

Stafford v A&E Real Estate Holdings, LLC
2022 NY Slip Op 32131(U)
July 6, 2022
Supreme Court, New York County
Docket Number: Index No. 655500/2016
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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JOHN STAFFORD, TIMOTHY HICKERNELL, JEFFREY
NATT, DANIEL FEYKA, JULIAN JONES, DONALD G.
HALL, THOMAS HUNTER, SEUN JAE OH, JANE KIM,
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COOPER, MATTHEW SULLIVAN, ELISE CZAJKOWSKI,
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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 O'REILLY 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 SIERRA RIVERS, DANIEL REYES,
OSCAR VALENCIA,

Plaintiffs,

- v -

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

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 008) 282, 283, 284, 285,
286, 287, 288, 289, 290, 291, 292, 293, 294, 295

were read on this motion to COMPEL COMPLIANCE WITH SUBPOENAS.

Defendants A&E Real Estate Holdings, LLC and A&E Real Estate Management, LLC

(“Defendants”) move to compel non-parties Alba Stone Works, Inc., Gold & Reiss Kitchen and

Bath Center, Corp., D&R Marble & Granite, Inc., Freedom Marble & Granite LLC, Kitchen World Corp., and Nikqi GC, Inc. (the “Non-Parties”) to comply with subpoenas *duces tecum* (“Subpoenas”) issued to them by Defendants and for related relief. No opposition has been filed by the Non-Parties or any party. For the following reasons, the motion is GRANTED to the extent the Non-Parties are directed to comply with the Subpoenas and the motion is otherwise DENIED without prejudice.

BACKGROUND

This is a putative class action in which Plaintiffs allege that Defendants charged rents in excess of what is legally permissible. (NYSCEF 170 [First Amended Class Action Complaint]). The Court has previously resolved multiple discovery disputes between the parties. (*Stafford v A&E Real Estate Holdings, LLC*, 2020 N.Y. Slip Op. 33090[U], 1 [N.Y. Sup Ct, New York County 2020], *affd*, 192 AD3d 648, 648 [1st Dept 2021]).

Non-Parties allegedly completed “individual apartment improvements” or “IAI’s” on certain units relevant to this litigation that Defendants contend may justify rental increases. (NYSCEF 283 [Defendants’ Moving Brief at 1]). Defendants’ motion is supported by documents indicating that the Non-Parties completed work at Defendants’ properties. (NYSCEF 285-290 [Bernard Affirmation Exs. A-F]). Defendants have also submitted copies of the Subpoenas (NYSCEF 291 [Bernard Aff. Ex. G]), affidavits of personal service on each of the Non-Parties (NYSCEF 292 [Bernard Aff. Ex. H]) and correspondence indicating Defendants’ multiple efforts to have Non-Parties voluntarily comply with the Subpoenas (NYSCEF 293-294 [Bernad Aff. Exs. I-J]). Defendants filed an Affidavit of Service indicating that they served their motion on Non-Parties by FedEx. (NYSCEF 295).

DISCUSSION

Where a nonparty fails to comply with a subpoena, a party may move under CPLR § 3124 to compel compliance. (*Douglas Elliman, LLC v TWP Real Estate, LLC*, 189 AD3d 614, 614 [1st Dept 2020]; *Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 110 [1st Dept 2006]). Defendants' motion is sufficient to show that the Subpoenas seek relevant information and that Non-Parties have not responded despite Defendants' efforts to obtain compliance. Accordingly, the Defendants' motion seeking to compel responses to the Subpoenas is GRANTED. Those branches of Defendants' motion made pursuant to CPLR § 2308 for statutory penalties and Judiciary Law § 773 for costs and expenses including attorney' fees are DENIED without prejudice to renewal should the Non-Parties fail to comply with this order within twenty (20) days of service with notice of entry upon them. (*Nat. Ass'n of Water Companies v CKR Law, LLP* [N.Y. Sup Ct, New York County 2022]).

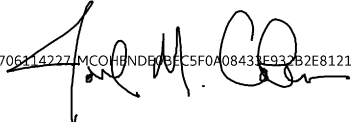
* * * *

Accordingly, it is

ORDERED that Plaintiff's motion to compel Non-Parties' compliance with the Subpoenas is GRANTED to the extent of compelling compliance and otherwise DENIED without prejudice and it is further

ORDERED that Non-Parties shall comply with the Subpoenas within twenty (20) days of the service of a copy of this Decision & Order with notice of entry upon them.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/6/2022
DATE

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
 REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: