

**260-261 Madison Ave. LLC v
WeWork 261 Madison LLC**

2023 NY Slip Op 33843(U)

October 27, 2023

Supreme Court, New York County

Docket Number: Index No. 654806/2021

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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260-261 MADISON AVENUE LLC,
 Plaintiff,

- v -

WEWORK 261 MADISON LLC, ADAM NEUMANN,
 WEWORK INC., WW HOLDCO LLC, THE WE COMPANY
 MC LLC, THE WE COMPANY MANAGEMENT
 HOLDINGS L.P., WEWORK COMPANIES LLC, THE WE
 COMPANY MANAGEMENT LLC, WE WORK
 MANAGEMENT LLC, WW BUILDCO LLC

Defendants.

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INDEX NO. 654806/2021
 MOTION DATE 08/24/2023
 MOTION SEQ. NO. 012

**DECISION + ORDER ON
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283

were read on this motion to COMPEL DISCOVERY.

Plaintiff 260-261 Madison Avenue LLC (“Plaintiff”) moves for an order pursuant CPLR § 3124, compelling defendants WeWork Inc., WW Holdco LLC, The We Company MC LLC, The We Company Management Holdings L.P., WeWork Companies LLC, The We Company Management LLC, We Work Management LLC, and WW BuildCo LLC (collectively, “WeWork Parent” or “Defendants”) to (i) fully respond to Interrogatory No. 2 and (ii) fully produce in response to Request for Production Nos. 9 & 10. For the following reasons, Plaintiff’s motion is granted.

“CPLR 3101(a) provides that there shall be full disclosure of all matter material and necessary in the prosecution of an action” (*Blair v Otto Brehm, Inc.*, 54 AD3d 702, 702 [2d Dept 2008]). Where discovery demands are relevant to the causes of action and are not unduly burdensome, a motion to compel should be properly granted (*see T.A. Ahern Contrs. Corp. v*

Dormitory Auth. of State of NY, 24 Misc 3d 416 [Sup Ct, NY County 2009]). Here, Plaintiffs seek financial and banking information in order to support its claim to pierce the corporate veil of WeWork Parent. Defendants object to such requests as over-broad, harassing, and irrelevant as they cover eight defendants over an eleven-year period.

I. Interrogatory No. 2

Interrogatory No. 2 provides: “[i]dentify each of Your bank accounts operating from January 1, 2012 to the date of trial in this action that received funds from any other Defendant” (NYSCEF 274). Plaintiff’s request that Defendants identify their bank accounts that “received funds from any other Defendant” is a legitimate subject of discovery because, as the Court recognized at oral argument, “Plaintiff alleges that at the direction of other companies that are named as Defendants here, each of the WeWork entities use each other’s funds and assets for their own purposes and for the benefit of the parent company and do not treat each other as independent profit centers,” “freely comingle funds among each other,” and “that the parent controls centralized treasurer operations that manage all payments for the purportedly independent WeWork entities.” (NYSCEF 271 at 35:10-14, 18, 23-25). Thus, information regarding which bank accounts each entity used may be relevant to proving Plaintiff’s alter ego allegations (*Zinger v Serv. Ctr. of NY, Inc.*, 94 AD3d 482, 482-483 [1st Dept 2012] [finding that “requests concerning the corporate defendant's bank accounts and credit cards seek documents and information of the type that would yield evidence of misuse of the corporate form” and thus were “material and necessary” for the prosecution of the action]; *Balestriere PLLC v Banxcorp*, 2013 NY Slip Op 31539[U], *10 [Sup Ct, NY County 2013] [holding that defendant must respond to requests to identify all bank accounts or credit lines held by, used, or controlled by defendants as this request related to plaintiff’s theory of alter-ego]).

II. Request for Production Nos. 9 & 10

Document Request No. 9 seeks “Documents sufficient to identify all bank accounts, money market funds, or other financial accounts used by, or for the benefit of and of the WeWork Entities, regardless of time period”¹ (NYSCEF 275 at 11). Document Request No. 10 seeks “[a]ll of Your financial records, including tax returns, QuickBooks, general ledgers, consolidated financial statements, bank reconciliations, and other electronic accounting files, accounting records, drafts, internal communications, notes, logs, calendars, and memoranda” (*id.*).

These document requests seek documents relevant to Plaintiff’s claims to pierce the corporate veil of WeWork Parent, and are therefore “material and necessary in the prosecution” of this action (CPLR 3101[a]). As with Interrogatory No. 2 above, New York courts routinely compel defendants to produce such information in veil-piercing cases (*Bykov v United Elite Group Inc.*, 2021 NY Slip Op 30220[U], *6 [Sup Ct, NY County 2021] [finding plaintiff is entitled to defendants’ bank statements, cancelled checks, wire transfers, records of deposits, withdrawal receipts, and wire transfer receipts, and any loan agreements as this interrogatory was material and necessary to support plaintiff’s theory as to piercing the corporate veil]; *Mikhailov v Liberty Publ. House Inc.*, 2009 NY Slip Op 30312[U], *6, *11 [Sup Ct, NY County 2009] [compelling defendants to produce bank statements where plaintiff alleged that the shell entity “was undercapitalized with the intent of avoiding obligations,” that the parent “drained income

¹ Plaintiff’s First Set of Document Demands notes that “[u]nless otherwise indicated, all Documents and information provided shall be from January 1, 2012, through the date of trial in this Action” (NYSCEF 275 at p 9). While Request No. 9 provides, “regardless of time period,” the parties’ motion papers seem to indicate that the time period of “January 1, 2012, through the date of trial in this Action” applies to all the disputed requests, including Request No. 9.

out of” the shell entity, and the shell “failed to retain earnings to meet its financial obligations”]). As in *Bykov*, Plaintiff alleges inadequate capitalization, a commingling of assets, and the diversion of corporate funds. Plaintiff is entitled to obtain documents relevant to these allegations, including “bank statements, cancelled checks, wire transfers, records of deposits, withdrawal receipts, and wire transfer receipts.” (2021 NY Slip Op 30220[U], *6).

While it’s true that Plaintiff’s requests cover an eleven-year period, the requests are not unreasonable because they correspond to the time period encompassed by WeWork’s lease of the Premises and the instant dispute. Defendants argue that although the court in *Bykov* compelled defendants to produce “bank statements, cancelled checks, wire transfers, records of deposits, withdrawal receipts, and wire transfer receipts, and any loan agreements,” it limited the time period for these demands to five years (2021 NY Slip Op 30220[U], *12). However, Defendants omit that the court merely limited the time period to “*two years before the*” *parties’ agreement* through a year after plaintiff’s claim accrued (*id.* at *13). Applied here, this rule would entitle Plaintiff to discovery from June 4, 2010, two years before the parties executed the Lease and the Guaranty, through the present because Plaintiff’s damages continue to accrue (*id.*). Accordingly, Plaintiff’s demand for information from January 1, 2012 through the present is reasonable based on the facts and circumstances of the case.

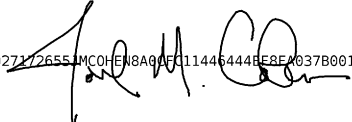
Finally, Defendants’ concern that the requested discovery contains sensitive financial information has already been addressed by the parties and this Court through the Stipulation and Order for the Production and Exchange of Confidentiality Information (*see* NYSCEF 24; 199).

The Court has considered Defendants’ remaining arguments and finds them unavailing. Thus, Plaintiff’s motion to compel is granted.

Accordingly, it is

ORDERED that Plaintiff's motion to compel is **GRANTED**; it is further
ORDERED that Defendants shall within a reasonable period (to be discussed by the parties, preferably without the need for Court intervention) (i) respond to Interrogatory No. 2 and (ii) produce non-privileged documents responsive to Request for Production Nos. 9 & 10.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

10/27/2023

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