

Chen Dongwu v New York City Regional Ctr. LLC

2022 NY Slip Op 31325(U)

April 21, 2022

Supreme Court, New York County

Docket Number: Index No. 652024/2017

Judge: Robert R. Reed

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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. ROBERT REED PART **43**

Justice

-----X INDEX NO. 652024/2017

CHEN DONGWU, *et al.*,

Plaintiffs,

11/17/2021,
MOTION DATE 01/04/2022

- v -

MOTION SEQ. NO. 007 008

NEW YORK CITY REGIONAL CENTER LLC, GEORGE
OLSEN, PAUL LEVINSOHN, THE NEW YORK CITY EAST
RIVER WATERFRONT DEVELOPMENT FUND, LLC,

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 357

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 358, 359, 360, 361, 362, 363, 364

were read on this motion to/for DISCOVERY

ROBERT R. REED, J.:

This is an action arising out of the participation of 136 Chinese nationals (“plaintiffs”) in an EB-5 Immigrant Investor Program. The action was filed by each national in his or her individual capacity, to recover damages purportedly sustained as a result of an investment made in support of I-526 and I-829 immigration applications. Defendants New York City Regional Center LLC, George Olsen and Paul Levinsohn managed the development fund that received the plaintiffs’ investments.

Defendants move pursuant to CPLR 3101(a) and CPLR 3124 to compel plaintiff to produce the remaining eighty-three (83) plaintiffs for a deposition. In response, plaintiff moved for a protective order pursuant to CPLR 3103(a) to strike the defendants' notices of deposition and preclude the defendants from requesting the deposition of any additional plaintiffs.

DISCUSSION

CPLR 3101 (a) provides, in pertinent part, that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” “The words, ‘material and necessary,’ are . . . to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; see *Forman v Henkin*, 30 NY3d 656, 661 [2018]; *Asphalt Maintenance Servs. Corp. v Oneil*, 174 AD3d 562 [2019]; *Cajamarca v Osatuk*, 163 AD3d 619, 620 [2018]).

“However, the principle of ‘full disclosure’ does not give a party the right to uncontrolled and unfettered disclosure” (*McAlwee v Westchester Health Assoc., PLLC*, 163 AD3d 547, 548 [2018]; see *Ramirez v New York City Tr. Auth.*, 132 AD3d 653, 654 [2015]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531, 531 [2007]). “The supervision of disclosure and the setting of reasonable terms and conditions therefor rests within the sound discretion of the trial court, and absent an improvident exercise of that discretion, its determination will not be disturbed” (*Berkowitz v 29 Woodmere Blvd. Owners', Inc.*, 135 AD3d 798, 799 [2016], quoting *Mattocks v White Motor Corp.*, 258 AD2d 628, 629 [1999]).

Pursuant to CPLR 3101(a), the plaintiffs are obligated to appear and provide testimony after receipt of a proper notice of deposition. The plaintiffs in this action have appeared

individually and bring suit in their individual capacities against the defendants for claims sounding in fraud and breach of fiduciary duties. Defendants may demand the deposition upon oral questions of each plaintiff individually, notwithstanding the plaintiffs' residency (*Schoen v. Morgan Trucking Co.*, 13 AD2d 622 [1st Dept 1961]; *Wygocki v. Milford Plaza Hotel*, 38 AD3d 237 [1st Dept 2007]) and irrespective of the number of plaintiffs who commenced suit.

The cases cited by the plaintiffs in opposition to defendants' motion and in support of their motion for a protective order, apply to collective class-action suits. This is not a class action case. The Court does not find the cited caselaw persuasive as they do not involve cases brought by multiple plaintiffs in their individual capacity (*see Ackerman v. Price Waterhouse*, 252 AD2d 179 [1st Dept 1998][Plaintiffs sought review of the New York County Supreme Court decision denying them class action certification]; *Stellema v. Vantage Press, Inc.*, 109 AD2d 423 [1st Dept 1985][The Court modified a lower court ruling regarding who may be included in a class action certification]; *King v. Club Med, Inc.*, 76 AD2d 123 [1st Dept 1980][Appellant-Defendant challenged a New York County Supreme Court decision granting a motion for class action certification]).

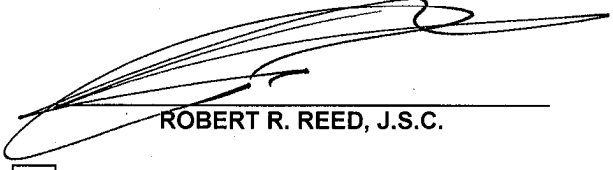
Accordingly, it is hereby

ORDERED that defendants' motion to compel (mot. seq. 007) the deposition of the remaining eighty-three (83) un-deposed plaintiffs is granted. It is further

ORDERED that the plaintiffs who have not appeared for a deposition shall, upon proper notice, appear in person for a deposition in New York at a mutually agreeable time and place, or appear remotely for a virtual deposition. It is further

ORDERED that plaintiffs' motion for a protective order (mot. seq. 008) is denied.

04/21/2022
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE