

Xiao Ling Yang v 174 Elizabeth St. LLC
2019 NY Slip Op 31816(U)
June 25, 2019
Supreme Court, New York County
Docket Number: 150801/2018
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

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XIAO LING YANG,

Plaintiff,

- v -

174 ELIZABETH STREET LLC, GEORGE LEE, THOMAS LEE,

Defendants.

INDEX NO.

150801/2018

MOTION DATE

04/05/2019

MOTION SEQ. NO.

004, 005, 006

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 119, 120, 121, 122

were read on this motion to/for

DISCOVERY

Motion sequence numbers 004, 005, and 006 are consolidated for disposition. The relevant facts are set forth in detail in the court's decision and order on motion sequence number 002, entered November 7, 2018, and are not restated herein.

(MSN 004) Motion to Compel Defendants.

In motion sequence number 004, plaintiff Xiao Ling Yang moves, pursuant to CPLR 3124, for an order: (1) compelling defendants 174 Elizabeth Street, LLC ("Elizabeth Street"), George Lee ("George"), and Thomas Lee ("Thomas") (collectively, "Defendants") to each submit to a deposition on or before a date certain; (2) compelling Defendants to produce complete responses to Plaintiff's document requests, dated June 8, 2018, at least twenty (20) days prior to the dates for such depositions; (3) directing that, in the event Defendants fail to timely serve complete responses to Plaintiff's document requests or submit to depositions, Plaintiff's counsel may move in this Court for appropriate penalties and sanctions, pursuant to CPLR 3126; and (4) awarding Plaintiff the costs of her motion.

In sum, Defendants have produced documents regarding the subject building for only the years between 2014 and 2015. However, the action concerns Plaintiff's claimed ownership as a tenant in common of the building during the time period from 2014 to present. In 2014, Plaintiff's husband passed away, at which point the other 75% owners of the building allegedly excluded plaintiff from receiving any information concerning the operation of the building. Defendants' objections and responses to Plaintiff's requests contain conclusory objections that, inter alia, the requests are unduly burdensome, and/or privileged, which the court rejects as unsubstantiated.

Defendants provide no meaningful opposition to Plaintiff's motion seeking discovery responses. To date, Defendants have failed to produce the documents as agreed to and ordered by the court in the preliminary conference order and, at the last minute before Defendants' depositions were to take place, refused to conduct the depositions on the grounds that Defendants were unavailable and out of the country. Defendants are hereby directed to serve documents responsive to Plaintiff's discovery requests for the period from 2014 to present in accordance with this conditional order and to submit to depositions as provided for herein. (see *Gibbs v St. Barnabas Hosp.*, 16 NY3d 74, 79, 942 N.E.2d 277, 917 N.Y.S.2d 68 [2010]; *Vaca v Village View Hous. Corp.*, 145 AD3d 504, 505, 43 N.Y.S.3d 42 [1st Dept 2016]).

(MSN 005) Motion to Compel Non-Party.

In motion sequence number 005, Plaintiff moves, pursuant to CPLR 3124, for an order: (1) compelling non-party JSK Property Management LLC ("JSK") (property manager for the building in which Plaintiff claims a 25% interest) to produce documents in response to Plaintiff's subpoena duces tecum within twenty (20) days; (2) directing that, in the event JSK fails to produce such documents, Defendants are precluded from relying on any such documents in this

action; and (3) further directing that JSK be sanctioned for failure to comply with the subpoena, including payment to Plaintiff of full reimbursement for her attorneys' fees in bringing the motion. JSK has not appeared, nor has it complied with the subpoena or otherwise opposed the motion.

Plaintiff has established her entitlement to a conditional order directing JSK to comply with the subpoena on the terms set forth herein. In the event JSK fails to comply with this court's order, Plaintiff may move for a further order holding JSK in contempt of Court.

(MSN 006) Duplicative Motion.

Motion sequence number 006 is duplicative of motion sequence number 005 and was improperly marked in NYSCEF as an independent motion sequence.

CONCLUSION

Accordingly, for the reasons stated herein, it is hereby

ORDERED that Plaintiff's motion to compel Defendants is granted; and it is further

ORDERED that Defendants shall produce to plaintiff within 20 days from service of a copy of this order with notice of entry, documents responsive to Plaintiff's document requests, dated June 8, 2018, for the period from 2014 to present; and it is further

ORDERED that defendants shall, within 45 days from production of the aforesaid documents, produce a witness with knowledge of the facts for deposition, at the office of counsel for plaintiff, on a date and at a time convenient for the parties; and it is further

ORDERED that in the event Defendants fail to comply with this order, Defendants will be precluded from offering testimony and from offering any documents responsive to Plaintiff's discovery requests, at the time of trial unless the documents responsive to Plaintiff's document requests, dated June 8, 2018, for the period from 2014 to present are transmitted to plaintiff's

counsel within 20 days from service of a copy of this order with notice of entry and, within 15 days after said 20-day period, an affirmation of compliance by defendants' counsel is filed with the Clerk of the Part and a copy thereof is served upon counsel for plaintiff; and it is further

ORDERED that filing with the Clerk of the Part shall be made by filing with the New York State Courts Electronic Filing System; and it is further

ORDERED that Plaintiff's motion to compel non-party JSK to produce documents responsive to Plaintiff's subpoena is granted; and it is further

ORDERED that JSK shall comply with the subpoena within thirty (30) days of service of a copy of this order with notice of entry; and it is further

ORDERED that in the event JSK fails to comply with this order, Plaintiff may move in this court for the appropriate penalties and sanctions, pursuant to CPLR 3216, and holding JSK in contempt of court; and it is further

ORDERED that plaintiff's counsel shall serve of a copy of this conditional order with notice of entry, upon non-party JSK; and it is further

ORDERED that counsel are directed to appear for a status conference in Room 307, 80 Centre Street, New York, New York, on August 6, 2019, at 9:30 AM.

6/25/2019

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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☐

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

☐ DENIED☒
☐
☐
☐

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☐ OTHER☐ REFERENCE
W. FRANC PERRY, J.S.C.