

Tsui v Chou

2019 NY Slip Op 35071(U)

August 8, 2019

Supreme Court, New York County

Docket Number: Index No. 652840/2013

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOEL M. COHEN PART IAS MOTION 3EFM

Justice

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WINNIE TSUI, GINYEE CHU, HUY BUI, DIMPLE BHATT,
TANVA NANTAKWANG, LILA HEYMANN, LIN CHEUNG,
JEANNIE CHEUNG, KIM LAM, JAMAL ABDELNOUR,
MARIANA ABDELNOUR, JING TUN, CHONG TUN,
HAROLD KIM, JESSICA ROSENRAICH, DARREN
JACKSON, CHOY CHEUNG, MARIE HELENE ATTWOOD

INDEX NO. 652840/2013
MOTION DATE 07/25/2019
MOTION SEQ. NO. 005

Plaintiff,

- v -

KATHERINE CHOU, ROBERT CHOU, CHOU
MANAGEMENT CO. INC., SEAN LEFKOVITS, MAURA
BURK, ALIA AVIDAN, EURUM HASNAIN, JEISOHN FIALA,
CLAUDIA RICCIARDI, RAPHAELLA RICCIARDI, BOARD
OF MANGERS OF EMPIRE CONDOMINIUM, RITA CHOU,
IRENE TAM, YUH CHEN, JEISOHN FIALA, JOHN AND
JANE DOE 1 - 5,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 145, 146, 147, 148,
149, 150, 152, 153, 154, 155, 156, 157

were read on this motion for RECOVERY OF INTERPRETER FEES.

Upon the foregoing documents

Plaintiffs seek an Order awarding it costs expended to cover interpreter fees at
the deposition of defendants Katherine and Robert Chou. Defendants oppose this
motion. For the following reasons, Plaintiffs' motion is denied.

CPLR §3114 states: "If the witness to be examined does not understand the
English language, the examining party must, at his own expense, provide a translation
of all questions and answers.". CPLR §3116 directs that the examining party bear the
expenses of a deposition.

Plaintiffs argue that they should not be required to pay for the interpreter because, they assert, the interpreter was not necessary. They state that Katherine Chou was able to answer two dozen questions in English and that Robert Chou attends board meetings for Empire Condominiums that are conducted in both English and Mandarin. From this, they draw the conclusion that Defendants are able to speak English and therefore did not require an interpreter. To support their position, Plaintiffs cite to *Born to Build LLC v. Saleh*, 2014 WL 1492130 (Sup. Ct., Nassau Co. 2014).

In *Born to Build*, the deposing party successfully argued that the deponent was fully able to speak and understand English and, thus, an interpreter was unnecessary. In that case, the witness had previously testified before the court at a traverse hearing without the aid of an interpreter. Based on that testimony, the court believed it was in a position to conclude that the witness had sufficient command of the English language to be deposed alone. Therefore, the court shifted the burden of paying the costs of the interpreter from the plaintiff to the defendant under its protective order powers. See CPLR §3103(a).

Even assuming *Born to Build* was decided correctly (which is not clear), in this case the Court is not in a position to make an independent finding as to whether Defendants are sufficiently fluent in English that it would be unreasonable for them to have an interpreter to provide comfort that they were not misconstruing a question or not conveying accurately their intended responses to questions.

Here, Defendants offer the affidavit of Rita Chou, who is the daughter of Katherine and Robert Chou, to oppose Plaintiffs motion. (NYSCEF 153). Rita Chou explains that her parents, who were born in China, are conversational in English but do

not have a high level of fluency in the language. (*Id* ¶5) She further attests that to ensure that Defendants understand and accurately respond to nuanced deposition questions over the course of several hours, they require the use of a translator. *Id.* She also confirms that the Empire Condominium board meetings are conducted in both Mandarin and English and that she has personally attended each board meeting and often translates and explains English statements that Robert and Katherine Chou did not understand. *Id* ¶6.

This Court, having no independent basis to conclude there was not a legitimate need for Katherine and Robert Chou to use interpreters and the CPLR being quite clear that the expenses associated with taking a deposition are to be borne by the party taking the deposition, finds that the Plaintiffs have not made a sufficient showing of entitlement to shifting its burden of paying for the interpreter.

Therefore, it is:

ORDERED that Plaintiffs' motion to shift the burden to Defendants Katherine and Robert Chou for paying for interpreter fees is denied.

This constitutes the Decision and Order of the Court.

8/8/2019
DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE