

Chhabra v Couture Interior Design Intl. Inc.
2022 NY Slip Op 33840(U)
November 7, 2022
Supreme Court, New York County
Docket Number: Index No. 653644/2018
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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NEERU CHHABRA,

Plaintiff,

- v -

COUTURE INTERIOR DESIGN INTERNATIONAL INC.,
DURITE USA, LLC, BEN CHASIN, and MAURICE SEDAKA,

Defendants.

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INDEX NO. 653644/2018

MOTION DATE 10/19/2020,
11/06/2020

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 003) 48, 49, 50, 51, 52, 53, and 65

were read on this motion to QUASH SUBPOENA.

The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 69, 70, 71, 72, and 73

were read on this motion to COMPEL DISCOVERY.

Upon the foregoing documents, it is hereby ordered that the defendants’ motion to quash a non-party subpoena served on TD Bank N.A. (Motion Seq. 003), and the plaintiffs’ motion to compel discovery (Motion Seq. 004), are decided in accordance with the following memorandum.

The Complaint

Plaintiff commenced this action by summons and complaint filed July 20, 2018, alleging the following:

Plaintiff is the owner of a condominium unit located at 252 Seventh Avenue in Manhattan. Defendant Couture Interior Design International Inc. is engaged as a home improvement contractor, as is defendant Durite USA LLC. Defendant Morris Sedaka is a

principal of Durite; but alleged to lack the licensure required to conduct such activity on his behalf or on behalf of Durite. Defendant Ben Chasin is alleged to be the president of Couture.

Plaintiff entered into a contract with Couture on December 14, 2016, for a home renovation project, resulting in plaintiff's deposit of funds accessible to defendants to enable their purchase of materials. The deposit consisted of \$19,053 for access by Couture and \$40,000 for access by Durite – both tendered on December 16, 2016. The complaint alleges that “a new, cleaned-up and corrected contract” was entered into by the parties on December 20, 2016 (Complaint para 66). Both contracts, however, are alleged to have lacked any recital by defendants regarding their licensure status or of any start and completion dates.

On December 21, 2016, plaintiff instructed Chasin “to tear up the contract” (Complaint para 78). On December 27, 2016, plaintiff demanded a return of her deposit. The complaint proceeds with a description of various subsequent events which, while confused at times, leads to the ultimate gravamen of this lawsuit – a failure by the defendants to return plaintiff's deposit (*see, id.*, paras 95-96). The first cause of action is against Couture for “breach of contract” due to Couture's alleged failure to return plaintiff's deposit to her. The second cause of action is against Durite for “breach of contract” due to Durite's alleged failure to return plaintiff's deposit to her. The third cause of action is against Couture and Durite for “violation of lien law” due to defendants' alleged failure to maintain plaintiff's deposits in escrow, or to maintain books and records concerning defendants' use of the deposits. The fourth cause of action is against Sedaka for “fraud” for allegedly lying about the status of Couture's purchase of materials for the project. Although that cause of action makes reference to “false and misleading misrepresentations . . . for the purpose and with the intent of inducing [plaintiff] to enter into the home improvement contract” (Complaint para 182), the nature of such is not fully ascertainable from this court's

reading of the allegations of that cause of action. The fifth cause of action is against all defendants for “civil conspiracy” by allegedly inducing plaintiff, fraudulently, into entering into a contract and making deposits thereunder. The sixth cause of action is against all defendants for “fraudulent inducement.” The seventh cause of action is against all defendants for “money had and received.” Two final causes of action are alleged – one for “unjust enrichment” and another for “tortious interference” involving another, non-party, contractor.

Although much of the 213-paragraph complaint in this action lacks perfect clarity, one thing is predominantly certain: it seeks a return of plaintiff’s deposit money on the factual theory that defendants took and kept that money without providing the home improvement work said money was intended to acquire (*see*, Complaint at 30-31).¹

Plaintiff’s Motion to Compel Discovery from Defendants

Plaintiff has served what can only be described as an extensive set of 45 document demands on the defendants (NYSCEF Doc. No. 61). In opposition to plaintiff’s motion to compel, defendants have filed voluminous documents which are represented by their counsel to be two waves of responsive documents – one delivered in July 2020 and another in November 2020 (NYSCEF Doc. Nos. 68-69) – plus interrogatory answers served in July 2020 (NYSCEF Doc. No. 70) in response to a 58-item set of interrogatories. Insofar as plaintiff’s instant motion to compel takes issue with the sufficiency of such responsive action, it must provide a sufficient modicum of explanation before this court can conclude that defendants are in non-compliance. Nevertheless, should plaintiff’s analysis of defendants’ production and answers reveal that such responsive action is bereft of independent evidence of defendants’ use of deposited funds for plaintiff’s renovation purposes, i.e., receipts from third-party suppliers or checks paid out by

¹ No motion has been made challenging the sufficiency of the complaint’s allegations themselves, or any of its causes of action.

defendants to such suppliers, or other such independently probative items, plaintiff may have already obtained what she needs by way of evidence relevant to, and supportive of, her causes of action.

As for documents proving Sedaka's licensure status, defendants' counsel has acknowledged that Sedaka, in fact, holds no such license; but rather, a college degree in structural engineering (NYSCEF Doc. No. 67 para 8).

In the wake of defendants' aforementioned production and answers – characterized by defendants' counsel as “all relevant responsive documents and information” in defendants' possession (NYSCEF Doc. No. 67 para 6) – said counsel commits to make his clients available for deposition, at which further probing may be had. The court favors such an effort, including, if genuinely necessary, a post-deposition demand (*see, id.*, para 8).

The document demands include a request for information related to Chasin's alleged showing to plaintiff of Durite's work “at the Savoy Condominium” and “the Galleria Condominium” as a means of inducing plaintiff to retain Durite (*see*, Complaint para 19). Defendant's counsel casts that demand as irrelevant (*see*, NYSCEF Doc. No. 67 para 12). The court finds the demand relevant to the limited extent that proof of Durite's role in such work, if any, should be produced (*see, Lichtman v Mount Judah Cemetery*, 269 AD2d 319 [1st Dept] [the court retains discretion as to whether the discovery sought is overly broad, unduly burdensome and improper], *appeal dismissed* 95 NY2d 860 [2000]).

Defendants' Motion to Quash the Subpoena Served on Non-Party TD Bank

Plaintiff served a subpoena duces tecum on non-party TD Bank N.A. (NYSCEF Doc. No. 52) seeking “monthly bank statements, deposit slips, cancelled checks, cash withdrawals, automatic debit withdrawals, and electronic and/or wire transfer receipts, internet transfers,

check registers, and all checks and wire transfers, debits and deposits” relating to two specific account numbers understood by this court to be the TD Bank accounts in which the Couture and Durite deposits are held.² Defendants have moved to quash by casting the subpoena as “an exhaustive look into the financial history” of all the defendants “without any regard to the connection (or lack thereof) to the lawsuit” (Aff. In Support [NYSCEF Doc. No. 49] para 11).

In view of the foregoing state of party discovery, discussed hereinabove under the heading “Plaintiff’s Motion to Compel Discovery from Defendants,” the court prefers to stay the non-party subpoena at this time in favor of plaintiff’s further examination of defendants’ production and follow-up deposition practice, with reservation of subpoena rights.

Accordingly, it is

ORDERED that defendants’ motion to quash the subpoena to TD Bank N.A. is granted to the extent that the subpoena is stayed pending further order of the court; and it is further

ORDERED that plaintiff’s motion to compel further party discovery is granted to the extent that she is free to depose the defendants in the wake of defendants’ document production thus far, subject to her right to serve post-deposition demands if genuinely necessary; and also to the extent that defendants shall produce proof of Durite’s role, if any, in work performed by Durite at the Savoy Condominium and the Galleria Condominium; and it is further

² The subpoena asserts four more demands for documents which, per this court’s review, are already subsumed within the comprehensive, first, demand quoted in the text (*see*, Subpoena [NYSCEF Doc. No. 52]). To the extent the first demand also seeks proof of Sedaka’s licensure: as stated in the text, defendants’ counsel has already acknowledged there was none.

ORDERED that a status conference will be held at the Courthouse, 111 Centre Street, Room 1166, New York, New York, on December 7, 2022, at 10:00 a.m.

Louis L. Nock

<u>11/7/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
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