

**Manhattan Realty Co. 1, LP v YSI Inc.**

2023 NY Slip Op 31417(U)

April 26, 2023

Supreme Court, New York County

Docket Number: Index No. 650800/2020

Judge: Louis L. Nock

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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**

<p><b>PRESENT:</b> <u>HON. LOUIS L. NOCK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>MANHATTAN REALTY COMPANY 1, LP,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>YSI INC. and SHU IKEDA,</p> <p align="center">Defendants.</p> <p>-----X</p>	<p><b>PART</b> <span style="float: right;"><b>38M</b></span></p> <p><b>INDEX NO.</b> <u>650800/2020</u></p> <p><b>MOTION DATE</b> <u>01/29/2021, 03/23/2021</u></p> <p><b>MOTION SEQ. NO.</b> <u>001 002</u></p> <p align="center"><b>DECISION + ORDER ON MOTION</b></p>
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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 60 were read on this motion to COMPEL NON-PARTY DISCOVERY.

The following e-filed documents, listed by NYSCEF document numbers (Motion 002) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, and 63 were read on this motion to COMPEL NON-PARTY DISCOVERY.

The action involves a commercial landlord’s claims against its tenant, a restaurant business concern, for rental arrears and for failure by the tenant to construct a “fully vented commercial kitchen” in the leased space pursuant to the lease (Complaint ¶ 14). The complaint seeks damages in the amount of \$43,420 as well as an injunction for tenant’s specific performance of the lease’s kitchen construction requirement. The defendants are the tenant and its guarantor.

Defendants counterclaimed, alleging breaches by the landlord relating to an alleged defect in the premises’ natural gas lines which, as alleged, motivated landlord to withhold its consent for the kitchen construction to go forward. Defendants seek \$750,000 in restitution, which is alleged to be the amount it spent toward the lease, but which it could not capitalize on

due to landlord's alleged stoppage of tenant's kitchen construction due to defective natural gas lines serving the premises. Defendants also seek rescission of the lease.

In connection with their counterclaims, defendants served subpoenas duces tecum on certain non-parties who were retained to perform work at the premises. Those non-parties are identified as Carl Giunta Associates Inc. and Spring Scaffolding LLC (*see*, subpoenas, NYSCEF Doc. Nos. 16, 22). Defendants now move (seq. no. 001) to compel those witnesses' compliance with those subpoenas due to the fact that neither of them has responded to them.

Defendants also served subpoenas duces tecum on additional non-parties who are also asserted to be entities "involved in work that was performed and/or planned to be performed at the Premises" (NYSCEF Doc. No. 37 at 2). They are: Everest Scaffolding Inc.; Great American Restoration Services, Inc.; Jack Green Assocs. Consulting Engineers; and Samiro Services, Inc. (*see*, subpoenas, NYSCEF Doc. Nos. 40, 44, 47, 51). Those non-parties are similarly alleged to have not responded to the subpoenas served on them.

Consequently, defendants move (seq. no. 002) to compel those witness' compliance.

Everest Scaffolding Inc. is the only witness which responded to the motion(s), demonstrating that it has complied through its production of documents (*see*, NYSCEF Doc. Nos. 61, 62). However, none of the other subpoenaed witnesses have responded, either to the subpoenas or to the motion(s). Accordingly, the motion to compel is granted.

Accordingly, it is

ORDERED that defendants' motion (seq. no. 001) to compel subpoena compliance by non-parties Carl Giunta Associates Inc. and Spring Scaffolding LLC is granted, and said non-parties are directed to respond to the subpoenas served upon them no later than May 10, 2023, by

mailing or otherwise delivering their response to defendants' counsel: Robert D. Lillienfeld, Esq., Moses & Singer LLP, 405 Lexington Ave., New York, NY 10174; and it is further

ORDERED that defendants may immediately move for an order of contempt against Carl Giunta Associates Inc. and Spring Scaffolding LLC should they fail to so comply; and it is further

ORDERED that defendants' motion (seq. no. 002) to compel subpoena compliance by non-parties Great American Restoration Services, Inc.; Jack Green Assocs. Consulting Engineers; and Samiro Services, Inc., is granted, and said non-parties are directed to respond to the subpoenas served upon them no later than May 10, 2023, by mailing or otherwise delivering their response to defendants' counsel: Robert D. Lillienfeld, Esq., Moses & Singer LLP, 405 Lexington Ave., New York, NY 10174; and it is further

ORDERED that defendants may immediately move for an order of contempt against Great American Restoration Services, Inc.; Jack Green Assocs. Consulting Engineers; and Samiro Services, Inc., should they fail to so comply; and it is further

ORDERED that said counsel shall file an affidavit or affirmation of service on all the foregoing non-parties prior to any future motion for an order of contempt against any or all of aid non-parties; and it is further

ORDERED that the motion to compel subpoena compliance from non-party Everest Scaffolding Inc. is denied as moot.



<u>4/26/2023</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 checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
		<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE