

Sentry At QB, LLC v Xi Hui Wu
2019 NY Slip Op 35263(U)
August 21, 2019
Supreme Court, Queens County
Docket Number: Index No. 701659/2019
Judge: Robert J. McDonald
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

SENTRY AT QB, LLC, SENTRY OPERATING
CORP., DING KWONG WAI /k/a JOHN WAI
and BENJAMIN WAI,

Index No.: 701659/2019

Motion Date: 8/15/19

Plaintiffs,

Motion No.:

- against -

Motion Seq.: 6

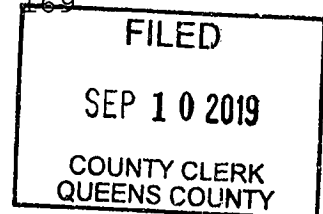
XI HUI WU a/k/a STEVEN WU, CHUN PETER
DONG, 9008 QUEENS BLVD LOFT LLC, SUM
TSANG CHENG, WING FUNG CHAU, WING FUNG
HOME REALTY GROUP, INC., HOK KWAI
CHAU, WAN BIN LU, XUI QIN LIN, and
CHOI YIM CHI,

Defendants.

The following electronically filed documents read on this Order
to Show Cause by plaintiffs for an Order pursuant to CPLR 3101
and 3124, entering the ESI Protocol annexed as Exhibit 1;
directing defendants Xi Hui Wu a/k/a Steven Wu, Chun Peter Dong,
and 9008 Queens Blvd Loft LLC (the Seller Defendants) to produce
documents responsive to Request Nos. 10, 13, 22, 23, 24, 28, 29,
32, 33 and 35 of plaintiffs' First Request for Production of
Documents to the Seller Defendants dated May 16, 2019, in
accordance with the ESI Protocol; and directing defendant TCJ
Construction Inc. (TCJ) to produce documents responsive to
Request Nos. 9, 12, 21, 22, 23, 26, 29, 31 of plaintiffs' First
Request for Production of Documents to TCJ dated May 16, 2019, in
accordance with the ESI Protocol:

Papers
Numbered:

- Order to Show Cause-Affidavits-Exhibits-
Memo. of Law.....EF 118 - 156
The Assignee Defendants' Affirmation in Opposition-
Exhibits.....EF 167 - 168
The Seller Defendants and TCJ Construction's Memo.
of Law in Opposition.....EF 169



As is relevant here, plaintiffs proposed a Protocol to govern the parties' production of all electronically stored information (ESI). Plaintiffs contend that virtually all of the documents that the parties exchange will be ESI, primarily emails and text messages. Counsel argues that the production of the documents as PDFs without meta data will deprive plaintiffs of relevant information, is improper, and will require plaintiffs to incur additional costs of review and organization. Counsel contends, therefore, that the production of ESI in the format proposed ensures that the parties will be able to meaningfully analyze, search, and display the produced electronic data.

While the Seller Defendants and TCJ have agreed to produce hard copies of the relevant documents requested, subject to their reasonable objections, and the Assignee Defendants have agreed to produce relevant ESI documents in searchable PDF format, all defendants have opposed the use of plaintiffs' proposed ESI Protocol on the grounds that it is unreasonable and costly.

CPLR 3122(c) merely requires documents to be produced "as they are kept in the regular course of business". As the parties are not in agreement with the use of plaintiffs' proposed ESI Protocol, this Court will not compel the use of such. Moreover, this Court notes that plaintiffs have not demonstrated a need, other than the need for convenience, for the production of all ESI in the format provided for by their proposed Protocol.

Turning to that branch of the application seeking an Order compelling production of documents concerning the renovation of the premises, plaintiffs have withdrawn Seller Request No. 33 and TCJ Request No. 29, and Seller Defendants and TCJ have withdrawn their objection to Seller Request No. 35 and TCJ Request No. 31.

Seller Request No. 10 and TCJ Request No. 9 seek all documents concerning the costs to renovate or convert the premises from the time it was acquired by 9008 Queens on the grounds that it may show whether defendants' statements to plaintiffs were truthful and/or whether they had knowledge of the alleged defective workmanship at the premises. The Seller Defendants and TCJ do not object to providing work records regarding the work performed at the property, but do object to documents concerning the costs on the grounds that the request is not relevant to any of plaintiffs' claims. This Court finds that the documents sought pursuant to these requests are relevant and material to whether the Seller Defendants and TCJ misrepresented the state of the outstanding construction work.

Seller Request No. 13 and TCJ Request No. 12 seek all documents and communications with the Department of Buildings or any other government agency concerning the premises, including permits, filings, stop work orders, ECB violations, schedules, TCOs or COs on the grounds that such documents are relevant to plaintiffs' tortious interference with prospective economic advantage and fraud claims. The Seller Defendants and TCJ object on the grounds that the request is overbroad and not necessary and material to the establishment of plaintiffs' claims. This Court finds that the documents sought are relevant to plaintiffs' tortious interference with prospective advantage, fraud, and breach of contract claims. However, as plaintiffs' claims are directed at the state of construction at the Premises at the time of negotiations between the parties for the Contract of Sale, in March 2016, the demand must be limited in time from March 2016 to present.

Plaintiffs also seek documents related to the Seller Defendants and TCJ's financial records, Seller Requests Nos. 22-24 and TCJ Requests Nos. 21-23, on the grounds that Wu, Dong, and TCJ Construction are alter egos of 9008 Queens. As a motion to dismiss the alter ego claims is currently pending, discovery pertaining to these financial records shall be held in abeyance pending a determination of the motion to dismiss (see Barkley v Olympia Mtge. Co., 2007 WL 9719171, *1 [EDNY 2007]).

Lastly, plaintiffs seek all documents and communications concerning agreements by any of the Seller Defendants to pay or share with any other person from proceeds of a transaction involving the Premises, including any sale or refinancing of the Premises, Seller Request No. 28, all documents and communications with Chaim Miller, Chaim Babad, Tu Kang Yang and Yun Zhu Yang concerning the Premises, Seller Request No. 29 and TCJ Request No. 26, and all documents and communications concerning a lease with Amy Cao, Queens Pointe Talent, Inc. or any Affiliate of Amy Cao for a portion of the Premises to operate a daycare center, Seller Request No. 32. In opposition, the Seller Defendants withdrew their objection to these requests and agreed to provide the requested documentation to the extent within their possession.

Accordingly, and based on the above, it is hereby

ORDERED, that the branch of plaintiffs' application seeking an Order entering the ESI Protocol is denied; and it is further

ORDERED, that the branch of plaintiffs' application seeking an Order compelling the Seller defendants and TCJ to produce

documents responsive to the Seller Requests and TCJ Requests, is denied as moot as to Seller Request Nos. 28, 29, 32, 33, and 35 of plaintiffs' First Request for Production of Documents to the Seller Defendants dated May 16, 2019, and as to TCJ Requests Nos. 26, 29 and 31 of plaintiffs' First Request for Production of Documents to TCJ Construction dated May 16, 2019; and it is further

ORDERED, that the branch of plaintiffs' application seeking an Order compelling the Seller defendants and TCJ to produce documents responsive to Seller Request Nos. 22-24 and TCJ Request Nos. 21-23 is denied at this time with leave to renew, if necessary, after the motion to dismiss is decided; and it is further

ORDERED, that the branch of plaintiffs' application seeking an Order compelling the Seller defendants and TCJ to produce documents responsive to Seller Request No. 10 and TCJ Request No. 9 is granted and the Seller Defendants and TCJ shall produce documents responsive to such within twenty (20) days of the date this Order is filed; and it is further

ORDERED, that the branch of plaintiffs' application seeking an Order compelling the Seller defendants and TCJ to produce documents responsive to Seller Request No. 13 and TCJ Request No. 12 is granted only to the extent that the Seller Defendants and TCJ shall produce all documents and communications with the Department of Buildings or any other government agency concerning the premises, including permits, filings, stop work orders, ECB violations, schedules, TCOs or COs from March 2016, and the Seller Defendants and TCJ shall produce documents responsive to such within twenty (20) days of the date this Order is filed.

Dated: August 21, 2019
Long Island City, N.Y.



ROBERT J. MCDONALD
J.S.C.

FILED
SEP 10 2019
COUNTY CLERK
QUEENS COUNTY