

**New York State Div. of Hous. & Community Renewal  
v Zara Realty Holding Corp.**

2023 NY Slip Op 33593(U)

October 6, 2023

Supreme Court, New York County

Docket Number: Index No. 450245/2019

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS**

**PART 10M**

*Justice*

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NEW YORK STATE DIVISION OF HOUSING AND  
COMMUNITY RENEWAL and THE PEOPLE OF THE  
STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK,

**INDEX NO.** 450245/2019

**MOTION DATE** 05/18/2023

**MOTION SEQ. NO.** 002

Plaintiffs,

- v -

ZARA REALTY HOLDING CORP., ZARA CONTROL LLC,  
KARRAN a/k/a KENNETH SUBRAJ, RAJESH ANTHONY  
a/k/a TONY SUBRAJ, JAIRAJ a/ka JAY SOBHRAJ, AMIR  
SOBHRAJ, JASMINE SUBRAJ, DEVANAND SUBRAJ,  
JASMINE HOMES, LLC, JAMAICA MANAGEMENT LLC,  
149 ST LLC, 150 PARK LLC, 162-20 LLC, 164-03 LLC, 166 ST  
LLC, 195 ST LLC, 195-24 LLC, 51-25 VAN KLEECK LLC, 57  
ELMHURST, LLC, 8787 HILLSIDE PARK LLC, 88-05  
MERRICK BLVD LLC, 88-15 144 ST LLC, 88-22 PARSONS  
BLVD LLC, 89-21 153 LLC, 91-60 LLC, BELAIR PARK 5  
LLC, BELAIR PARK 8825 LLC, HILLSIDE PARK 168 LLC,  
HILLSIDE PLACE LLC, HUDSON HOUSE LLC, JAMAICA  
ESTATES LLC, JAMAICA SEVEN LLC, KING'S PARK 148  
LLC, KING'S PARK 8809 LLC, NINETY ONE SIXTY ONE  
LLC, ONE NINETY SIXTH ST LLC, PARK HAVEN, LLC,  
PARSONS 88 REALTY LLC, PARSONS MANOR LLC,  
WOODHULL PARK 191 LLC, and WOODSIDE  
PROPERTIES 45 ST LLC,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 77

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and oral argument held before the court on June 22, 2023, the court denies Defendants Zara Realty Holding Corp.'s, Zara Control, LLC's, Karran a/k/a Kenneth Subraj's, Rajesh Anthony a/k/a Tony Subraj's, Jairaj a/k/a Jay Sobhraj's, Jasmine Subraj's, Devanand Subraj's, Jasmine Homes, LLC's, Jamaica Management LLC's, 149 St LLC's, 150 Park LLC, 195-24 LLC's, 51-25 Van Kleeck LLC's, 57 Elmhurst, LLC's, 8787 Hillside Park LLC's, 88-05 Merrick Blvd LLC's, 88-15 144 St LLC's, 88-22 Parsons Blvd LLC's, 89-21 153 LLC's, 91-60 LLC's, Belair Park 5 LLC's, Belair Park 8825 LLC's, Hillside Park 168 LLC's, Hillside Place LLC's, Hudson House LLC's, Jamaica Estates LLC's, Jamaica Seven LLC's, King's Park 148 LLC's, Kings Park 8809 LLC's, Ninety One Sixty One LLC's, One Ninety Sixth St LLC's, Park Haven LLC's, Parsons 88 Realty LLC's, Parsons Manor

LLC's, Woodhull Park 191 LLC's, and Woodside Properties 45 St LLC's (collectively "Defendants") motion to compel production of certain documents deemed privileged and to compel Plaintiffs New York State Division of Housing and Community Renewal and The People of the State of New York, by Letitia James, Attorney General of the State of New York (collectively "Plaintiffs") to produce deposition witnesses with relevant information.

Plaintiffs initiated this action based on Defendants' alleged violations of the Rent Regulation laws and Executive Law § 63(12). After a two-year investigation, Plaintiffs allege that Defendants collected illegal fees from their tenants, forced tenants to pay excessive security deposits and advances, issued illegal lease riders, and illegally changed terms and conditions of rental agreements. Although both parties engaged in extensive discovery exchange, Plaintiffs withheld a number of documents based on various privileges, including attorney-client privilege, attorney work-product privilege, common interest privilege, and a law enforcement privilege. Additionally, Plaintiffs assert that they are not required to produce witnesses for deposition because this case is a law enforcement action.

Defendants now move to compel Plaintiffs' production of documents deemed privileged and to compel the production of witnesses under Motion Sequence No. 002. Defendants argue in substance that pursuant to CPLR 3101(a), Plaintiffs are required to provide full disclosure of all discovery that is material and necessary in the prosecution or defense of this action. Defendants further argue in substance that Plaintiffs broadly assert various privileges to avoid producing documentary evidence and deposition witnesses. Defendants contend that Plaintiffs waived the right to assert an attorney-client privilege when communications were shared with third-party agencies. More specifically, Defendants argue that Plaintiff withheld approximately 186 documents on the basis of attorney-client privilege, but a previous privilege log revealed that these documents were shared with other third-party agencies. Defendants contend that Plaintiffs fail to satisfy the requirements of the "common interest" privilege to justify why documents shared with third-parties are protected and do not require production.

Additionally, Defendants argue in substance that Plaintiffs' assertion of a law enforcement privilege is inapplicable in this case, as it is generally not recognized as a basis to withhold documents in New York State court proceedings. In particular, Defendants contend that Plaintiffs withheld approximately 450 documents from their document production on the basis of a "law enforcement" privilege. Additionally, Defendants contend that there are documents that Plaintiff deemed protected under the law enforcement privilege that were shared with agencies that are not involved with the law enforcement of this matter. Defendants argue in substance that the actions of Plaintiffs in withholding certain documentary evidence and the improper use of certain privileges is contrary to the rules of discovery.

Regarding the production of deposition witnesses, Defendants argue in substance that Plaintiffs are not entitled to special considerations in discovery matters. Specifically, Defendants argue that pursuant to CPLR 3102(f), although Plaintiffs are the State of New York and a state agency, for the purposes of disclosure, Plaintiffs are to be treated as if they are private citizens. Therefore, Defendants contend that Plaintiffs are required to produce witnesses with knowledge because Defendants are entitled to conduct depositions as a part of the discovery process. Defendants further contend that although certain fact witnesses who conducted the investigation

interviews are also attorneys, those individuals were not working as Plaintiffs' counsel during the course of the investigation. As such, Defendants argue in substance that Defendants should have the opportunity to depose those individuals as Defendants believe they are unable to obtain necessary information from other sources. Alternatively, Defendants contend that if Plaintiffs are not required to produce deposition witnesses, then Defendants should be given the same protections and not be required to produce deposition witnesses.

Plaintiffs oppose Defendants' motion to compel. Plaintiffs argue in substance that Defendants failed to rebut Plaintiffs' assertion of privilege. Plaintiffs further argue in substance that their attorney work-product privilege is not waived by the sharing of documents with third parties. More specifically, Plaintiffs contend that attorney work-product privilege is only waived when materials are voluntarily released to an adversary or used in a way that may end up produced to an adversary. Plaintiffs further contend that work-product shared with parties who share a common legal interest in the litigation does not waive such privilege. Specifically, Plaintiffs assert that the documents shared with legal advocacy organizations and other tenant groups while planning the litigation against Defendants (even where litigation did not commence) were properly withheld as privileged under the common interest doctrine.

Additionally, Plaintiffs argue in substance that certain documents were properly withheld under the law enforcement privilege. Plaintiffs contend that this privilege is used to prevent disclosure of law enforcement procedures and techniques, protect the identity of sources, protect witnesses and law enforcement personnel and to otherwise prevent interference with the investigation. Plaintiffs assert that in the instant matter that the Tenant Protection Unit ("TPU") investigated Defendants and the investigation included witness interviews and discussions with other government agencies. As such, Plaintiffs argue in substance that the law enforcement privilege applies to certain withheld documents identified in their privilege log because the documents contain their law enforcement techniques and strategies.

Moreover, Plaintiffs argue in substance that pursuant to CPLR 3102(f), Defendants have an additional burden of demonstrating "special or unusual circumstances" to warrant disclosure from the State, as a party, when the State is acting in a law enforcement capacity. Plaintiffs further argue in substance that Defendants have not met their burden of showing that the requested depositions are material and necessary to their defense. More specifically, Plaintiff's argue in substance that the standard for disclosure against New York State is not so broad as to compel witness testimony from government attorneys whose names appear in communications related to law enforcement actions. Plaintiffs contend that Defendants must demonstrate that the proposed witnesses have actual information that is material and necessary. Plaintiffs further contend that to the extent Defendants seek to depose Plaintiffs' investigators about tenant interviews, Plaintiffs assert that Defendants are in the best position to answer questions about their own business practices which are the subject of this case.

Pursuant to CPLR 3101(a)(1),(2) and (4),

There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

- (1) a party, or the officer, director, member, agent or employee of a party;
- (2) a person who possessed a cause of action or defense asserted in the action;
- (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required (CPLR 3101[a][1], [2] and [4]).

The test under CPLR 3101 (a) is one of usefulness and reason (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]).

Pursuant to CPLR 3102(f), “[i]n an action in which the state is properly a party, whether as plaintiff, defendant or otherwise, disclosure by the state shall be available as if the state were a private person” (*see* CPLR 3102[f]). However, CPLR 3101(b) provides that, “[u]pon objection by a person entitled to assert the privilege, privileged matter shall not be obtainable” (*see* CPLR 3101[b]).

The common interest privilege is an exception to the traditional rule that the presence of a third-party at a communication between counsel and client is sufficient to deprive the communication of confidentiality (*see Kindred Healthcare, Inc. v SAI Global Compliance, Inc.*, 169 AD3d 517 [1st Dept 2017]). The common interest doctrine provides a limited exception to waiver of the attorney-client privilege and requires that: “(1) the underlying material qualify for protection under the attorney-client privilege, (2) the parties to the disclosure have a common legal interest, and (3) the material must pertain to pending or reasonably anticipated litigation for it to be protected” (*id.*).

The law enforcement privilege was codified in NY Pub Off § 87(2)(e)(i)-(iv) and allows State agencies to deny access to certain records.

NY Pub Off § 87(2)(e)(i)-(iv) states in pertinent part;

Each agency shall, in accordance with its published rules, make available for public inspection and copying all records, except those records or portions thereof that may be withheld pursuant to the exceptions of rights of access appearing in this subdivision. . .

e) are compiled for law enforcement purposes only to the extent that disclosure would:

- i. interfere with law enforcement investigations or judicial proceedings, provided however, that any agency, which is not conducting the investigation that the requested records relate to, that is considering denying access pursuant to this subparagraph shall receive confirmation from the law enforcement or

investigating agency conducting the investigation that disclosure of such records will interfere with an ongoing investigation;

ii. deprive a person of a right to a fair trial or impartial adjudication;

iii. identify a confidential source or disclose confidential information relating to a criminal investigation; or

iv. reveal criminal investigative techniques or procedures, except routine techniques and procedures (*see* NY Pub Off § 87[2][e][i]-[iv]).

The court may conduct an in camera inspection to determine whether to compel production of the documents (*see Arkin Kaplan Rice LLP v Kaplan*, 107 AD3d 502 [1st Dept 2013]). "[W]hether a particular document is or is not a protected is necessarily a fact-specific determination . . . often requiring in camera review" (*see Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 378 [1991]; *see also Kenyon & Kenyon LLP v SightSound Tech., LLC*, 151 AD3d 530, 531 [1st Dept 2017]).

New York courts generally reject requests for depositions in cases where the Attorney General acts in its representative or protective capacity. In circumstances where the Attorney General acts in representative capacity as *parens patriae*, neither the Attorney General, nor her staff will be subject to being deposed (*see State v Volkswagen of America*, 41 AD2d 827 [1st Dept 1973]). The requesting party must demonstrate special circumstances to warrant the deposition of the Attorney General or her officers (*see Lefkowitz v Raymond Lee Organization*, 94 Misc 2d 875, 878-78 [Sup Ct, NY County 1978] *affd* 66 AD2d 656 [1st Dept 1978]). Moreover, interviews prepared from an investigation by the Attorney General are prepared in anticipation of litigation by the Attorney General (*id.* at 878-79).

Here, the court denies Defendants' motion to compel in its entirety. Generally, the rules of discovery are broad and when the State of New York or its agencies are a party to litigation, the State is treated in the same manner as a private citizen. However, as in this case, law enforcement proceedings are an exception.

In this case, the court conducted an in camera review of select privileged documents chosen by Defendants. The court agrees with Plaintiffs' argument and found that the selected documents were properly deemed privileged. The court also found that certain documents were covered by more than one privilege. Additionally, the court found that documents shared with third-party agencies did not waive attorney-client privilege because the common interest and/or law enforcement privilege applied. Most significantly, the third-party agencies with whom Plaintiffs shared communication also compiled documents and conducted tenant interviews in anticipation of their own litigation against the Defendants.

Moreover, as this case is a law enforcement proceeding, there is a heightened standard required to warrant the production of Plaintiffs' witnesses for deposition. The court finds that

Defendants failed to demonstrate any special circumstances which necessitate the requested depositions.

Therefore, the court denies Defendants' motion to compel the production of certain privileged documents and to compel the production of deposition witnesses.

To the extent not otherwise addressed herein, the court considered all arguments presented and nonetheless denies Defendants' motion to compel discovery or privileged documents and deposition witnesses.

As such, it is hereby


ORDERED that the court denies Defendants Zara Realty Holding Corp.'s, Zara Control, LLC's, Karran a/k/a Kenneth Subraj's, Rajesh Anthony a/k/a Tony Subraj's, Jairaj a/k/a Jay Sobhraj's, Jasmine Subraj's, Devanand Subraj's, Jasmine Homes, LLC's, Jamaica Management LLC's, 149 St LLC's, 150 Park LLC, 195-24 LLC's, 51-25 Van Kleeck LLC's, 57 Elmhurst, LLC's, 8787 Hillside Park LLC's, 88-05 Merrick Blvd LLC's, 88-15 144 St LLC's, 88-22 Parsons Blvd LLC's, 89-21 153 LLC's, 91-60 LLC's, Belair Park 5 LLC's, Belair Park 8825 LLC's, Hillside Park 168 LLC's, Hillside Place LLC's, Hudson House LLC's, Jamaica Estates LLC's, Jamaica Seven LLC's, King's Park 148 LLC's, Kings Park 8809 LLC's, Ninety One Sixty One LLC's, One Ninety Sixth St LLC's, Park Haven LLC's, Parsons 88 Realty LLC's, Parsons Manor LLC's, Woodhull Park 191 LLC's, and Woodside Properties 45 St LLC's motion to compel is denied; and it further

ORDERED that the parties must appear for a compliance conference in this matter via Microsoft Teams on November 15, 2023, at 10:00 a.m. (separate link will be provided).

This constitutes the decision and order of the court.

10/6/2023

DATE

  
ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE