

Trump v Cheng

2007 NY Slip Op 33161(U)

October 1, 2007

Supreme Court, New York County

Docket Number: 0602877/2005

Judge: Richard B. Lowe

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____
Justice

PART 56

Donald J Trump

INDEX NO. 602 877/05

MOTION DATE ~~016~~ 5/21/07

MOTION SEQ. NO. 016

MOTION CAL. NO. _____

- v -

Henry Cheng

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

OCT 03 2007

NEW YORK
COUNTY CLERK'S OFFICE

THIS MOTION IS DECIDED IN A ROOM OF THE
COURT HOUSE, NEW YORK COUNTY CLERK'S OFFICE

Dated: 10/3/07

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 56

-----X

DONALD J. TRUMP, individually and
derivatively on behalf of
HUDSON WATERFRONT ASSOC., L.P.,
HUDSON WATERFRONT ASSOC., I, L.P.,
HUDSON WATERFRONT ASSOC. II, L.P.,
HUDSON WATERFRONT ASSOC. III, L.P.,
HUDSON WATERFRONT ASSOC. IV, L.P.,
HUDSON WATERFRONT ASSOC. V, L.P.,

Plaintiff,

Index No. 602877/05

-against-

HENRY CHENG, VINCENT LO, CHARLES YEUNG,
EDWARD WONG, DAVID CHIU, HUDSON
WATERFRONT CORP., HUDSON WATERFRONT I
CORP., HUDSON WATERFRONT II CORP.,
HUDSON WATERFRONT III CORP., HUDSON
WATERFRONT IV CORP., HUDSON WATERFRONT
V CORP., HUDSON WATERFRONT ASSOC., L.P.,
HUDSON WATERFRONT ASSOC. I, L.P.,
HUDSON WATERFRONT ASSOC. II, L.P.,
HUDSON WATERFRONT ASSOC. III, L.P.,
HUDSON WATERFRONT ASSOC. IV, L.P.,
HUDSON WATERFRONT ASSOC. V, L.P.,
HUDSON WESTSIDE ASSOC., L.P.,
HUDSON WESTSIDE ASSOC. I, L.P.,
HUDSON WESTSIDE ASSOC. II, L.P.,
HUDSON WESTSIDE ASSOC. III, L.P.,
HUDSON WESTSIDE ASSOC. IV, L.P.,
HUDSON WESTSIDE ASSOC. V, L.P.,
JOHN DOE I and JOHN DOE II,

Defendants.

-----X

RICHARD B. LOWE, III, J:

Motion sequence numbers 016, 017 and 018 are consolidated for disposition.

This action involves a dispute over the sale price of, and the use of sale proceeds from,

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parcels of land that were developed by the parties in this action. The 20-count amended complaint asserted direct and derivative causes of action. Defendants moved to dismiss the amended complaint for lack of jurisdiction, failure to state a cause of action, and based upon documentary evidence. By decision and order dated July 24, 2006, this court granted the motions to dismiss, dismissing all of plaintiffs' claims except the eighteenth cause of action for access to books and records (7/24/06 Decision). Judgment was entered on September 19, 2006.

In motion sequence numbers 016 and 018, the Hudson Waterfront LPs and the Hudson Waterfront Corps move for summary judgment dismissing the eighteenth cause of action for access to books and records. In motion sequence number 017, Trump moves for summary judgment "compelling the inspection of records related to Fineview Resources, Ltd. in the possession of Defendants, including, but not limited to, correspondence and records between Defendants and Fineview Resources, Ltd., all related to the one transaction involving the sale of the Penn Rail Yards." Trump's 4/19/07 Notice of Motion.

The facts of this case are stated in detail in this court's decision and order, *Trump v Cheng*, 9 Misc 3d 1120(A) (Sup Ct, NY County 2005), and the 7/24/06 Decision. Therefore, the court presumes familiarity with the facts, and the facts will not be restated herein. Unless otherwise indicated in this decision, defined terms in the 7/24/06 Decision shall have the same meaning herein.

DISCUSSION

Books and Records

Trump's Motion for Summary Judgment (017)

Trump moves for summary judgment to compel the inspection of Fineview records in

defendants' possession relating to the sale of the Properties. Defendants counter that all Fineview documents have either been produced or do not exist.

As stated in the March 14, 2007 decision and order of the Special Master (3/14/07 Order), “[i]f the documents do not exist, an order or judgment interpreting or compelling compliance with the agreement would be futile, a waste of judicial resources and nothing more than an advisory opinion, prohibited under New York law.” 3/14/07 Order, 4/17/07 Gruenglas Aff., Ex. 16, at 2, citing *New York Public Interest Research Group, Inc. v Carey*, 42 NY2d 527 (1977).

In anticipation of the present summary judgment motions, in order to identify the universe of documents at issue, the Special Master permitted Trump to serve a single interrogatory “requesting identification of the categories of documents in the possession or control of the defendant limited partnership, with sufficient particularity to apprise plaintiff of the nature and approximate quantity of such documents but without disclosing the substance of the documents themselves” *Id.* at 3.

On March 14, 2007, Trump served an interrogatory, asking defendants to:

[d]escribe any and all documents relating to the brokerage and/or finders services rendered by Fineview with respect to the transaction involving the sale of property known as “Trump Place” in the form of a privilege log, with sufficient particularity as to the categories, types, and quantities of documents so that the Plaintiff will be apprised of the scope of the existing documents.

4/17/07 Gruenglas Aff., Ex. 17.

Defendants responded to Trump’s interrogatory by producing a log listing “Categories of Documents Relating to the Brokerage and/or Finder’s Services Rendered by Fineview with Respect to the Sale of Riverside South.” *Id.*, Ex. 18. Defendants’ response lists 17 categories of

documents, their date ranges, and the number of documents in each category. *Id.* Defendants' interrogatory response is verified by Barry Gross, an officer of the limited partnerships' general partners.

On Trump's summary judgment motion and in proceedings before the Special Master, Trump's counsel concedes that Trump already has the documents identified in defendants' interrogatory response. 4/17/07 Goldberg Aff., ¶¶ 2, 28-31, 34; 5/8/07 Gruenglas Aff., Ex. 7, at 46-48 and Ex. 19. Trump's counsel also submits a memorandum that he submitted to the Special Master, affirmatively arguing that he "believe[s] there are no such records and that Fineview was a ruse." Goldberg Aff., Ex. T. Trump's counsel also concedes that James T. Galvin, an expert hired by Trump to review the financial documents of the limited partnership "has discovered no records between Fineview and [the Hudson Waterfront Corps] or [the Hudson Waterfront LPs]." Goldberg Aff., ¶ 29. Thus, it appears that Trump seeks documents that he admits do not exist. This is the precise situation that the Special Master appropriately described as futile and a waste of judicial resources.

Furthermore, Trump's argument is based upon an inference that he urges the court to draw from Section 14.1 of the Agreement of Sale and Purchase, dated June 17, 2005, between the Hudson Waterfront LPs and Extell, the purchaser of the Properties. Section 14.1 states that the Hudson Waterfront LPs and Extell will each "pay all fees and commissions payable" to Fineview "pursuant to separate written agreement[s]" Goldberg Aff., Ex. S. This provision arises in the context of an indemnification clause with respect to payment of any outstanding brokerage commissions. In other words, this provision was designed to prevent the Hudson Waterfront LPs (as sellers) or Extell (as the purchaser) from being liable to Fineview for fees or

commissions to which the other party may have obligated itself pursuant to a written agreement.

However, nothing contained in Section 14.1 indicates that a written agreement exists for either the Hudson Waterfront LPs or Extell. Nor does it state that any amount was payable to Fineview by the Hudson Waterfront LPs. Rather, the only evidence of a payment to Fineview was made by Extell, not the Hudson Waterfront LPs, and the limited partnerships were not a party to that transaction. Rather, the only evidence of a payment to Fineview is evidence of a payment made by Extell, not the Hudson Waterfront LPs, and the limited partnerships were not a party to that transaction.

Moreover, when the court heard oral arguments on Trump's motions for reargument and renewal on December 15, 2006, defendants' counsel represented to the court that "[t]here were no such fees paid by the LPs. There is no such contract." 12/15/06 Tr., at 43. In a letter to the Special Master dated December 19, 2006, prior to a status conference on the books and records claim, defendants' counsel also represented to the Special Master that documents concerning a \$17.5 million fee paid by the Hudson Waterfront LPs to Fineview were not "turned over because they do not exist – the LPs paid no commissions to Fineview." 5/8/07 Gruenglas Aff., Ex. 17, at 15 (emphasis in original). At the actual status conference held on December 21, 2006, defendants' counsel again represented to the court that no agreement exists between the Hudson Waterfront LPs and Fineview and no brokerage or commission payments were made. *Id.*, Ex. 6, at 15-16, 27-28. Thus, if the limited partnerships never paid a finder's fee to Fineview, there is no reason why they should have documents evidencing such a payment. The limited partnerships have produced evidence of payment by Extell to Fineview, but have repeatedly represented that there are no documents evidencing payments made by the Hudson Waterfront LPs to Fineview.

Trump argues that the court should infer that defendants' interrogatory response omitted responsive documents, because defendants asserted five general objections to the interrogatory. However, defendants represent that "all documents in any way relating to the brokerage and/or finders' services rendered by Fineview with respect to the sale of the Penn Yards were included in Defendants' interrogatory response." General Partners' Mem. of Law, at 13. Defendants also state that "[n]o such documents were omitted from the interrogatory response on the basis of the accompanying objections." *Id.* Counsel's representations are consistent with Trump's argument that he already possesses the documents catalogued in defendants' interrogatory response, and that the additional documents he seeks either do not exist or are not in defendants' possession. For the foregoing reasons, Trump's motion (motion sequence number 017) for summary judgment compelling the inspection of records relating to Fineview is denied.

Defendants' Motion for Summary Judgment Dismissal (016 and 018)

Trump's sole remaining cause of action, the eighteenth cause of action, seeks access to the limited partnerships' books and records in accordance with section 12.2 of the Agreements. The eighteenth cause of action alleges that "the defendants have repeatedly refused to permit Trump to conduct any inspection or copying, refused to provide access to documents on request, and falsified other books and records to conceal their wrongdoing." Amended Complaint, ¶ 139. Defendants argue that they have complied with Trump's requests for access to books and records, and that, therefore, this cause of action should be dismissed as moot. The parties also dispute the scope of the books and records provision.

"[T]he laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners." Partnership

Law § 121-901. The same rule applies to corporations, requiring the application of the laws of the state where the corporation was formed. *Hart v General Motors Corp.*, 129 AD2d 179 (1st Dept 1987). As it is undisputed that the Hudson Waterfront LPs are Delaware limited partnerships, and that the Hudson Waterfront Corps are Delaware corporations, Delaware law therefore applies to Trump’s claim for access to defendants’ books and records.

Under Delaware law, contracts “are construed as a whole, to give effect to the intentions of the parties. Where the contract language is clear and unambiguous, the parties’ intent is ascertained by giving the language its ordinary and usual meaning.” *AT & T Corp. v Faraday Capital Ltd.*, 918 A2d 1104, 1108 (Del 2007) (internal quotation marks and citations omitted). “The fact that the parties disagree on the meaning of a term does not render that term ambiguous. ‘Rather, a contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings’ [citation omitted].” *Id.*

Here, section 12.2 (a) of the Agreements provides that “[t]he General Partner shall maintain, or cause to be maintained, complete and accurate records of all transactions of the Partnership.” Ross Aff., Ex. A, at 66. Section 12.2 (b) requires that “[a]ll books, records and accounts of the Partnership, together with an executed copy of this Partnership Agreement and any amendments hereto ... shall be open for the inspection and examination (and making copies) by the Partners or their authorized representatives during regular business hours.” *Id.*

Under Delaware law, the phrase “‘books and records[]’ has a common and well-understood definition.” *Arbor Place, L.P. v Encore Opportunity Fund, L.L.C.*, 2002 WL 205681, *3 (Del Ch 2002). The phrase “can readily be understood through ... 6 Del. C. §

17-305” of Delaware’s Revised Uniform Limited Partnership Act (LP Act). *Id.* at *3 n 3. Section 17-305 of the LP Act “provides limited partners with the right to inspect, among other things, ‘information regarding the status of the business and financial condition of the limited partnership’ and ‘other information regarding the affairs of the limited partnership as is just and reasonable.’” *Madison Ave. Inv. Partners, LLC v America First Real Estate Inv. Partners, L.P.*, 806 A2d 165, 170 (Del Ch 2002), citing § 17-305 of the LP Act.

On March 9, 2006, while the motions to dismiss the amended complaint were sub judice, the parties appeared for a conference before the Special Master, who directed defendants to give Trump access to 20 categories of books, records and accounts of the Hudson Waterfront LPs. These categories included: the general ledger, income statements, balance sheets, cash flow statements, bank records, the check register, accounts receivable records, accounts payable records, records of partnership distributions, tax returns, audited financial statements, purchase and sale agreements, mortgages, leases, partnership agreements, governmental filings of the partnerships, appraisals, final offers, executed marketing agreements and records of amounts received in the transaction not reported on the general ledger in excess of \$1 million. 4/17/07 Grinalds Aff., Exs. B and C.

Trump does not dispute defendants’ assertion that, by June 12, 2006, the general partners had produced approximately 166,275 pages of books and records of the limited partnerships dating back to 1994. 4/17/07 Grinalds Aff., ¶ 8. Between August and October 2006, defendants produced additional documents (approximately 8,000 pages) accounting for the fiscal year ending March 31, 2006. Trump also does not dispute defendants’ assertion that he has received the general ledgers, general journals, books of entry and the Penn Yards sale contract.

At some point after the 7/24/06 Decision, Trump retained his new, current counsel to pursue the books and records claim. Counsel's expert, Galvin, reviewed the books and records produced by defendants. By letter dated November 13, 2006 to Trump's counsel, Galvin identified 21 books and records that he claimed were not produced. In an e-mail dated December 11, 2006, Trump's counsel informed defendants of his intention to obtain "every stitch of paper or electronically stored information" in the possession of the limited partnerships. 4/17/07 Gruenglas Aff., Ex. 8.

On December 21, 2006, the parties attended a status conference before the Special Master. The same day, in an e-mail to the Special Master, Trump's counsel stated his intention to obtain "all records in the possession of the General Partner, which it obviously holds for the benefit of the Limited Partners ..., this is without any limitation or restriction pursuant to the agreed-to provision of 12.2." 4/17/07 Grinalds Aff., Ex. O. Attached to this e-mail, Trump's counsel submitted a list of books and records that he claims were not produced by defendants. The Special Master directed defendants to produce books and records that were not in controversy by January 31, 2007.

On January 4, 2007, the Special Master issued a scheduling order for the production of books and records by January 31, 2007, and for discovery to proceed in February and March 2007 on the limited issues of defendants' compliance with the books and records production and the scope of books, records and accounts subject to inspection as intended by the parties under the Agreements. On January 16, Trump interjected an additional document request, and the Special Master extended defendants' time for production until February 13, 2007. Defendants responded on February 13th, indicating that many of the documents had already been produced or

do not exist.

By the end of March 2007, Trump did not take any discovery in connection with the Special Master's January 4th scheduling order. However, by letter to the Special Master dated March 20, 2007, Trump claimed that defendants' February 13th response was inadequate, that additional documents remained outstanding, and he requested a conference. The parties appeared before the Special Master on March 28, 2007 for a meet and confer, where they discussed the alleged deficiencies in defendants' February 13th response and new alleged deficiencies. Defendants stipulated to the production of specific additional books and records sought by Trump, and the Special Master so ordered that stipulation (4/11/07 Stipulation). 5/8/07 Grinalds Aff., Ex. A.

The 4/11/07 Stipulation established a schedule for the general partners to respond to 16 document requests by April 13 and four document requests by April 30, 2007. Of the 20 requests for documents memorialized in the 4/11/07 Stipulation, many of the documents had already been produced or did not exist. Some of the requests required the general partners to obtain back-up documentation from banks, such as deposit slips, credit and debit memos, wire transfer communications and bank statements. The general partners' April 30th response included documents generated after the limited partnerships' initial production, such as bank records for the year ending March 31, 2007, which could not have been produced earlier.

By letter dated April 19, 2007 to the Special Master, Trump again claimed that defendants had not complied with his books and records requests. In a letter dated May 4, 2007, the general partners responded to Trump's April 19th letter and another letter request from Trump dated March 27, 2007. The general partners' May 4th letter indicates that many of the documents

had already been produced, and attaches Trump's requested new, purportedly non-produced items as exhibits.

All together, defendants represent that they have produced over 180,000 pages of books and records over a 12-year period dating back to 1994. These documents include the limited partnerships' tax returns, purchase and sale agreements, mortgages, leases, governmental filings, and the general ledger, which defendants claim reflects all financial transactions by the Hudson Waterfront LPs. Trump does not dispute this claim, and, under Delaware law, the documents produced by defendants constitute books and records. *See e.g. Madison Ave. Inv. Partners, LLC*, 806 A2d at 173-74 (holding that partnership agreements with subsidiaries, partnerships' and subsidiaries' mortgage, loan, note and debt agreements, and financial statements and operating results relating to real estate held by the partnerships and their subsidiaries constituted "books and records" within the meaning of section 17-305 [a] [1] and [6] of the LP Act).

Moreover, Trump's counsel has acknowledged, and the documentary evidence demonstrates, that defendants have permitted inspection of, and access to, books and records, not refused it. 5/8/07 Grinalds Aff., ¶¶ 6-10; 5/18/07 Gruenglas Aff., Ex. 1 (Trump's counsel admitting that certain requested books and records had "been uncovered in one place or another - thanks to [defendants' counsel's] kind attention," and acknowledging "the courtesy and cooperation that is being showed in connection with responding to the information requested"). For the foregoing reasons, defendants' have made a prima facie showing refuting Trump's claim that they "have repeatedly refused to permit Trump to conduct any inspection or copying, and refused to provide access to documents on request." Amended Complaint, ¶ 139.

Trump counters that section 12.2 (a) should be read more expansively, because it requires

the general partners to maintain “records of all transactions of the Partnership.” The essence of Trump’s rebuttal argument is that he is entitled to, and the general partners have refused to provide, “every stitch of paper or electronically stored information” in the possession of the limited partnerships, and that this right is “without any limitation or restriction” under section 12.2 of the Agreements. 4/17/07 Gruenglas Aff., Ex. 8; 4/17/07 Grinalds Aff., Ex. O.

The term “transactions” is not defined in the agreements. Giving the word its ordinary meaning, Merriam-Webster’s Dictionary defines “transaction” as “something transacted; especially: an exchange or transfer of goods, services, or funds.” Among the relevant definitions in Black’s Law Dictionary are: “1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. 2. Something performed or carried out; a business agreement or exchange. 3. Any activity involving two or more persons.” Black’s Law Dictionary (8th ed. 2004). None of these definitions includes transactions that never happened, such as drafts of contracts and transactions that were never consummated, and related e-mails and correspondence. The limited partnerships’ document production goes beyond any of these definitions, and Trump fails to explain how the word “transactions” encompasses “every stitch of paper or electronically stored information” in the limited partnerships’ possession, “without any limitation or restriction.” Nor does Trump cite any authority in support of his argument. Therefore, Trump’s argument is unpersuasive.

“Where ... there is uncertainty in the meaning and application of the terms of the contract the court will consider testimony pertaining to antecedent agreements, communications and other factors which bear on the proper interpretation of the contract.” *Lillis v AT&T Corp.*, 2007 WL 2110587, *16 (Del Ch 2007) (citation and internal quotation marks omitted). Here, the plain

language of section 12.2 is clear and unambiguous. However, even assuming for the moment that the phrase “records of all transactions of the Partnership” is susceptible to a different interpretation, the extrinsic evidence supports defendants’ interpretation of section 12.2 of the Agreements. Roger Roisman (Roisman), Trump’s lead attorney who drafted and negotiated the Agreements, testified that this phrase is synonymous with the phrase “books and records,” and that the phrases “are used interchangeably.” 4/17/07 Gruenglas Aff., Ex. 6, at 47. Roisman testified that the books and records provision is “boilerplate” and “customary,” and does not require the limited partnerships to maintain records of transactions that were contemplated but never took place, or transactions where the limited partnership was not a party. *Id.* at 34, 38. Roisman also testified that the books and records provision does not require the limited partnerships to maintain copies of contract drafts, handwritten notes, communications, e-mails, calendar entries, or “every scrapbook paper” relating to a contract. *Id.* at 43-44. Roisman was unable to identify anything in section 12.2 (b) of the Agreements that expands inspection rights beyond the statutory rights. Barry Ross, the attorney who negotiated the Agreements on behalf of the general partners of the Hudson Waterfront LPs, agrees with Roisman’s testimony.¹ Ross Aff., ¶¶ 1-11. Thus, the parties never intended to expand the scope of books and records

¹ The court notes that Trump submits the deposition testimony of Leonard Boxer (Boxer), who claims to have been the supervising attorney of Roisman’s law firm at the time that the firm represented Trump. Boxer’s testimony essentially seeks to broaden the scope of section 12.2 of the Agreements. However, Boxer admitted that he had only “general recollections,” that he “really was not involved with the drafting of the documents,” and that Trump’s current attorney had merely asked him to offer an interpretation of the books and records provision. Goldberg Aff., Ex. O, at 10-11. Therefore, Boxer’s testimony is not probative of the parties’ intent. In any event, Boxer’s testimony is consistent with Roisman’s testimony and Ross’s affidavit in that they all agree that a finder’s fee agreement, if one existed, is subject to a books and records inspection. However, as discussed above, there was no such agreement.

inspections beyond what is permitted under Delaware law, specifically, section 17-305 of the LP Act.

Furthermore, it would be unreasonable and lack business sense to require the limited partnerships to maintain “every stitch of paper or electronically stored information” until the partnerships terminate in 2044. *Hillman v Hillman*, 910 A2d 262, 270 (Del Ch 2006) (Delaware courts examine whether contract interpretation is “reasonable and makes business sense,” and whether “the plain language of the contract creates [an] absurd result”); *State v Cooper*, 575 A2d 1074, 1076 (Del 1990) (stating that literal interpretations of statutory language that yielded absurd results should be avoided).

Moreover, while Trump argues that allegations of fiscal mismanagement broaden his inspection rights, the only fiscal mismanagement alleged relates to his dismissed causes of action. Thus, it appears that Trump is attempting to use his right to access the partnerships’ books and records in order to obtain discovery on his dismissed claims. *See e.g.* Trump’s 11/22/06 Reply Mem. of Law on Renewal Motion, ¶ 36 (“we made a *subpoena-like* demand ... for Fineview records possessed by the Limited Partnership – it being required ... under the Partnership Agreement to keep ‘complete and accurate records of all transactions’”).

The Delaware Supreme Court has made clear that discovery and books and records inspections “are not the same and should not be confused.” *Security First Corp. v U.S. Die Casting and Dev. Co.*, 687 A2d 563, 570 (Del 1997). The right to inspection of books and records “is not an invitation to an indiscriminate fishing expedition.” *Id.* at 565.

Notwithstanding defendants’ production of thousands of documents for Trump’s inspection, Trump next argues that the general partners failed to produce certain books and

records in their April 13th response to the 4/11/07 Stipulation. 4/19/07 Goldberg Aff., Ex. D. Trump also claims, generally, that there are a “large quantity of records” that, to date, have not yet been produced and to which he is entitled. 4/19/07 Goldberg Aff., ¶ 6. All of the specific documents that Trump claims were not produced required the general partners to obtain supporting documentation from third parties, including Pricewaterhousecoopers, HSBC and Goldman Sachs. In their April 13th response, the general partners represent that they have requested the documents from the third parties, are awaiting responses, and, upon receiving the documents will produce them to Trump.

The defendants seem to have already produced voluminous amounts of the requested documents. However, Trump has successfully identified at least eight categories of documents that the general partners admittedly (in their April 13th response) did not produce, albeit because the defendants are awaiting responses from third parties. Furthermore, through the affidavit of his attorney, Trump purports that there is an additional “large quantity of records” that, to date, have not yet been produced and to which he is entitled. 4/19/07 Goldberg Aff., ¶ 6. This is enough to rebut defendants’ prima facie showing.

For the foregoing reasons, a hearing will be held in order to determine specifically which books and records, if any, the general partners have not permitted Trump to inspect.²

Therefore, defendants’ motions (motion sequence numbers 016 and 018) for summary judgment dismissing the eighteenth cause of action are denied.

² The court also notes that, as a limited partner of the Hudson Waterfront LPs, Trump is entitled to continued access to the limited partnerships’ books and records for the duration of the limited partnership. The court has been made aware of the parties’ mutual agreement to appoint an interlocutor to mediate any future books and records disputes.

Accordingly, it is hereby

ORDERED that defendants' motions (motion sequence numbers 016 and 018) for summary judgment are denied; and it is further

ORDERED that Trump's motion for summary judgment (motion sequence 017) is denied; and it is further

ORDERED that the parties appear on November 1, 2007 at 9:30 a.m. whereby a hearing will be held on Trump's claim for production of additional books and records by the Limited Partnership; and it is further

ORDERED that the remainder of the action shall continue.

Dated: October 1, 2007

ENTER:



J.S.C. B. LORIE, JR.
JULY 10 2007

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