

A. Michael Tyler Realty Corp. v 9 Barrow Owners Corp.

2020 NY Slip Op 31296(U)

May 5, 2020

Supreme Court, New York County

Docket Number: 651336/2018

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

-----X

A. MICHAEL TYLER REALTY CORP.,

Plaintiff,

- v -

9 BARROW OWNERS CORP., 9 BARROW
CONDOMINIUM

Defendants.

-----X

INDEX NO. 651336/2018

MOTION DATE 07/31/2019

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to QUASH SUBPOENA.

This case arises out of a dispute between Plaintiff A. Michael Tyler Realty Corp. (Plaintiff or AMT), a property management company, and Defendants 9 Barrow Owners Corp. and 9 Barrow Condominium (together, Defendants or 9 Barrow). Following this Court's Decision and Order dated December 6, 2018, granting in part 9 Barrow's motion to dismiss AMT's complaint, the sole remaining claim in this case is AMT's claim for breach of contract (NYSCEF 40). That claim asserts that AMT is entitled to receive commissions from 9 Barrow based on certain "Major Capital Improvement" (MCI) projects undertaken at the condominium building (*id.*). According to 9 Barrow, however, AMT was not hired to manage those projects. Rather, 9 Barrow says it hired Allen Ross Architecture ("Allen Ross") to perform that work, and therefore AMT cannot claim commissions for work Allen Ross performed (*see* NYSCEF 70). The parties then engaged in discovery on this narrowed dispute.¹

¹ In the December 6, 2018 Decision and Order, the Court dismissed AMT's claims for anticipatory breach of contract, unjust enrichment, and attorneys' fees (NYSCEF 40). The Court

In the course of discovery, AMT served a non-party subpoena duces tecum and ad testificandum on Allen Ross on July 2, 2019 (the Subpoena) (NYSCEF 52), and 9 Barrow now moves to quash the Subpoena. Mainly, 9 Barrow argues that the Subpoena is “unnecessary” and “abusive” because 9 Barrow has already provided documents and information from Allen Ross, which is 9 Barrow’s agent for the MCI projects (NYSCEF 70). In addition, 9 Barrow argues that the Subpoena is procedurally improper, duplicative of document requests served on 9 Barrow, and overbroad (*id.*).

9 Barrow’s motion to quash the subpoena addressed to Allen Ross is denied. However, Allen Ross need not respond to AMT’s discovery demands until (i) party discovery is substantially complete and (ii) AMT modifies the Subpoena to narrow the document demands, provide statutorily prescribed notice to a non-party, and set an appropriate deposition date. As written, the Subpoena comprises 39 separate document requests, covering an array of topics, and is disproportionate to the discrete issue remaining in this case (*see* NYSCEF 52; *Reuters Ltd. v Dow Jones Telerate, Inc.*, 231 AD2d 337, 344 [1st Dept 1997] [“[I]t is clear that everything sought must meet the relevancy standard and the subpoena must set forth what is sought with some degree of clarity.”] [quashing subpoena]). Moreover, the Subpoena lacks the notice required under CPLR § 3101(a)(4) (*see De Stafano v MT Health Clubs, Inc.*, 220 AD2d 331, 331 [1st Dept 1995] [“The subpoenas duces tecum with notice of deposition served on plaintiff’s health care providers were facially defective for failure to ‘stat [e] the circumstances or reasons such disclosure is sought or required’, as required by CPLR 3101(a)(4)”]). If AMT serves an

also dismissed a portion of AMT’s breach of contract claim, leaving only the claim for capital-improvement commissions (*id.*).

appropriate subpoena on Allen Ross at the appropriate time, counsel for Allen Ross must respond.

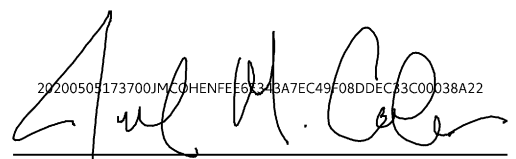
At this juncture, the parties disagree over whether Allen Ross is a non-party (AMT's view) or an agent of 9 Barrow (as 9 Barrow argues). That distinction, however, is beside the point. Either way, the CPLR requires "full disclosure of all matter material and necessary in the prosecution or defense of an action" by "a party, . . . [an] agent or employee of a party" or "any other person, upon notice stating the circumstances or reasons such disclosure is sought or required" (CPLR § 3101). Discovery from Allen Ross is "material and necessary" to the adjudication of AMT's contract claim, since 9 Barrow's defense to that claim rests largely on the role Allen Ross played with the MCI projects. So, to the extent 9 Barrow asserts that Allen Ross is its agent here, that means 9 Barrow is responsible for ensuring "full disclosure" of relevant documents belonging to Allen Ross. For any documents that 9 Barrow is producing to AMT, 9 Barrow should indicate the subset of those documents that were maintained by Allen Ross. Once 9 Barrow has substantially completed its document production – including the documents belonging to Allen Ross – AMT may propound narrowed document demands to Allen Ross in order to fill any perceived gaps in 9 Barrow's production.

Accordingly, it is:

ORDERED that Defendants' motion to quash is Denied subject to the conditions described herein.

This constitutes the Decision and Order of the Court.

5/5/2020
DATE


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JOEL M. COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	