

**Lee v Luk**

2011 NY Slip Op 31153(U)

May 2, 2011

Supreme Court, New York County

Docket Number: 603111/05

Judge: Jane S. Solomon

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

JANE S. SOLOMON

PART 55

Index Number : 603111/2005

LEE, DENNIS

vs.

LUK, NANCY LEE

SEQUENCE NUMBER : 004

AMEND

INDEX NO. \_\_\_\_\_

MOTION DATE 4/22/11

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

his motion to/for \_\_\_\_\_

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-5

6-8

9-11

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the enclosed memorandum decision and order.

**FILED**

MAY 03 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/2/11

[Signature]

JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----X

DENNIS LEE a/k/a LEE MAN FOR DENNIS  
and LI-MUN-HOK STEVEN as Trustees and  
as Executors of the Estate of LEE  
CHAN WUN YIN, LI CHUNG, DENNIS LEE a/k/a  
LEE MAN FOR DENNIS, LI-MUN-HOK STEVEN,  
and LAI MAY MIMIE, on behalf of themselves  
as shareholders and on behalf of all  
similarly situated shareholders of  
LEE-TAI ENTERPRISES (USA) LTD.,  
238-240 7<sup>th</sup> AVENUE CORP., BROADWAY  
CHINATOWN REALTY INC., SEVENTH AVENUE  
DEVELOPMENT, LLC, and Suing in the Right  
of LEE-TAI ENTERPRISES (USA) LTD.,  
238-240 7<sup>th</sup> AVENUE CORP., BROADWAY  
CHINATOWN REALTY INC., SEVENTH AVENUE  
DEVELOPMENT, LLC, DENNIS LEE and  
LI CHUNG as directors and officers of  
LEE-TAI ENTERPRISES (USA) LTD.,  
238-240 7<sup>th</sup> AVENUE CORP., BROADWAY  
CHINATOWN REALTY INC., SEVENTH AVENUE  
DEVELOPMENT, LLC,

Index. No. 603111/05

DECISION AND ORDER

Plaintiffs,

-against-

NANCY LEE LUK a/k/a LEE LAI CHING,  
NANCY, and LEE TAI ENTERPRISES (USA)  
LTD., 238-240 7<sup>th</sup> AVENUE CORP.,  
BROADWAY CHINATOWN REALTY INC.,  
SEVENTH AVENUE DEVELOPMENT, LLC,

Defendants.

-----X

JANE S. SOLOMON, J.:

Plaintiff Dennis Lee moves for a protective order, and  
to strike defendants' Second Demand for Production of Documents;  
defendants cross-move for an order compelling compliance with the  
demand for production. Plaintiff also seeks to "suppress" an e-  
mail message upon which the demand for production was made on the

grounds of attorney-client privilege.

The facts of the dispute are stated in some detail in the decision dated February 6, 2007. Briefly stated, plaintiff Dennis Lee (Lee) challenges whether his sister, defendant Nancy Luk, was authorized to engage in certain real estate transactions in her role as the officer of corporations established by their parents to own and manage the family's New York real estate. Their mother, Lee Chan Wun Yin (Chan), died in 1993, and her estate is the subject of a probate proceeding in Hong Kong that, it appears, is still being litigated. The Hong Kong probate proceeding has some bearing on the dispute here. When this action was commenced, Lee sued, in part, in his capacity as trustee and executor of the Chan Estate. The Chan Estate's claims were dismissed in the February 6, 2007 order.

On August 14, 2006, oral argument was held in this action in connection with a motion to dismiss the complaint. That same day, plaintiff's attorney sent an e-mail message to her client, Lee, and to Johnson Kong (Kong). Kong is a partner in McCabe International Trustee Limited (the McCabe Firm), which was appointed to serve as the executor of Chan's estate by the High Court of the Hong Kong Special Administrative Region (see, *Aff. of Aimee P. Levine, Esq.*, paragraph 5). The Hong Kong court appointed the McCabe Firm as a replacement for Lee, who had previously served as the estate's executor. The e-mail, a copy

of which is annexed to the Levine Aff. in Exhibit A, contains Levine's report of the court appearance, describes her interaction with opposing counsel, and contains her legal impressions and advice on how to proceed. It states Levine's opinion that many documents support their case, and that Nancy Luk made a significant admission in a sworn statement supplied to a financial institution, of which her attorney is aware.

In May 2010, the McCabe Firm caused the e-mail to be submitted as an exhibit to papers filed on behalf of the Chan Estate with the Hong Kong court, seeking leave to obtain ancillary letters in the Nassau County Surrogates Court, and thereafter to bring an action in New York County to assert the estate's interests in the corporate defendants herein (Levine Aff., Ex. G).

Not surprisingly, the e-mail got back to defendants' attorney in New York. He served the Second Demand for Production (Demand), dated August 18, 2010, with a copy of the e-mail (Demand, Levine Aff., Ex. A). Plaintiff served a response to the Demand, asserting the attorney-client privilege and otherwise stating that documents sought already were produced in a prior disclosure (Levine Aff., Ex. B).

The Demand has seven parts: (1) all documents referenced in the e-mail; (2) all documents evidencing ownership of the defendant corporations, to the extent not already produced; (3)

all documents evidencing or relating to company shareholders, directors or officers, to the extent not already produced; (4) all correspondence between Levine and Lee relating to the e-mail; (5) all correspondence between Levine and any other person relating to matters referenced in the e-mail; (6) all correspondence between Levine and Lee relating to ownership of the companies; and (7) all correspondence between Levine and Lee relating to the shareholders, directors or officers of the companies.

Plaintiff objects to the fourth, sixth and seventh items on the grounds of attorney-client privilege. He objects to the second, third, and fifth items because the material was demanded in an earlier demand for production, and was produced. He objects to the first item, demanding all documents referenced in the e-mail, because those documents either were produced or are defendants' own documents.

Confidential communications between an attorney and her client generally are privileged and not obtainable in discovery, subject to exceptions not at issue here (CPLR 4503 [attorney-client privilege] and 3101[b] [privileged material is not obtainable]). The burden of establishing any right to protection is on the party asserting it (*Spectrum Sys. Int'l Corp. v Chem. Bank*, 78 NY2d 371, 377 [1991]). In order for the privilege to apply to a communication, it must be between an attorney and her

client, and the communication must be primarily of a legal character (*id.*). It also must be confidential (9 Weinstein, Korn & Miller, New York Civil Practice: CPLR, ¶ 4503.15).

Defendants do not contest that the e-mail was an attorney-client communication of a primarily legal character that was confidential when made. Rather, they argue that it ceased to be confidential when submitted to the Hong Kong court, and that Lee's waiver of the attorney-client privilege can be implied from the Chan Estate's use of it, and that Lee's waiver extends to all communications with his attorney regarding the e-mail's subject matter.

The argument has merit with respect to the e-mail itself. Its content is no longer confidential, regardless of Levine's intent when she sent it. The document is public, and lack of relevance aside (CPLR 3101[a]), there is no reason at this time to preclude defendants from retaining or using it. Accordingly, the branch of the motion seeking to preclude defendants from using the e-mail is denied.

The objection grounded in attorney-client privilege is well founded with respect to items four, six and seven in the Demand. These demands seek *other* confidential attorney-client communications for which there has been no waiver or breach of confidentiality. Defendants' contention that Lee has impliedly waived the privilege as to other communications based upon the

Chan Estate's submission to the Hong Kong court is over-reaching and not supported by any authority. Therefore, the motion for a protective order relieving plaintiffs from any obligation to respond to these items in the Demand is granted.

The motion further is granted as to the other items in the Demand because they are duplicative. On its face, the e-mail makes reference to no document independently relevant and discoverable subject to prior production demands, or not already in defendants' possession.<sup>1</sup> That Levine referred to a document in the e-mail would not make it immune to production, as Levine herself acknowledges in this motion, and in plaintiff's response to the Demand (Levine Aff., Ex. B). Item 5, which seeks disclosure between Levine and any other person "relating to matters referenced" in the e-mail is over-broad and not likely to lead to disclosure of relevant material not otherwise demanded. Accordingly, it hereby is

ORDERED that plaintiff's motion for a protective order is granted to the extent that no further response to the Demand is required, and otherwise is denied; and it further is

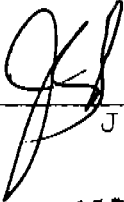
---

<sup>1</sup>Apart from Nancy Luk's own sworn statement, no document is specifically identified.

ORDERED that the cross-motion to compel is denied.

Dated: May 2, 2011

ENTER:

  
\_\_\_\_\_  
J.S.C.

**JANE S. SOLOMON**

**FILED**  
MAY 03 2011  
NEW YORK  
COUNTY CLERK'S OFFICE