

37 W. 46th St. Realty Corp. v KS Homes NY Inc.

2022 NY Slip Op 32385(U)

July 20, 2022

Supreme Court, New York County

Docket Number: Index No. 656254/2020

Judge: Arlene 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

-----X

37 WEST 46TH STREET REALTY CORP.,

Plaintiff,

- v -

KS HOMES NY INC., KEWON SONG,

Defendant.

-----X

KS HOMES NY INC., KEWON SONG aka KAY SONG,

Plaintiff,

-against-

PAULA BOKSIL LEE, aka BOKSIL P. LEE, JOSEPH LEE

Defendant.

-----X

INDEX NO. 656254/2020

MOTION DATE 07/14/2022

MOTION SEQ. NO. 002 003

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 596022/2020

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 65, 66, 67, 68, 69, 70

were read on this motion to/for EXTEND - TIME.

Motion Sequence numbers 002 and 003 are consolidated for disposition. The motion (MS002) by defendants to compel plaintiff to comply with outstanding discovery is decided as described below. The motion (MS003) by plaintiff to extend its time to file a note of issue is granted.

Background

This dispute concerns alleged tortious acts committed by defendants during the sale of a mixed-use property owned by plaintiff. Plaintiff contends that defendants agreed to act as

plaintiff's broker but did not have the experience or competence to do the job. It claims defendants did not effectively represent plaintiff's interests.

In this motion, defendants contend that at the deposition of plaintiff's witness (Joseph Lee), he mentioned that there was another potential witness who might shed light on the key facts of this case. Defendants claim they asked for the contact information for this witness (Scott Pechon) but that plaintiff has not provided the requested information. They also want to do the deposition of plaintiff's president Boskil Paula Lee (who is also a third-party defendant).

In opposition, counsel for plaintiff contends that he did not see the discovery request before the instant motion was made and has now produced the requested discovery. Plaintiff contends that it will work with defendants should they want to depose non-party Scott Pechon. It observes that third-party defendant Paula Lee is represented by separate counsel.

In reply, defendants admit that most of the discovery requested has been provided but that two issues remain. They include the deposition of Paula Lee (president of plaintiff) who apparently lives in Washington State and the deposition of Scott Pechon (who resides in Canada). Defendants argue that they are concerned they cannot subpoena him.

Discussion

As an initial matter, the Court observes that the third-party defendants made a cross-motion the day before the return date. A stipulation entered into by all parties adjourned the time to oppose or cross-move with respect to motion sequence 002 to July 7, 2022 and third-party defendants waited until July 13, 2022 to cross-move. The Court declines to consider this untimely application.

With respect to the merits, the fact is that there are only two issues left. The first is the deposition of Paula Lee. Defendants contend that after the parties explored doing a video

deposition of this witness, their counsel was informed that this witness is no longer physically able to do a deposition. The Court finds that defendants should issue a new notice of deposition for this witness with whatever method they prefer (video or an in-person deposition). It is unclear from defendants' papers what method of deposition they want or whether this witness is capable of doing a deposition but, on this record, they are clearly entitled to a deposition of this witness.


However, the Court cannot grant any relief with respect to non-party Scott Pechon. Defendants maintain that this witness lives in Canada and that they are concerned about issuing a subpoena. Unfortunately, this Court cannot offer advice about how to hold a third-party deposition of witness who apparently lives in a foreign country. Defendants' counsel must do the necessary research and determine whether they want to pursue this deposition.

The Court also grants motion sequence 003, which seeks to extend the time to file a note of issue. A note of issue may be filed only after the deposition of plaintiff's president/third party defendant Paula Lee (unless further motion practice based on her health, which must include proper proofs, leads to a different decision). The note of issue shall be filed on or before October 17, 2022. That should be more than enough time to finish up the two remaining discovery issues.

Accordingly, it is hereby

ORDERED that the motion by defendants to compel is denied as moot as plaintiff has now responded to the request and defendants may pursue the depositions of third-party Paula Lee (also plaintiff's president) and non-party Scott Pechon and the cross-motion by third-party defendant Paula Lee is denied as procedurally improper; and it is further

ORDERED that the motion by plaintiff (MS003) for an extension of time to file the note of issue is granted and the deadline is hereby extended to October 17, 2022.

<u>7/20/2022</u> 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"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE