

Minkoff v Executive Risk Indem. Inc.

2024 NY Slip Op 32907(U)

August 15, 2024

Supreme Court, New York County

Docket Number: Index No. 656253/2018

Judge: Debra A. James

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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. DEBRA A. JAMES

PART 59

Justice

-----X

ALYSSE DEE MINKOFF,

Plaintiff,

- v -

EXECUTIVE RISK INDEMNITY INC., THE CIELO
CONDOMINIUM BOARD, and FIRST SERVICE
RESIDENTIAL,

Defendants.

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INDEX NO. 656253/2018

MOTION DATE 08/14/2024

MOTION SEQ. NO. 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 171, 172, 173, 174, 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200

were read on this motion to/for DISCOVERY.

ORDER

Upon the foregoing documents, it is

ORDERED that plaintiff's motion pursuant to CPLR 3124 to compel discovery by defendants The Cielo Condominium Board and/or First Service Residential is granted in part; and it is further

ORDERED that, within thirty (30) days of service of a copy of this order with notice of entry, defendants The Cielo Condominium Board and/or First Service Residential shall produce to plaintiff and co-defendants the annual written reports that summarize the records and vouchers of receipts and expenditures for the years 2018 through 2023, and, in accordance with NY Real Property Law § 339-w, grant plaintiff access to examine the records and vouchers

of receipts and expenditures during convenient hours of the weekday; and it is further

ORDERED that to the extent that it seeks copies of correspondence, digital or otherwise, about plaintiff between and/or among the members of The Cielo Condominium Board, within thirty (30) days of service of a copy of this order with notice of entry, the defendants The Cielo Condominium Board and First Service Residential shall produce to plaintiff and co-defendants copies of such members' letters dated from May 28, 2018 through May 29, 2023; and it is further

ORDERED that to the extent defendant The Cielo Condominium Board asserts that its meeting minutes for the period of May 28, 2018 to May 29, 2023 contain privileged matter, within twenty (20) days of service of a copy of this order with notice of entry, such defendant shall produce a privilege log with respect to such content to plaintiff, co-defendants, and the court; and it is further

ORDERED that, within thirty (30) days of service of a copy of this order with notice of entry, defendant The Cielo Condominium Board shall produce to plaintiff and co-defendants the minutes of meetings of the Cielo Condominium Board for the period of May 28, 2018 to May 29, 2023, redacted of any such privileged content, and both such redacted and unredacted hard copies of such meeting minutes to the court for in camera review; and it is further

ORDERED that defendants The Cielo Condominium Board and/or First Service Residential shall, within thirty (30) days from service of a copy of this order with notice of entry, produce to plaintiff and co-defendants copies of audited financial statements for the period May 28, 2018 to May 29, 2023; and it is further

ORDERED that to the extent that plaintiff seeks copies of (1) claims against defendants The Cielo Condominium and/or First Service Residential of other condominium owners; (2) contracts for construction work or "physical labor performed", including bids, architects'; (3) contractors' records and certificates of occupancy; (4) invoices for all payments greater than \$500 made by the defendant The Cielo Condominium; (5) all insurance records; and (6) other official records that relate to the operation and management of the building, plaintiff's motion to compel is denied; and it is further

ORDERED that none of the foregoing discovery directed to be produced shall be posted to NYSCEF, but must be exchanged with the parties to this action only by e-mail of counsel or as to the court by overnight courier or personal delivery; and it is further

ORDERED that, as previously scheduled, counsel are directed to appear for oral argument via Microsoft Teams of motion sequence numbers 6 and 7 on September 4, 2024, 12:10 PM.

DECISION

This court agrees with plaintiff that, pursuant to Real Property Law § 339-w, defendant The Cielo Condominium Board must provide her inspection and examination, as well as production of copies, at plaintiff's expense of, "records. . . of the receipts and expenditures arising from the operation of the property", as well as "the vouchers authorizing [such] payments". See Pomerance v McGrath, 143 AD3d 443 (1st Dept 2016). The court finds unavailing the argument of defendant The Cielo Condominium that plaintiff's lawsuit against it claiming negligence somehow circumscribes such right.

This court also holds that defendants The Cielo Condominium and/or First Service Residential must produce to plaintiff and co-defendants a copy of the board minutes and the audited financial statements that plaintiff seeks in discovery, as "the fact that Real Property Law § 339-w gives a unit owner the right to examine certain types of documents does not mean that the unit owner may not under common law examine additional documents", Pomerance, at p 441.

The court also concurs with plaintiff that correspondence, digital or otherwise, of which she is the subject, sent among or between Board members is discoverable. See Matter of Stein v New York State Department of Transportation, 25 AD3d 846, 848 (3d Dept 2006).

However, plaintiff has not shown that copies of claims against defendants The Cielo Condominium and/or First Service Residential of other condominium unit owners; contracts for construction work or "physical labor performed", including bids, architects'; contractors' records and certificates of occupancy; invoices for all payments greater than \$500 made by the defendant The Cielo Condominium; all insurance records; and/or other official records that relate to the operation and management of the building, are material to issues joined in this action, and therefore the court denies such relief. See Haller v North Riverside Partners, 189 AD2d 615, 616 (1st Dept 1993) ("demand seeks production of . . .any action or claim by any tenants. . ., which might require production of documents concerning unrelated claims. . .having nothing to do with the issues raised in plaintiff's complaint.")

Debra A. James

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| <u>8/15/2024</u> | | | <u>DEBRA A. JAMES, J.S.C.</u> |
| DATE | | | |
| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> GRANTED | <input type="checkbox"/> GRANTED IN PART | <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 |
| | <input type="checkbox"/> DENIED | | |