

Moskowitz v Tory Burch LLC

2020 NY Slip Op 30059(U)

January 8, 2020

Supreme Court, New York County

Docket Number: 159599/2015

Judge: Robert R. Reed

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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. ROBERT R. REED PART 43

Justice

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HERBERT MOSKOWITZ D/B/A MANHATTAN REALTY
COMPANY,

Plaintiff,

INDEX NO. 159599/2015

MOTION DATE N/A

MOTION SEQ. NO. 008

- v -

TORY BURCH LLC, SKANSKA USA BUILDING
INC., THORNTON TOMASETTI, INC., LANGAN
ENGINEERING ENVIRONMENTAL SURVEYING &
LANDSCAPING ARCHITECTURE PPC., NEW YORK CITY
DEPARTMENT OF BUILDINGS,

Defendant.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 008) 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377

were read on this motion to QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents, it is ordered that this motion is granted.

Plaintiff commenced this action to recover damages allegedly incurred as a result of the pile drilling activities related to underpinning for the property immediately adjacent to plaintiff's property. Plaintiff now moves to quash defendants' subpoena to non-party Manhattan Realty Company 1 (MRC1). Plaintiff argues that the information sought in the subpoena is irrelevant to the dispute in this action, is overbroad and constitutes an invasion of privacy. In opposition, defendants argue that the information sought is narrow in scope, specific, and material and necessary to the litigation.

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. Accordingly, "an 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"

(*Anheuser-Busch, Inc. v. Abrams*, 71 NY2d 327). “The person seeking to quash the subpoena bears the burden of establishing that the requested documents and records are utterly irrelevant” (*Ledonne v. Orsid Realty Corp.*, 83 AD3d 598 citing *Velez v. Hunts Point Multi-Serv Ctr., Inc.*, 29 AD3d 104.) However, “the disclosure of tax returns is disfavored due to their confidential and private nature, requiring the party seeking disclosure of tax returns to make a strong showing of necessity and demonstrate that the information contained in the returns is unavailable from other sources” (*Weingarten v Braun*, 158 AD3d 519, citing *Williams v. New York City Hous. Auth.*, 22 AD3d 315).

In the matter at bar, plaintiff seeks to quash defendants’ subpoena sent to non-party MRC1. Defendants’ subpoena seeks plaintiff’s federal, New York State, and local tax filings from December 2016 -- the month and year plaintiff purportedly transferred possession and ownership of the subject property to MRC1 -- to present. Defendants argue that, through discovery provided by plaintiff, it is clear that the subject property was transferred to non-party MRC1, that it was MRC1 (and not plaintiff) which thereafter collected rents from the building’s apartments, that it was MRC1 (and not plaintiff) which paid the legal bills incurred in connection with the current action, and that it was MRC1 (and not plaintiff) which arranged and paid for elevator repairs at the subject property. Defendant argues that it is not irrelevant or unreasonable to inquire whether MRC1 deducted from its income earned as owner and landlord the costs of litigation and elevator repairs. Thus, if non-party MRC1 has accepted said expenses as its own and used them to gain an advantage by reducing its tax obligation in connection with the subject building’s rental income, defendants submit, that would eliminate any argument by plaintiff that these expenses constitute damages suffered by him individually. Moreover, defendants submit, such proofs would ultimately challenge plaintiff’s standing to prosecute this action.

In their pursuit of non-party MRC1's tax returns, defendants plausibly make a strong showing of necessity for said non-party's tax returns. The tax returns, indeed, could contradict plaintiff's standing and demonstrate that plaintiff is not the correct party to bring this action. Defendants, however, have made an insufficient showing, at this time, of their inability to procure the information they seek in the tax returns from other sources (*see Gordon v. Grossman*, 183 AD2d 669). "Even if the alternative methods attempted by parties seem burdensome compared to the release of the non-moving party's tax returns, no discovery is allowed 'absent showing an inability to obtain information from other sources'" (*Altidor v. State-Wide Ins. Co.*, 791 NY2d 867 citing *Penn New York Construction v. State of New York*, 92 AD2d 1086.) Defendants' affirmation in opposition is devoid of statements that discovery of MRC1's tax records is their sole means of obtaining the information they seek; indeed, defendants fail to mention whether they have even explored potential alternate methods for discovering this information, and, if so, what weaknesses such other devices present (*Penn York Construction*, 92 AD2d at 1087).

With respect to defendants' request for tax records, any new motion should set forth the particular areas of the non-party's tax records defendants believe would provide the relevant information they seek, so the court can properly limit the disclosure to avoid being unduly intrusive (*see Kornblatt v. Jaguar Cars, Inc.*, 172 AD2d 590; *see also Krauss v. Putterman*, 50 AD2d 599).

Accordingly, it is

ORDERED that plaintiff's motion to quash defendants' subpoena to non-party Manhattan Realty Company 1 is granted.

This constitutes the Decision and Order of the Court.

1/8/2020

DATE



ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE