

**Trustees of Masonic Hall & Asylum Fund v Bay Ridge
Lodge 758 Bldg. Corp.**

2023 NY Slip Op 33195(U)

September 5, 2023

Supreme Court, Kings County

Docket Number: Index No. 500308/17

Judge: Lawrence Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 5th day of September, 2023.

P R E S E N T:

HON. LAWRENCE KNIPEL,
Justice.

-----X
TRUSTEES OF MASONIC HALL & ASYLUM FUND,

Plaintiff,

-against-

BAY RIDGE LODGE 758 BUILDING CORP., et al.,

Defendants.
-----X

SUPPLEMENTAL ORDER

Index No. 500308/17

Mot. Seq. No. 8

The following e-filed papers read herein:

NYSCEF Doc No.:

Notice of Motion, Motion, Affirmation in Support, Memorandum of Law, and Exhibits Annexed _____	<u>252-265</u>
Affirmation in Opposition and Exhibits Annexed _____	<u>266-285</u>
Reply Affirmation _____	<u>286</u>
Additional Papers:	
Order, dated January 24, 2023 _____	<u>291</u>
Order, dated August 23, 2023, in the Related Action _____	<u>159 (Entered in Related Action)</u>
Order, dated February 15, 2023, on Plaintiff's	
Motion in Seq. No. 9 in this Action _____	<u>294</u>

The defendants Bay Ridge Lodge 758 Building Corp., Bay Ridge Minerva Lodge #758 (also known as "Bay Ridge Lodge #758, Free & Accepted Masons") (the "subordinate lodge"), Jerry Fishman, Peter Grazioli, and Anthony Barris (collectively with the subordinate lodge, "the subordinate lodge entities") jointly moved (in motion [mot.] sequence [seq.] number [no.] 8 herein) – over the objection of the plaintiff Trustees of Masonic Hall & Asylum Fund (the "Trustees") – for an order: (1) "compelling counsel for the plaintiff herein" (or, more precisely, the Trustees in this action) to attend the EBTs noticed in the related action captioned *Bay Ridge Lodge 758, Free & Accepted Masons, et al. v Grand Lodge of Free & Accepted Masons of the State of N.Y., et al.*,

Index No. 502414/2017 (the “related action”), which, until its dismissal by order, dated August 23, 2023 (NYSCEF Doc. No. 159 entered in the related action), as more fully set forth below, was pending before this Court; (2) setting dates for Grand Lodge of Free & Accepted Masons of the State of New York and certain affiliated individuals (collectively, the “Grand Lodge entities”) as the defendants in the related action (as well as for the Trustees as the plaintiff in this action) to depose witnesses for the subordinate lodge entities which are the plaintiffs in the related action and the defendants in this action;¹ (3) setting deadlines for propounding the post-EBT document requests on any and all so-ordered EBTs; and (4) “for such other, further and different relief as the Court may deem just and proper” (the “instant motion”).

By order dated December 29, 2020, the Court granted the Trustees’ motion to consolidate this action and the related action for a joint trial (the “consolidation order”) (NYSCEF Doc No. 245). In so holding, the Court pointed out (at page 2 of the consolidation order) that “[t]he pivotal issue underlying both actions is the propriety of the charter revocation [of the subordinate lodge] which is both a plaintiff in the related action and a defendant in this action], and *once that is determine[ed], issues concerning control of [the subordinate lodge]’s assets [in this action] will follow*” (emphasis added).

On June 25, 2022, the subordinate lodge entities served the instant motion in the capacity as the defendants in this action (mot. seq. no. 8 in this action) and concurrently served a mirror image of the instant motion in the capacity as the plaintiffs in the related action (mot. seq. no. 4 therein)

¹ The subordinate lodge entities as the defendants in this action were also (with certain exceptions not relevant herein) the plaintiffs in the related action. See *Bay Ridge Lodge 758, Free & Accepted Masons v Grand Lodge of Free & Accepted Masons of State of N.Y.*, 2018 NY Slip Op 31689(U) (Sup Ct, Kings County 2018), *aff’d* 202 AD3d 1035 (2d Dept 2022). In contrast, the Trustees as the plaintiff in this action were *not* named in any capacity (either as a plaintiff or defendant) in the related action.

(the “related-action motion”). The related-action motion had been fully submitted on July 22, 2022, and the decision thereon had been rendered on September 2, 2022 in the related action, in each instance, *before* the instant motion in this action was fully submitted on September 16, 2022. Specifically, by order, dated September 2, 2022, issued in the related action, the Court, in relevant part, granted the related-action motion “only to the extent that [the] parties shall adhere to [the] order of depositions established in the most recent scheduling order,” with a critical proviso that “[i]f plaintiff [in the related action; i.e., the subordinate lodge defendants] fails to comply timely with this order, the complaint [in the related action] will be dismissed” (NYSCEF Doc. No. 120 issued in the related action) (emphasis added) (the “related-action conditional order of dismissal”).

By notice of motion, dated October 20, 2022, the Grand Lodge entities as the defendants in the related action moved (in mot. seq. no. 6 therein) to strike the subordinate lodge entities’ complaint in the related action on the ground that the latter failed to comply with the related-action conditional order of dismissal (the “related-action dismissal motion”). Before the related-action dismissal motion (in mot. seq. no. 6 therein) could be heard by the Court in Commercial Part 4 on January 27, 2023, however, the Court, by order, dated January 24, 2023, adjourned the consideration of the instant motion, pending the determination of the related-action dismissal motion (in mot. seq. no. 6 therein) (NYSCEF Doc. No. 291) (the “adjournment order”).

Following the entry of the adjournment order on February 6, 2023, two events transpired. *First*, the Court, by order, dated August 23, 2023, granted the then-pending related-action dismissal motion (in mot. seq. no. 6 therein) and dismissed the related action (NYSCEF Doc. No. 159 entered in the related action) (the “related-action dismissal order”). The related-action dismissal order was served with notice of entry on August 25, 2023 (NYSCEF Doc. No. 161 entered in the related action).

Second, the Trustees as the plaintiff in this action had moved, by Notice of Motion, dated November 9, 2022 (in mot. seq. no. 9 herein), for an order granting them a default judgment, dismissing the defendants' answer with counterclaims, and granting them ancillary relief (the "Trustees' default-judgment motion") (NYSCEF Doc. No. 287). Over the defendants' objection, the Court, by order, dated February 15, 2023, granted the Trustees' motion "only to the extent that [the] answer [is] stricken and [the] counterclaims [are] dismissed [in the instant action] unless defendant[s] provide outstanding documents sought within 30 days of date hereof. To the extent that defendant[s] do[] not have a document demanded, an affidavit to that effect shall be provided" (NYSCEF Doc. No. 294 [underlining in the original]) (the "instant-action conditional order of dismissal"). According to the e-court docket, nothing further has transpired in this action to date following the entry of the instant-action conditional order of dismissal on February 17, 2023.

Based on the foregoing, it is

ORDERED that the instant motion (in mot. seq. no. 8 herein) is *denied as moot*; and it is further

ORDERED that the Trustees' counsel shall electronically serve a copy of this supplemental order with notice of entry on the subordinate lodge entities' counsel (as well as on the Grand Lodge entities' counsel in the related action), and electronically file an affidavit of said service in this action with the Kings County Clerk.

This constitutes the supplemental order of the Court.

ENTER FORTHWITH,



**HON. LAWRENCE KNIPEL
ADMINISTRATIVE JUDGE**