

**Creif Lender LLC v Lucky of 195 Madison St.
Roofing & Contr. Inc.**

2022 NY Slip Op 30383(U)

January 20, 2022

Supreme Court, New York County

Docket Number: Index No. 850028/2018

Judge: Arlene P. Bluth

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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. ARLENE BLUTH PART 14

Justice

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INDEX NO. 850028/2018

CREIF LENDER LLC, AS ASSIGNEE OF CREIF 109, LLC,

MOTION DATE 01/19/2022

Plaintiff,

MOTION SEQ. NO. 005

- v -

LUCKY OF 195 MADISON STREET ROOFING &
CONTRACTING INC., ALLAN STEVE, SRUN TAING,
BANCO POPULAR NORTH AMERICA, THE PEOPLE OF
THE STATE OF NEW YORK, NEW YORK STATE
DEPARTMENT OF TAXATION AND FINANCE, JOHN DOE,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203

were read on this motion to/for DISCOVERY.

The motion by defendant Lucky of 195 Madison Street Roofing & Contracting, Inc. (“Lucky”) to compel plaintiff to supplement its responses to defendant’s first set of interrogatories and first request for production of documents is granted in part and denied in part.

Background

In this foreclosure action, plaintiff claims that Lucky stopped making mortgage payments and seeks to recover on this unpaid loan. Lucky argues that it is the victim of a massive fraud and it did not knowingly intend to enter into the loans upon which plaintiff brought this suit.

Lucky brings this discovery motion and complains about various responses from plaintiff. It insists that plaintiff’s response to interrogatories 1 and 2 only included vague descriptions of

the expected substance of witness' knowledge and did not disclose several witnesses that have relevant knowledge. Lucky also questions why plaintiff did not include details about these witnesses such as their addresses or titles at the time of the foreclosure transaction. Lucky also demands that plaintiff supplement responses about its due diligence procedures—which Lucky claims is a key part of the case because Lucky argues plaintiff should never have approved the subject mortgage.

With respect to the document demands, Lucky argues that plaintiff produced 6,000 documents without any organization whatsoever and that it failed to produce documents in response to certain categories. Lucky insists plaintiff did not produce tax returns despite plaintiff admitting that it reviews tax returns in response to interrogatory 17 (as part of the mortgage process). Lucky demands that plaintiff produce documents about other loans, notes mortgage or other transactions between plaintiff and either Lucky or Lyndon Chin (the person who allegedly entered into the subject loan without permission).

Also at issue are requests 26-27, which seeks plaintiff's due diligence information and requests 37 and 38 (concerns plaintiff's formation and structure).

In opposition, plaintiff emphasizes that it responded to Lucky's document demands and interrogatories. Plaintiff insists it has no further documents to produce. It also argues that the interrogatories at issue are beyond the scope of what is permissible. Plaintiff maintains that its policies for entering into mortgages, if such exist, are not relevant because negligence is not an issue in this case. Plaintiff argues that it did include a due diligence checklist and that its document demand responses were proper.

In reply, Lucky insists that plaintiff should be directed to supplement its interrogatory responses and the document demand responses. It also complains about plaintiff's late opposition and the parties' disagreements about a possible adjournment.

Discussion

As an initial matter, the Court will consider this motion on the merits. The parties have filed opposition and reply papers; that the parties want to play games concerning an adjournment is not this Court's concern given that this motion is fully briefed.

With respect to the interrogatories, the Court finds that plaintiff must supplement its responses for number 4, 5 and 18. Plaintiff's defense—that a Commercial Division rule about the scope of interrogatories applies here—is without merit. That rule does not apply to all trial courts and is therefore not a defense to responding.

Plaintiff's other objection, that it need not produce any policies about entering into mortgages, is ludicrous. This entire case comes down to whether plaintiff was justified in entering into the subject mortgage. Despite Lucky's constant assertions that this case is fraudulent because an unauthorized person entered into the mortgage, that argument does not end the matter. A key component of whether plaintiff will ultimately be able to recover is whether it did the proper due diligence and how it evaluated the authority of person who signed the mortgage papers on behalf of Lucky. Plaintiff's policies concerning how it considers mortgage applications are clearly relevant. According to plaintiff this relates to interrogatories 4, 5, and 18 and so plaintiff must supplement these responses by February 4, 2022.

The Court also finds that the responses to interrogatories 1 and 2 are sufficient. The potential witnesses are identified along with contact information. Certainly, plaintiff could have

provided a bit more of a description about the exact knowledge of each witness but that is not the point of an interrogatory. Plaintiff need not prepare a witness statement about what this witness might say in response to an interrogatory. Lucky can seek to depose these witnesses if it desires.

The Court also finds that plaintiff properly responded to interrogatories 6 and 7 by attaching a due diligence checklist. That satisfies the spirit of this question- the template that plaintiff uses to evaluate mortgage applications.

With respect to the document demands, the Court finds as follows: plaintiff has until February 4, 2022 to produce all relevant documents. Any documents not produced by this date cannot be used at trial or in any subsequent motions. Plaintiff argues it has no more relevant documents and so this is plaintiff's last chance to turn over any other documents it might find. Of course, if it turns out plaintiff has withheld certain documents, the Court will entertain motions for appropriate sanctions. However, the Court emphasizes that it cannot order plaintiff to produce documents a party contends it does not possess.

The Court also declines to tell plaintiff to produce documents in a certain way. While it may be courteous to produce documents in an organized fashion, there is no rule that plaintiff must produce documents for Lucky's optimum convenience.

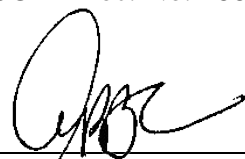
Accordingly, it is hereby

ORDERED that the motion by defendant Lucky of 195 Madison Street Roofing & Contracting Inc. is granted only to the extent that plaintiff must provide supplemental responses to interrogatories 4, 5 and 18 on or before February 4, 2022 and denied to the extent it seeks additional supplemental responses to other interrogatories; and it is further

ORDERED that plaintiff has until February 4, 2022 to produce any additional relevant documents and that any documents not produced by this date cannot be used in this case, either at trial or in subsequent motions.

Remote Conference: February 7, 2022 at 11:30 a.m. (NYSCEF Doc. No. 188).

1/20/2022
DATE


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