

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ORIN R. KITZES IA Part 17  
Justice

F&T MANAGEMENT & PARKING CORP.	x	Index Number <u>1904</u> 2008
- against -		Motion Date <u>September 17,</u> 2008
FLUSHING PLUMBING SUPPLY CO., INC., et al.		Motion Cal. Number <u>29</u>
	x	Motion Seq. No. <u>4</u>

The following papers numbered 1 to 12 read on this motion by plaintiff F&T Management & Parking Corp. (F&T) pursuant to CPLR 3124 and 2308 to direct nonparty Murphy & Lynch, P.C., by James M. Murphy, to comply with the subpoena dated January 28, 2008 and appear for a deposition and produce the documents demanded in the subpoena and for an award of fees and costs incurred in connection with the motion; and this cross motion by nonparty Murphy & Lynch, P.C., and defendants Paul Brown, Paul Brown Properties, Ltd. (Paul Brown Properties), 37-25, LLC, and Flushing Plumbing Supply Co., Inc. (Flushing Plumbing) pursuant to CPLR 2304, 2308 and 3124 to direct plaintiff F&T to withdraw or modify the subpoena or to fix conditions thereto, and pursuant to CPLR 3101 and 3214 to stay discovery in this action pending a determination of the motions by defendants Paul Brown Properties, 37-25, LLC, Flushing Plumbing and Paul Brown, and by Chien Yang Development Group, Inc. (Chien Yang Development), Shoho J LLC (Shoho) and Chien Tsang Lin pursuant to CPLR 3211.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-5
Notice of Cross Motion - Affidavits - Exhibits...	6-9
Answering Affidavits - Exhibits.....	10-12

Upon the foregoing papers it is ordered that the motion and cross motion are determined as follows:

On February 5, 2008, plaintiff F&T caused a judicial subpoena ad testificandum and duces tecum, to be served, requiring nonparty, Murphy & Lynch P.C., by James M. Murphy, to appear for a deposition at the offices of counsel for F&T and produce certain records and documents, relating to the sale for F&T or attempted sale of any or all of real properties known as Block 4972, Lots 10, 20 and 22 in Queens County, New York, the sublease or attempted sublease of any or all of those properties, and a document denominated "RELEASE OF RIGHT OF FIRST REFUSAL."

Plaintiff F&T asserts that on April 11, 2008, counsel for nonparty Murphy & Lynch, P.C. sent a facsimile transmission objecting to the fact the subpoena was made returnable at the office of plaintiff F&T's counsel, as opposed to in a court of law. In addition, counsel for nonparty Murphy & Lynch, P.C. opined in the fax that the subpoena should have been indexed under Index No. 9034/2004 (F&T Management & Parking Corp. v Flushing Plumbing Supply Co., Inc., [Supreme Court, Queens County]). Counsel for nonparty Murphy & Lynch, P.C. requested the subpoena be withdrawn, or modified and reserved.

Plaintiff F&T seeks to compel Murphy & Lynch, P.C. to comply with the subpoena and to direct Murphy & Lynch, P.C. to pay its legal fees incurred in relation to the enforcement of the subpoena.

Nonparty Murphy & Lynch, P.C. seeks to direct plaintiff F&T to withdraw or modify the subpoena, or for the court to fix conditions regarding the subpoena. In addition, defendants Flushing Plumbing, Paul Brown Properties, 37-25, LLC and Paul Brown oppose the motion by plaintiff F&T and seek a stay of discovery pending a determination of the motions by defendants Paul Brown Properties, 37-25, LLC, Flushing Plumbing and Paul Brown and by Chien Yang Development, Shoho and Chien Tsang Lin pursuant to CPLR 3211.

The motion and cross motion are denied as moot (see separate order of this date) (F&T Management & Parking Corp. v Flushing Plumbing Supply Co., Inc., [Supreme Court, Queens County, Index No. 1904/2008]).

Dated: January 23, 2009

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J.S.C.