

Gedula 26, LLC v Lightstone Acquisitions III LLC

2020 NY Slip Op 33601(U)

October 27, 2020

Supreme Court, New York County

Docket Number: 653977/2014

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
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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<p>GEDULA 26, LLC, 485 SHUR LLC, BSD 777-26 MANAGER LLC, BSD SHEVA MANAGER LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p>LIGHTSTONE ACQUISITIONS III LLC, 485 SEVENTH AVENUE ASSOCIATES LLC, THE LIGHTSTONE GROUP, LLC,</p> <p style="text-align: center;">Defendants.</p>	<p>INDEX NO. <u>653977/2014</u></p> <p>MOTION DATE <u>N/A, N/A</u></p> <p>MOTION SEQ. NO. <u>012 013</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 679, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 816, 817

were read on this motion to

COMPEL DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 013) 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 680, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 716, 717, 718, 719, 792

were read on this motion for

DAMAGES

Upon the foregoing documents, it is

ORDERED, that Plaintiffs' motion to compel the production of certain documents of Defendants (Motion Seq. 12), is resolved and withdrawn without prejudice on the condition that the parties hereby agree that Defendants will produce the following documents within 30 days after the entry of this Order:

- Defendants' general ledgers, income and expense statements and trial balances for the period from November 1, 2018 to present;
- Consolidated financial statements of 485 Seventh Avenue Associates LLC as of December 31, 2018 and December 31, 2019;
- Defendants' year end 2018, 2019 and most recent 2020 operating statements; and
- The most recent STAR report prepared and delivered to Moxy Hotel; and it is further

ORDERED, that Plaintiffs' motion to compel seeking the deposition of David Lichtenstein ("Lichtenstein"; Motion Seq. 12), is resolved and withdrawn without prejudice on the condition that Plaintiffs and Defendants hereby agree as follows:

1. Neither Plaintiffs nor Defendants will call Lichtenstein as a witness in their cases-in-chief at any trial, nor use his testimony or affidavit in support or opposition of a motion for summary judgment;
2. Notwithstanding the foregoing, Plaintiffs and Defendants shall not be precluded or limited from introducing, citing, referencing, or asserting any documents (including, without limitation, all ESI), testimony (other than Lichtenstein's), and/or other evidence attributing or referencing statements, acts, words, or facts relating to Lichtenstein (e.g., without limitation, references made to or about Lichtenstein in e-mails between and among Lightstone's representatives) in voir dire, arguments, support or defense of motions (e.g. for summary judgment), hearings, or a trial (generally, a "Motion or Trial"), so long as:
 - (a) the subject matter was referred to, mentioned, or reflected in any pleadings, oral arguments, filings, or document submissions (e.g., motions, affirmations, affidavits, memoranda of law, exhibits); discovery, including all productions, demands, responses, and depositions; or otherwise in this action (collectively, a "Disclosed Subject Matter"; hereafter, any subject matter outside the scope of "Disclosed Subject Matter" shall be referred to as a "Non-Disclosed Subject Matter"); and
 - (b) its use is not prohibited pursuant to the rules of evidence;
3. Plaintiffs shall not be precluded or limited from providing evidence or arguments opposing Defendants' position that Lichtenstein's knowledge is not relevant to this action or Defendants' defenses;
4. Defendants are not precluded from calling Lichtenstein as a witness in any Motion, Trial or other proceedings, or submitting an affidavit, in order to address any factual assertions made by Plaintiffs concerning a Non-Disclosed Subject Matter. Defendants shall not be permitted to provide any testimony by Lichtenstein (whether at trial,

- hearing, by affidavit or otherwise) in connection with any Non-Disclosed Subject Matter or Disclosed Subject Matter asserted or elicited by Defendants if not initially raised or asserted by Plaintiffs; and
5. In the event either party determines that Lichtenstein's testimony was or is not immaterial or irrelevant to Plaintiffs' case-in-chief or Defendants' defenses, either party shall have the right to seek appropriate relief by motion on notice or by Order to Show Cause, including, without limitation, an examination of Lichtenstein before trial or the submission of testimony by Lichtenstein (after an examination of Lichtenstein before trial has been conducted) concerning a Disclosed Subject Matter or a Non-Disclosed Subject Matter, and the non-moving parties reserve all rights and objections to any such motion; and it is further

ORDERED that part of Plaintiffs' motion to compel (Motion Seq. 12) seeking to strike requests 5 through 27 in Defendants' Notice to Admit is denied without prejudice; and it is further

ORDERED that Defendants' cross-motion to renew their motion to dismiss the complaint (Motion Seq. 12), and, upon renewal, to dismiss the Complaint, is denied; and it is further

ORDERED Defendants' motion for an order as to damages (Motion Seq. 13) is withdrawn, without prejudice, as the Court will defer ruling on such motion and decide the issues raised in such motion in conjunction with the parties' motions for summary judgment (as further set forth below); and it is further

ORDERED that with respect to that part of Defendants' motion for an order as to damages (Motion Seq. 13) by which Defendants seek to compel Plaintiffs to provide discovery, it is hereby resolved and withdrawn without prejudice on the condition that Plaintiffs will produce the following documents within 30 days after the entry of this Order, to the extent not already produced in this action:

documents relating to any alternate use of funds that were available to Plaintiffs at relevant times and could have been available to acquire the new property owner's LLC interest

pursuant to the alleged agreement (as set forth in the second cause of action in the Amended Complaint) from the period November 20, 2014 to March 31, 2016; and it is further

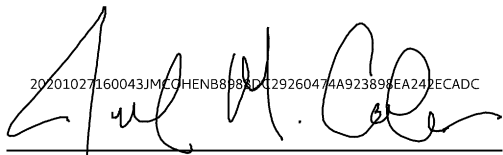
ORDERED that with respect to Plaintiffs’ motion to amend the Complaint (Motion Seq. 15), which was granted by Decision and Order dated and entered on March 5, 2020, Defendants may conduct a limited deposition of Abraham Talassazan concerning issues relating solely to the allegations set forth at Paragraphs 69 (a) through (e) of Plaintiffs’ amended complaint, on October 29, 2020, commencing at 2:00 p.m., not to exceed two (2) hours, and shall be conducted remotely, to the extent requested by Plaintiffs, at Defendants’ sole cost and expense; and it is further

ORDERED that discovery will be completed not later than 30 days after the entry of this Order, and that Plaintiffs are directed to file the Note of Issue not later than 40 days after the entry of this Order; and it is further

ORDERED that motions for summary judgment are to be filed on or before December 15, 2020 (made returnable on February 12, 2021), with opposition papers due on or before January 20, 2020, and reply papers due on or before, February 11, 2021.

This constitutes the decision and order of the Court.

10/27/2020
DATE

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JOEL M. COHEN, J.S.C.

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