

Stafford v A&E Real Estate Holdings, LLC
2020 NY Slip Op 33090(U)
September 18, 2020
Supreme Court, New York County
Docket Number: 655500/2016
Judge: Joel M. Cohen
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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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JOHN STAFFORD, TIMOTHY HICKERNELL, JEFFREY NATT, DANIEL FEYKA, JULIAN JONES, DONALD HALL, THOMAS HUNTER, SEUN OH, JANE KIM, DENISE STARAKIEWICZ, WOJTEK STARAKIEWICZ, RYAN KORELL, EMAN ASIRI, MOHAMMAD HAQUE, RYAN HALEY, MARISOL MARTINEZ, WINFIELD COOPER, MATTHEW SULLIVAN, ELISE CZAJKOWSKI, JOHN PETRALITO, ROYA BASSAM, MOLLY CROOG, SAM TANABE, JASON BAILEY, ALEXANDER RICHARDS, HAJERA DEHQANZADA, ALI ABIDI, DERIC MIZOKAMI, JOHN RIVERA, ALVIN REALUYO, FABIENNE FERREIRA, K.M.O. VERA, KRISTIN MYERS, JESSE NEIL, CRAIG NADEAU, ANNMARIE COLUCCI, ROSHEN CARMAN, ALVIN FERNANDEZ, MARGARET PLESS, JOSE CALVILLO, EMMANUELLA PAUL, JESUS RIOS, NINA CHIDICHIMO, NATALIE HIRSH, CRAIG CONNOLE, ALEXANDRIA KIRCHER, EARL BARRETT-HOLLAWAY, SANTA PENA, DONNA DEMPSEY, SERENA FORBES, SOPHIA GREER, RUXANDRA STANCU, LEAH MCKUNE, RASUEL MCKUNE, DAVID WARTH, MOHAMMAD UDDIN, ELI JAMES, RICHARD DURO, NICHOLAS NAVIGLIA, MONICA THORNE, VINCENT WALLGREN, EILEEN WALLGREN, JEANNINE FRUMESS, EVAN JACOBS, WILLIAM RIVERS, GRACE RIVERS, DANIEL REYES, OSCAR VALENCIA

INDEX NO. 655500/2016
MOTION DATE N/A, N/A
MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

Plaintiffs,

- v -

A&E REAL ESTATE HOLDINGS, LLC, A&E REAL ESTATE MANAGEMENT, LLC,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 004) 189, 190, 191, 192, 193, 194, 209, 211, 217, 218, 219, 220, 233

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 210, 212, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 241, 242, 243, 244, 245

were read on this motion to/for DISCOVERY

Upon the foregoing documents, and for the reasons stated on the record during a hearing on June 12, 2020 (NYSCEF 244), and for the reasons stated during a teleconference between the parties and the Court on September 16, 2020, it is:

ORDERED that the portion of Motion Sequence 005, that sought to compel Defendants to produce un-redacted copies of the previously produced DHCR Rent Rolls from 1984 to the present, for each building in the A&E Portfolio, is **granted** with respect to any building in which a named plaintiff resided or resides, and is otherwise **denied**, without prejudice with respect to any other building in the A&E Portfolio; with leave to renew following a decision on Plaintiffs' forthcoming CPLR Article 9 motion; it is further

ORDERED that the portion of Motion Sequence 005, that sought to compel Defendants to produce management agreements for each building in the A&E Portfolio, is **granted** with respect to any building in which a named plaintiff resided or resides, and is otherwise **denied**, without prejudice with respect to any other building in the A&E Portfolio; with leave to renew following a decision on Plaintiffs' forthcoming CPLR Article 9 motion; it is further

ORDERED that the portion of Motion Sequence 005, that sought to compel Defendants to produce due diligence materials, is **denied**, without prejudice, and with leave to renew following a decision on Plaintiffs' forthcoming CPLR Article 9 motion, except that Defendants shall produce a chart which, to the best of Defendants' knowledge, sets forth the owner of an apartment at the time the IAIs at issue were purportedly performed for each of the units occupied by the named Plaintiffs; it is further

ORDERED that the portion of Motion Sequence 004, that sought to compel Plaintiffs to produce income information with respect to any Plaintiff earning more than \$200,000.00 per year, is **denied**; it is further

ORDERED that the portion of Motion Sequence 004, that sought to compel Plaintiffs to produce evidence with respect to their primary residence, is **denied**; it is further

ORDERED that the portion of Motion Sequence 004 that sought to compel Plaintiffs to produce communications between Plaintiffs and a representative of Housing Rights Initiative (“HRI”) that have been withheld on grounds of attorney-client privilege is **granted**. The Court finds that communications with non-lawyers at HRI are not privileged. The Court further finds that communications with counsel that include HRI are not privileged because any such privilege was waived by sharing the communication with a non-lawyer third party.

In their brief in opposition to this portion of Motion Sequence 004, Plaintiffs took the position that “TO THE EXTENT THE COURT REQUIRES PRODUCTION OF THE HRI COMMUNICATIONS, THEY SHOULD BE SUBJECT TO AN IN-CAMERA REVIEW, PRIOR TO PRODUCTION.” (*see* NYSCEF 220, at 16 [all caps in original]). Plaintiffs further stated “[i]f there is any doubt that the HRI Communications are irrelevant, and/or are not subject to the attorney-client privilege, Plaintiffs’ counsel respectfully requests that the Court conduct an *in-camera* review to verify Plaintiffs’ assertions of relevance and privilege,” and that “[t]o order such production without such review, would be error.” (*id.*)

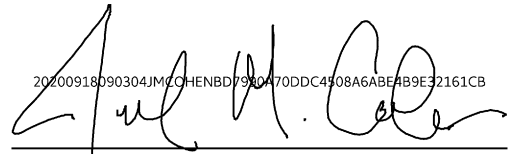
At oral argument, Plaintiffs’ counsel again appeared to welcome an *in camera* review (*see* NYSCEF 244 p. 26:22-23 [“And, your Honor, if you want them for an in-camera review, we are happy to show you that”]). During the course of the argument, the Court indicated its view that the HRI communications were not privileged, but agreed to undertake an *in camera* review of a sample of the 900 HRI documents, to be selected randomly by the parties. The Court asked the parties to settle an order setting forth, among other things, the process for selecting documents to be reviewed (*see id.* P. 46:17-19).

After oral argument, Plaintiffs changed their minds. In their version of a proposed order, Plaintiffs objected to an *in camera* review (which, again, they had *demand*ed in their opposition brief), and indicated an intention to appeal the Court’s “directive” to produce documents for such review. Plaintiffs indicated that they “intend to appeal the Court’s directive regarding the HRI materials,” and “have taken the position that the portion of the order requiring *in camera* production of the HRI materials should be stayed, pending an exhaustion of Plaintiffs’ appellate remedies.” (NYSCEF 241). In response, Defendants pointed out that Plaintiffs’ proposed approach “improperly gives Plaintiffs two opportunities to appeal the same issue; namely, whether the HRI Communications are privileged.” (NYSCEF 243).

During a September 16, 2020 conference call with counsel to discuss this issue, the Court observed that the request for an *in camera* review came *from Plaintiffs*, and that unless and until the Court issued an order compelling production of the HRI documents *to Defendants* (*i.e.*, the relief sought in the pending motion), there was nothing to appeal. Plaintiffs nevertheless persisted in their objection to the *in camera* review notwithstanding their previous argument that a failure to undertake such a review “would be error.”

Based on the foregoing, the Court concludes that Plaintiffs have waived their initial request to have the Court undertake an *in camera* review of individual documents and that they are instead standing upon the across-the-board argument that all of the withheld communications with non-lawyers at HRI are privileged. Because their submissions did not meet the burden of establishing that any or all of the HRI documents are privileged, the motion to compel production of those documents is **granted**.

This constitutes the decision and order of the Court.


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JOEL M. COHEN, J.S.C.

9/18/2020
DATE

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