

Tower Legal Staffing Inc. v 65 Broadway Owner LLC
2023 NY Slip Op 32256(U)
July 7, 2023
Supreme Court, New York County
Docket Number: Index No. 158044/2020
Judge: Mary V. Rosado
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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TOWER LEGAL STAFFING INC.,

Plaintiff,

- v -

65 BROADWAY OWNER LLC, 65 BROADWAY OWNER II
LLC, 65 BROADWAY OWNER III LLC, LESLIE FIRTELL

Defendant.

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INDEX NO. 158044/2020
MOTION DATE 02/21/2023
MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 were read on this motion to/for DISCOVERY

Upon the foregoing documents, Plaintiff Tower Legal Staffing, Inc.'s ("Plaintiff") motion for leave to file a discovery motion is granted, and upon being granted said leave, Plaintiff's motion to compel the deposition of Meyer Chetrit ("Chetrit") is granted.

This is an action for breach of a lease and license agreement (*see* NYSCEF Doc. 1). Plaintiff is a tenant who leased Suites 1703 and 1808 at 65 Broadway, New York, New York. There was also a license agreement to use and occupy Suite 1101 at the same address. Plaintiff alleges a breach arising from failure to maintain the air conditioning and due to odors allegedly emanating from the bathroom in the common area adjacent to Suite 1808. Plaintiff seeks the deposition of Chetrit, the shareholder and member of Defendants 65 Broadway Owner LLC, 65 Broadway Owner II LLC, and 65 Broadway Owner III LLC ("Defendants"). Two prior depositions have taken place. Those depositions were of Fraidy Taub ("Taub") and Ezie Bryks ("Bryks"), who were employed by Plaza Management USA Inc., Defendants' managing agent.

However, Bryks expressed unfamiliarity with the pleadings and underlying lease, while Taub stated that Chetrit was the ultimate decision maker. Plaintiff then sought to compel the deposition of Chetrit, who Defendants refused to produce. Despite multiple conferences, the parties could not reach an agreement. Therefore, Plaintiff was granted leave to file this motion.

Plaintiff argues that Chetrit appears to be the sole individual with authority to make decisions for the Defendants and with personal knowledge of the claims and defenses of the parties involved in this lawsuit. Plaintiff argues compelling Chetrit's deposition is proper here where prior deposed parties lacked the necessary knowledge or decision-making capacity related to Plaintiff's claims and Defendants' defenses. Moreover, as Defendants have refused to produce Chetrit despite multiple requests to do so, a motion to compel is procedurally proper.

Defendants cross-moved for a protective order preventing the parties from taking further depositions of Defendants, whether by Chetrit or any other designees. Defendants argue compelling a third corporate representative to testify would be inappropriate here, where Plaintiffs have not shown (a) that Bryks and Taub lacked sufficient knowledge on the full range of issues, and (b) a substantial likelihood that Chetrit possesses information material and necessary to the prosecution of this action.

A review of portions of Bryks' deposition testimony shows that he is the building manager on behalf of the Defendants. He provided names of the engineering team that maintains the HVAC. While he stated he was only "vaguely familiar" with the provisions of the lease at issue, he did testify that they have leasing meetings, so he knows what the building is supposed to provide for the tenants. He testified that he was familiar with the plaintiffs in this case. He further testified that he knew about HVAC issues during the time frame alleged in the Complaint. He also testified he received complaints about the HVAC, and he even personally visited the site when Plaintiffs put

in a complaint. He even was able to testify as to the different systems which cooled the seventeenth and the eighteenth floors. He further provided testimony about the vendor used.

Ms. Taub was produced with respect to Defendants' counterclaims and to testify on issues related to the lease and license agreement. Ms. Taub testified she was the designated leasing representative for Defendants and had been working in that position since 2016. She negotiates the terms of the lease. If tenants have questions about their lease, Ms. Taub testified that she was the go-to person. She also had knowledge of the claims in this action. She was familiar with Plaintiff and their lease. She even stated that she drafted the license agreement between Defendants and Plaintiff. She stated that her understanding of the lease was that the tenants are not entitled to a rent abatement due to lack of services. She further testified to the manner in which Plaintiff terminated their agreements with Defendants. She testified to Plaintiff's alleged arrears and why they never received a refund of their security deposit.

Defendants argue that the aforementioned testimony, coupled with Plaintiff's failure to demonstrate that Chetrit possesses any relevant knowledge, warrants denial of Plaintiff's motion and granting Defendants' cross motion.

On reply, Plaintiff argues that Bryks failed to testify why the parties "chose to essentially disregard the defective HVAC". Plaintiff argues that due to Bryks' failure to testify as to this regard, the Court should compel Chetrit to testify, since in an organizational flow chart he is listed as a managing member of Defendants. Plaintiff has included as exhibits correspondence both from Plaintiff and Taub to Chetrit indicating Chetrit was involved in decision making for rent abatements and lease formation (*see* NYSCEF Docs. 49-51).

"While discovery should be liberal, the information sought must be material and necessary, and meet a test of usefulness and reason" (*AQ Asset Management LLC v Levine*, 138 AD3d 635,

636 [1st Dept 2016] quoting *Manley v New York City Hous. Auth.*, 190 AD2d 600, 600 [1st Dept 1993]). A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’ – i.e., relevant – regardless of whether discovery is sought from another party” (*Forman v Henkin*, 30 NY3d 656 [2018]). A party seeking additional deposition from a corporation must show (1) the corporate representatives already deposed had insufficient knowledge, or were otherwise inadequate, and (2) there is a substantial likelihood that the persons sought for depositions possess information which is material and necessary to the prosecution of the case (*Asprou v Hellenic Orthodox Community of Astoria*, 185 AD3d 638 [2d Dept 2020]).

As there are documents showing that Chetrit was involved somewhat in the management of the building, and decisions he made may be relevant to the defense of counterclaims alleging rental arrears as well as Plaintiff’s claim for the breach of the covenant of quiet enjoyment there is a substantial likelihood he may have information which is material and necessary. Moreover, the record reflects that Chetrit made decisions concerning major capital improvements, such as repairing the HVAC, and that he met with building management regarding tenants’ concerns. Mr. Chetrit is also the signatory on the contracts with Plaintiff. There is some indication from Taub’s testimony that Chetrit was also involved at some point in decisions regarding rent abatements. Given the broad and liberal nature of discovery, the Court finds that Plaintiff’s motion should be granted and Defendants’ cross-motion should be denied. However, Plaintiff is only allowed to depose Meyer Chetrit on the limited line of questioning which it stresses is lacking – namely why or how Meyer Chetrit allegedly made decisions regarding potential rent abatements and repair of the building’s HVAC system.

However, the Court stresses that a “party is not entitled to unlimited, uncontrolled, unfettered disclosure” (*Asprou, supra* at 640). Therefore, given this is the third individual being produced for a deposition by Defendants, absent a strong showing of the necessity of certain information from Plaintiffs, the Court may be unlikely to compel Defendants to produce any further witnesses.

Accordingly, it is hereby,

ORDERED that Plaintiff’s motion to compel the deposition of Meyer Chetrit is granted and Defendant’s cross-motion seeking a protective order is denied; and it is further

ORDERED that Defendants shall produce Meyer Chetrit for an examination before trial on or before September 29, 2023 solely on the narrow issues regarding Chetrit’s alleged decision making with regard to rent abatements and maintenance/repair of the building’s HVAC system; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on Defendants.¹

This constitutes the Decision and Order of the Court.

<u>7/7/2023</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE

¹ There is a pending motion to withdraw by Defendants’ attorneys (*see* Mot. Seq. 005). Upon resolution of that motion, the Court will direct the parties to appear for a conference with the Court at which time a stipulation may be entered regarding outstanding discovery and an extension of time to file the Note of Issue, if necessary.