

96 Springs, LLC v Chefs Club NY, Inc.
2022 NY Slip Op 30284(U)
January 27, 2022
Supreme Court, New York County
Docket Number: Index No. 654445/2020
Judge: Frank P. Nervo
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANK NERVO PART 04

Justice

-----X

96 SPRINGS, LLC

Plaintiff,

- v -

CHEFS CLUB NY, INC.,

Defendant.

-----X

INDEX NO. 654445/2020

MOTION DATE 07/09/2021, 09/10/2021, 11/11/2021

MOTION SEQ. NO. 002 003 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 69, 70, 71, 72 were read on this motion to/for EXTEND - TIME

The following e-filed documents, listed by NYSCEF document number (Motion 004) 73, 74, 75, 76, 77 were read on this motion to/for AMEND CAPTION/PLEADINGS

This matter was transferred to Part IV.

In these motions, plaintiff seeks an order compelling defendant to produce a designee for deposition (mot. seq. 002), to extend time to file the note of issue (mot. seq. 003), and to amend the complaint following the reletting of the instant premises (mot. seq. 004). Motion sequences 003 and 004 are unopposed. However, defendant opposes motion sequence 002, and cross-

moves to compel plaintiff produce records related to the calculation of damages and defendant's security deposit.

CPLR § 3101(a) directs that there "shall be full disclosure of all matter material and necessary to the prosecution or defense of an action, regardless of the burden of proof" (*Forman v. Henkin*, 30 NY3d 656, 661 [2018]). The test utilized is "one of usefulness and reason" (*id.*).

Here, the instant motion practice is necessitated, in part, by the parties' determination to wait until the eve of discovery deadlines to serve demands. The Court, prior to the transfer of this matter to Part IV, directed that depositions be completed by June 4, 2021 (*see* Preliminary Conference Order). On June 2, 2021, two days before the deadline to complete depositions, plaintiff served defendant with a notice of deposition.

In this commercial real-estate matter, defendant seeks discovery related to: plaintiff's attempts to re-lease the premises, communications between defendant and plaintiff including those regarding defendant's obligations under the lease, documents reflecting value of furniture/fixtures left by defendant at the premises, defendant's security deposit, and calculation/basis for damages

alleged by plaintiff. The material sought by defendant clearly relates to the claims at issue, to wit, the alleged breach of a commercial lease and damages stemming therefrom.

Likewise, the deposition of defendant is necessary to these same claims. Notwithstanding, the Court's patience is not unlimited, and further delays in completing depositions and discovery in this routine contract action will not be abided, absent extraordinary circumstances as found by the Court.

Accordingly, it is

ORDERED that plaintiff shall provide defendant with documents/material in defendant's "Request No. 2, 4, 5, 6, 7, and 8" (NYSCEF Doc. No. 55 p. 10 of 16) on or before February 18, 2022. To the extent that plaintiff is not in possession of such material plaintiff shall serve a *Jackson* affidavit so stating by the deadline above; and it is further

ORDERED that defendant shall produce a witness with knowledge of the facts underlying plaintiff's claims for deposition, either in-person or via electronic means, on March 10, 2022 beginning at 10:00am and continuing until completion, in accordance with the Uniform Rules. The deposition shall not be

adjourned or otherwise rescheduled absent Court Order. The failure to produce a witness for deposition shall result in the striking of defendant's answer and cross-claims; the failure to hold the deposition at the date and time above shall constitute waiver of same; and it is further

ORDERED that post-deposition demands shall be served within 20 days of deposition date or shall be deemed waived; responses thereto shall be served within 20 days of receipt of demand. Failure to timely serve responses to timely post-deposition demands shall result in sanctions, in the Court's discretion, including but not limited to the striking of pleadings; and it is further

ORDERED that the plaintiff's motion for leave to amend the complaint herein is granted without opposition, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that the defendant shall serve an answer to the amended complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that the motion to extend the note of issue deadline is granted without opposition, and the deadline is extended to August 5, 2022; and it is further

ORDERED that failure to timely file the note of issue, or seek extension of same by application in accordance with the Part Rules, may result in sanctions, including striking of pleadings, in the Court’s discretion; and it is further

ORDERED that the parties are reminded of the Part Rules, available on the Court’s website, including those requiring extension of the note of issue by motion or order to show cause, returnable prior to the deadline date, and those prohibiting post-note discovery.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

1/27/2022
DATE


FRANK NERVO, J.S.C.

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"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE