NYSCEF pagination].)

attorneys' fees incurred in opposing this motion. (NYSCEF 249, Notice of Cross-Motion.)

Rose

The Board argues that Rose produced no documents in response to the Board's requests for production² and that he should produce his and Rose Associates' documents. In opposition, Rose submits an affidavit explaining that he "conducted a search of [his] personal files and emails and, to the best of [Rose's] knowledge, [he is] not in possession of any documents related to the 252 Condominium." (NYSCEF 203, Rose aff ¶ 4.) Rose also avers that, since his retirement in 2020, he has "not had access to nor any control over any documents related to the 252 Condominium including but not limited to the Adam@rosenyc.com email account." (*Id.* ¶ 5.)

Based on the affidavit, the court cannot "find that the search had been a thorough one or that it had been conducted in a good faith effort to provide ... necessary records to plaintiff." (*Jackson v New York*, 185 AD2d 768, 770 [1st Dept 1992].) Even though Rose avers that he retired from Rose Associates, he admits to being with Rose Associates from 2007 until 2020 (NYSCEF 203, Rose aff ¶ 1-3), thereby indicating that he may still have responsive documents in his possession, custody or control. Accordingly, Rose shall file an affidavit specifying "where the subject records were likely to be kept, what efforts, if any, were made to preserve them, whether such records were routinely destroyed, or whether a search had been conducted in every location where

² The Board served its requests for production on Rose on August 30, 2022, November 11, 2022, and December 1, 2022. (NYSCEF 181, Chun aff ¶¶ 9-11; NYSCEF 188-190, Requests for Production.) The Board made 34 requests for production in total. (NYSCEF 188-190, Requests for Production.)

the records were likely to be found.” (Jackson, 185 AD2d at 770.)

Additionally, in light of the capture of Adam R. Rose Foundation’s webpage which the Board proffered, Rose shall explain in his affidavit what is his relationship to Adam R. Rose Foundation and why adam@rosenyc.com email address appears to have been used on this website, as page source data indicates. (NYSCEF 273, webpage capture at 6 [time-stamped October 6, 2023].)

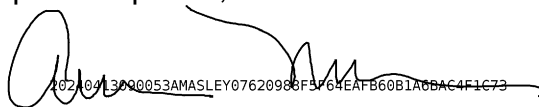
Rose Associates

Rose Associates shall comply with the subpoena. Rose Associates cross-motion seeking reasonable attorneys’ fees, cost and expenses incurred in complying with the subpoena, as well as sanctions, will be held in obedience until the court meets with the parties for a conference.

Accordingly, it is

ORDERED that motion sequence 005 is granted to the extent that defendant Adam R. Rose shall file on NYSCEF an affidavit as ordered herein (see supra at 3-4) by April 19, 2024. Also by April 19, 2024, nonparty Rose Associates, Inc. shall produce documents in compliance with the subpoena, as well as a privilege log if privilege review is conducted; and it if further

ORDERED that nonparty Rose Associates’ cross-motion is held in abeyance; a conference on the cross-motion will be held at 3:30pm on April 25, 2024.



4/13/2024
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE