

Delgrange v Madison Immobilier, LLC

2015 NY Slip Op 30868(U)

May 21, 2015

Sup Ct, New York County

Docket Number: 151651/13

Judge: Joan A. Madden

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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PHILIPPE DELGRANGE,

Plaintiffs,

INDEX NO. 151651/13

-against-

MADISON IMMOBILIER, LLC, ROBERTO CAVALLI,
INC., ROBERTO CAVALLI, USA, INC., JEAN-PIERRE
LEHMANN, and JOHN DOES 1-25,

Defendants.

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JOAN A. MADDEN, J.:

Non-party Poupetto, Inc. (“Poupetto”) moves pursuant to CPLR 2304 to quash the subpoena served by counsel for defendants Madison Immobilier LLC (“Madison”) and Jean-Pierre Lehmann (“Lehmann”)(together “the Madison defendants”). The Madison defendants oppose the motion.

Background

This action arises out of certain construction work (“the project”) performed at 25 East 63rd Street, New York, NY, known as 711 Madison Avenue (“the Premises”). Plaintiff Phillippe Delgrange (“Delgrange”) is a residential tenant of the Premises. Madison is a New York limited liability company, and the owner of the Premises. Lehmann is Madison’s Chief Executive and the sole owner of the two members that own Madison. ZR Continental Corp. (“Continental”) was engaged by Madison as the construction manager on the project, and by separate order of this court leave has been granted to amend the complaint to identify Continental as one the John Doe defendants. Non-party Edward Rutan (“Rutan”) is the President of Continental.

The project has its genesis in a modification and extension agreement entered into

between Madison and non-party Art Fashion Corp.¹ (“Art Fashion”) in December 2010, to expand the size of Art Fashion’s retail store to include space leased by Le Bilbouet, a French restaurant that then occupied the first floor and the basement of the 63rd Street side of the Premises. Poupetto is the owner of Le Bilbouet, and Delgrange was Poupetto’s President.

As a result of the lease modification and the expansion of Art Fashion’s space, Madison decided not to renew Bilbouet’s lease. Defendants maintain that before Bilbouet’s lease expired in 2012 “there were aggressive efforts by Mr. Ronald Perelman—a wealthy financier, partner with Delgrange in the restaurant and patron of the restaurant—to pressure defendant Madison into renewing the restaurant lease.” (Defendants’ Affirmation in Opposition, ¶ 4).

The project, which began in or about December 2012, apparently resulted in the release of asbestos into the air and caused the New York City Department of Environmental Protection (“DEP”) to shut down the project by order dated February 7, 2013. The project was subsequently permitted to proceed when asbestos abatement was completed on February 19, 2013. In this action, Delgrange maintains that he was exposed to asbestos as the result of defendants’ allegedly negligent, reckless and dangerous conduct.

The Verified Amended Complaint asserts causes of action for (1) an injunction enjoining defendants from proceeding with the work until such time as the Stop Work Order has been lifted and the asbestos properly abated, (2) interference with plaintiff’s rights of quiet enjoyment of his apartment and nuisance for which plaintiff seeks compensatory and punitive damages, (3)

¹Art Fashion was originally named as a defendant in this action; however, by decision and order dated October 18, 2013, the court granted its motion to dismiss the complaint against it. In addition, by stipulation dated April 30, 2013, the action was discontinued as against defendants Robert Cavalli, Inc. and Robert Cavalli, USA, Inc.

negligence for which plaintiff seeks compensatory and punitive damages, and (4) breach of the warranty of habitability for which plaintiff seeks a rent abatement.

At issue on this motion is a non-party subpoena served on Poupetto by the Madison defendants on February 11, 2014, and made returnable on March 27, 2014 (hereinafter “the Subpoena”). The Subpoena requests that a representative of Poupetto appear for oral testimony and “produce ... all books, records and other papers and documents in your possession which refer or relate to the following: 1) All leases, lease amendments (“Lease”) concerning ... the Premises, 2) All correspondence concerning the expiration and/or nonrenewal of the Lease, 3) All correspondence with Ronald Perelman concerning the Lease and/or the Premises, 4) All correspondence with Continental Group and/or Ziggy Rutan and/or Jean-Pierre Lehmann concerning the Lease and/or the Premises.”

Poupetta moves to quash the Subpoena, arguing that to obtain nonparty discovery, the Madison defendants must show that they cannot get the information sought from the non-party from independent sources. Specifically, Poupetta contends that defendants already possess and can easily obtain the documents they seek, including leases between Poupetta and Madison and correspondence relating to the lease and/or the Premises between Poupetto and Lehmann and/or between Poupetto and Rutan. In this connection, Poupetta asserts that Rutan is an officer of one of the corporate owners of Madison. In addition, Poupetta argues that the remaining documents, which concern correspondence regarding the lease for the Premises with Ronald Perelman, are neither material nor relevant and are not subject to nonparty discovery. More generally, Poupetta argues that the documents sought are not relevant to the claims in the action which concern asbestos exposure during that project, which occurred after Poupetta was a tenant at the

Premises.

The Madison defendants counter that the documents sought are relevant to the background of this litigation. Specifically, they argue that the information sought will “shed light on the broader context of this dispute between the parties—namely that Delgrange is engaging in this litigation as party of a petty ‘revenge’ for Madison’s allowing his restaurant’s lease to expire.” (Affirmation in Opposition, ¶ 5). They also argue that the bulk of materials are not in their possession or control and there is value in examining copies in Poupetto’s possession that may include drafts or earlier versions of the leases. In addition, the Madison defendants assert that the communications sought between Poupetto and Madison are relevant to the condition of the Premises, particularly as Delgrange has moved to expand its complaint to 2011 and 2012 during its lease term. They also argue that the testimony and information would shed light on Delgrange’s credibility.

In support of their opposition, the Madison defendants submit an affidavit from Rutan.² Rutan avers that Mr. Perelman called him no less than six times “pressing me on the issue” of renewing the restaurant’s lease and that Mr. Perelman stated that if he did not that it ““would be the worst decision of your life.”” (Rutan Affidavit, ¶ 10).

In reply, Delgrange argues that the subpoena is served purely to harass and that the information sought has no bearing on the issues in this action

Discussion

CPLR 3101 (a)(4) provides a mechanism by which a party may obtain discovery from a

²The affidavit was previously submitted in this action in opposition to Delgrange’s motion for an attachment.

nonparty. It states that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: ... (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.” See Velez v. Hunts Point Multi-Serv. Ctr., Inc., 29 A.D.3d 104, 108 (1st Dep’t 2006) (holding that “[i]t is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding”). As the Court of Appeals recently noted the “material and necessary” standard provided under CPLR 3101(a)(4):

is in keeping with this state's policy of liberal discovery. The words “material and necessary” as used in section 3101 must “be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” Allen v. Crowell–Collier Publ. Co., 21 N.Y2d 403, 406 (1968). Section 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty.

Kapon v. Koch, 23 NY3d 32, 38 (2014).

In accordance with the foregoing, “[a]n application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious ... or where the information sought is ‘utterly irrelevant to any proper inquiry. It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances.” Id., at 39-40 (internal citations and quotations omitted).

Under this standard, the Subpoena is overly broad insofar as it seeks documents for leases for not only the restaurant space but the entire Premises, and for an unlimited time period. On the other hand, given the Madison defendants’ position that the action was instigated as a result of

their refusal to renew Le Bilbouet's lease, documents and testimony related to expiration of the lease for the restaurant are potential relevant to their defenses in this matter. Accordingly, the motion to quash is granted to the extent of limiting the documents to be produced to those relating to Le Biblouet's lease that expired in 2012, including lease renewals, lease amendments and to any correspondence related to that lease for two year period prior to its expiration and the one year period afterwards.

Accordingly, it is

ORDERED that motion to quash the is granted to the extent that Poupetta need not only produce the documents set forth above, and these documents shall be produced and the deposition held within 45 days of the e-filing of this decision and order.

DATED: May 21, 2015


HON. JOAN A. MADDEN
J.S.C.