

Dorman v Luva of NY, LLC

2024 NY Slip Op 30445(U)

February 7, 2024

Supreme Court, Kings County

Docket Number: Index No. 520154/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 7th day of February 2024

HONORABLE FRANCOIS A. RIVERA

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JONATHAN DORMAN and MERRIL STUBBS DORMAN,

Plaintiff,

- against -

LUVA OF NY, LLC, WALDEK DEC, ANDREW PASEK, BEN HERZOG ARCHITECT, PC., and BEN HERZOG

Defendants.

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Recitation in accordance with CPLR 2219 of the papers considered on the notice of motion filed on January 10, 2023, under motion sequence number two, by defendant and fourth party plaintiff Luva of NY LLC (hereinafter Luva or the movant) for an order pursuant to CPLR 2304r: (1) quashing the subpoena duces tecum dated January 3, 2023, served on Polish & Slavic Credit Union Bank (hereinafter PSCUB) by Jonathan Dorman and Merrill Stubbs Dorman (hereinafter the plaintiffs), or in the alternative (2) quashing, fixing conditions, and/or modifying so much of the subpoena as the Court deems just and proper. The plaintiffs opposed the motion.

-Notice of motion

-Affidavit in support

Exhibit A

-Memorandum of law in opposition

-Affirmation in opposition

Exhibit A

-Affirmation in reply

Exhibits 1-2

-Memorandum of law in reply

BACKGROUND

On October 19, 2020, plaintiff commenced the instant action for damages for personal injury by filing a summons and complaint with the Kings County Clerk’s office (KCCO).

DECISION & ORDER

Index No.: 520154/2020

Ms. 2

Oral Argument: 6/15/2023

On December 21, 2020, defendants Ben Herzog Architect, P.C., (hereinafter BHA) and Ben Herzog interposed and filed a verified answer with the KCCO.

On January 11, 2021, defendants BHA, and Ben Herzog interposed and filed an amended verified answer with cross claims, counterclaims, and third-party claims with the KCCO.

On January 25, 2021, the Luva defendants interposed and filed a verified answer with counterclaim and cross claims against BHA and Ben Herzog.

By subpoena duces tecum dated January 10, 2023, the plaintiff sought from PSCUB the following documents: All monthly and yearly bank statements relating to a certain account of the movants from February 1, 2018 to January 2023; all documents relating to any wire transfer funds from Jonathan Dorman or Merrill Stubbs Dorman; and all documents relating to any wire transfer funds to or from BHA.

LAW AND APPLICATION

This action concerns damages allegedly suffered by the plaintiffs in association with faulty and incomplete renovation work (hereinafter the project) the defendants, including the movant performed at the plaintiffs' home at 428 6th St., Brooklyn, NY 11215 (hereinafter the subject premises).

Plaintiffs issued a nonparty subpoena to PSCUB seeking documents related to bank accounts of the movants at PSCUB. Plaintiffs contend that the allegations in their complaint regarding the movants squandering of plaintiffs' monies and lack of payment to subcontractors on the project render the bank records held by PSCUB relevant to the claims in the action.

Plaintiffs also contend that the movants did not comply with CPLR 2304 in making the instant motion to quash. They contend that the subpoena at issue was not returnable in court and thus the movant was obligated pursuant to the statute to request that plaintiffs withdraw or

modify the subpoena before moving to quash. They argue that the movant did not contact the plaintiffs to make such a request, nor did it assert in its moving papers that such a request was made rendering the motion premature. Plaintiff also contends that the subpoena is not overly broad.

CPLR 2304 provides as follows: A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable. If the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court; except that such motion with respect to a child support subpoena issued pursuant to section one hundred eleven-p of the social services law shall be made to a judge of the family court or the supreme court. Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify.

The plaintiffs requested, among other things, all monthly and yearly bank statements relating to a certain account of the movants from February 1, 2018, to January 2023. The Court agrees with the movant that the request is overbroad and finds that these documents are not relevant to the causes of action asserted against them. As to the request for all documents relating to any wire transfer funds from Jonathan Dorman or Merrill Stubbs Dorman, the Court finds this request is vexatious. The plaintiffs know what wire transfers they have made and may rely on their own records. As to the request for all documents relating to any wire transfer funds to or from BHA for six years, the court also finds this request to be overly broad and irrelevant. None of these documents are relevant or necessary to prove that the movant breached a contract with the plaintiffs by performing faulty and incomplete renovation work for the project they were

hired to do (see *Phoenix Life Ins. Co. v Irwin Levinson Ins. Trust II*, No. 70 AD3d 476 [1st Dept 2010]).

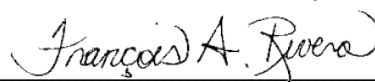
Moreover, contrary to the plaintiffs' contention the motion is not procedurally defective for failing to request that the plaintiffs withdraw or modify the subpoena before moving to quash. In *Brooks v. City of New York*, 178 Misc.2d 104, 105, 678 N.Y.S.2d 479, 480 (Sup.Ct., N.Y. County 1998), the court concluded that the phrase "returnable in a court" in CPLR 2304 is not the same thing as returnable in a courthouse. Rather, it means that the subpoena is issued within a court action or proceeding. The court concluded, therefore, that the motion to quash the subpoena requiring the witness to appear for a deposition could proceed straight away. A request to withdraw a subpoena before bringing a motion to quash the subpoena only must be made, pursuant to CPLR 2304, where the subpoena is not issued within a court action or proceeding. The Court agrees with this analysis.

CONCLUSION

The motion by plaintiff Luva of NY LLC for an order pursuant to CPLR 2304 quashing the subpoena duces tecum dated January 3, 2023, served on Polish & Slavic Credit Union Bank by Jonathan Dorman and Merrill Stubbs Dorman is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.