

Bissell St. I, LLC v Westbrook Partners LLC

2024 NY Slip Op 30884(U)

March 18, 2024

Supreme Court, New York County

Docket Number: Index No. 654223/2022

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

Pension Fund (Mot. Seq. 007), New York City Police Pension Fund (Mot. Seq. 008), and New York State Common Retirement Fund (Mot. Seq. 009).

The Subpoenas seek all communications and financial records between the Non-Parties and Westbrook Partners Real Estate Fund XI, and/or any Defendant, “referring to, referencing, or related to the Boeing campus.” The Subpoenas further provide that “[r]esponsive documents shall include, but not be limited to, communications, reports, prospectus materials, acquisition analyses, financial projections, quarterly reports, annual reports, distribution statements, capital call and distribution notices and co-investment materials exchanged between or among Westbrook Partners Real Estate Fund XI or any Westbrook Defendant, on the one hand,” and the Non-parties, on the other. Defendants oppose these motions. For the following reasons, Plaintiffs’ motion is denied.

CPLR 2307 governs a subpoena seeking “books, papers and other things” from a “library, or a department or bureau of a municipal corporation or of the state, or an officer thereof.” CPLR 2307 provides that “[u]nless the court orders otherwise, a motion for such subpoena shall be made on at least one day’s notice to the library, department, bureau or officer having custody of the book, document or other thing and the adverse party . . .” (CPLR 2307[a]; *Sanderson v NY City Tr. Auth.*, 2007 NY Slip Op 51382[U], *2 [Sup Ct, Kings County 2007]). The statute is reinforced by CPLR 3120(4), which notes that the motion requirements in CPLR 2307 are applicable when a subpoena duces tecum is sought to be served on a library or certain governmental departments in pretrial disclosure (CPLR 3120(4); *63rd & 3rd NYC LLC v Starr Indem. & Liab. Co.*, 76 Misc 3d 1208[A], [Sup Ct, NY County 2022])).

Here, nothing in the record indicates that Plaintiffs provided the notice required by CPLR 2307 to the Non-Parties. Thus, Plaintiffs have not given the Non-Parties an opportunity to

oppose these motions. Accordingly, the motions must be denied (*People v Simone*, 92 Misc 2d 306, 310 [Sup Ct, Bronx County 1977] [noting that the notice requirement serves the interest of allowing the government to “object to the issuance of a subpoena on legitimate grounds before it is signed”], *aff* 71 AD2d 554 [1st Dept 1979]; *63rd & 3rd NYC LLC*, 76 Misc 3d 1208[A] [denying motion pursuant to CPLR 2307 because defendant “failed to attach an affidavit or document evidencing that the within application was made on notice to the City of New York”]; *Townsend v B-U Realty Corp.*, 67 Misc 3d 1228[A] [Sup Ct, NY County 2020] [denying motion pursuant to CPLR 2307 as “the court has not dispensed with the procedural requirement that plaintiff give at least one day's notice to DHCR of its application for a subpoena”]).

Moreover, if there are documents exchanged among Defendants and Westbrook Partners Real Estate Fund XI and the Non-Parties, those documents would be in Defendants’ and/or and Westbrook Partners Real Estate Fund XI’s possession.¹ Plaintiffs should first request those documents from Defendants. If there is reason thereafter to request such documents from the Non-Parties, Plaintiffs may do so, provided they comply with the requirements of CPLR 2307.

Accordingly, it is

ORDERED that Plaintiffs’ Motions are **DENIED without prejudice**.

¹ Indeed, during a January 23, 2024 conference with the Court’s law clerk, Plaintiffs were advised to refine and narrow their earlier document requests to Defendants which seek to capture the same documents Plaintiffs seek from the Non-Parties through the Subpoenas.

This constitutes the Decision and Order of the Court.

3/18/2024

DATE


JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: