

CPC Contr. Corp. v JJSB Dev. LLC
2024 NY Slip Op 35655(U)
October 3, 2024
Supreme Court, Suffolk County
Docket Number: Index No. 611976/2019
Judge: James Hudson
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Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision

PRESENT:

HON. JAMES HUDSON
 Acting Justice of the Supreme Court

MOTION DATE: 6/25/24
 SUBMIT DATE: 8/7/24
 Mot. Seq. #: **001 – MD**

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 CPC CONTRACTING CORP.; and
 CHRISTOPHER CAMPBELL,

Plaintiffs,

VICTOR A. CARR & ASSOCIATES
 Attorneys for the Plaintiffs
 88 Second Street
 Mineola, NY 11501

-against-

JJSB DEVELOPMENT LLC; JJSB
 DEVELOPMENT HOLDINGS LLC; JJSB
 HOLDINGS LLC; MICHAEL ALESSI; and
 GREGORY SCHNEIDER,

MILLER, ROSADO & ALGIOS, LLP
 Attorneys for the Defendants
 320 Old Country Road, Suite 103
 Garden City, NY 11530

Defendants.
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JJSB Development LLC, JJSB Development Holdings LLC, JJSB Holdings LLC, Michael Alessi, and Gregory Schneider (“Defendants”, “JJSB”) request an order (mot. Seq. 001) pursuant to **CPLR 3124, 3126**: 1) compelling CPC Contracting Corp. and Christopher Campbell (“Plaintiffs”, “CPC”) to provide all documents in their possession, custody or control that are responsive to items 3 through 9 of the April 15th, 2024 notice of discovery inspection (“D&I”); 2) compelling CPC to comply with D&I Instruction E regarding any documents that have been lost or destroyed with specificity and stating the circumstances of any loss; 3) imposing sanctions against the plaintiffs for spoilation of

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evidence, and: a) reimbursing the defendants for any costs incurred in attempting to obtain the CPC tax returns for 2016 and 2017, b) if unobtainable, then precluding the plaintiffs from contesting allegations that their laborers were never paid for their work where one or both plaintiffs provided services for one or more defendant, or, in the alternative, c) granting the defendants an adverse inference against the plaintiffs relating to the issue of whether the plaintiffs paid any compensation to any person or entity who performed labor or any other services to one or both of the plaintiffs on any of the three (3) residential projects which are cited in the amended complaint.

This is a matter alleging breach of a 2016 oral contract between plaintiffs and defendants to provide work, labor, materials and services on residential construction/renovation projects at 30 Wilson Avenue, Middle Island, NY; 66 Fairfax Drive, Coram, NY; and 17 Alice Road, West Islip, NY. The plaintiffs allege that they were to receive \$60,000 for their work on each project, plus the cost of materials. The plaintiffs state that they were reimbursed for the materials and received \$10,000 for their work on each project. The plaintiffs allege breach of contract and an account stated of \$50,000 per project, for a total of \$150,000 which remains unpaid, despite due demand. The plaintiffs also allege unjust enrichment of the defendants, and *quantum meruit* of \$150,000. Last, the plaintiffs allege that defendants Michael Alessi and Gregory Schneider, the principals of JJSB, personally guaranteed payment, individually and severally.

Generally, the scope of pre-trial discovery is broad; with specific exceptions for material determined to be privileged and that which is an attorney's work product. **CPLR 3101 (a)** mandates full disclosure of all matters material and necessary to an action, consistent with "New York's policy of permitting open and far-reaching pretrial discovery"

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(*Neves v. Port Authority of New York and New Jersey*, 265 AD2d 393, 394, 697 NYS2d 85 [2d Dept 1999]; *M.C. v. Sylvia Marsh Equities, Inc.*, 103 AD3d 676, 959 NYS2d 280 92d Dept 2013)).

It is within the sound discretion of the Court to resolve discovery disputes (*Carmona v. HUB Props. Trust*, 186 AD3d 1485, 1486, 131 NYS3d 710 [2d Dept 2020]). The Court must balance the need for discovery against the burden of its production (*O'Neill v. Oakgrove Constr.*, 71 NY2d 521, 529, 528 NYS2d 1, 523 NE2d 277, *rearg denied* 72 NY2d 910, 532 NYS2d 785, 528 NE2d 1231 [1988]). The Court must liberally interpret whether the disclosure sought is material and necessary. That phrase has been held to include “facts bearing upon the controversy which will assist in the preparation for trial...the test is one of usefulness and reason” (*Harrison v. Bayley Seton Hosp., Inc.*, 219 AD2d 584, 584, 631 NYS2d 182 [2d Dept 1995]). Discovery which is sought in good faith or for use as evidence or in rebuttal, or for purposes of cross-examination, is permitted (*Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406, 288 NYS2d 449, 235 NE2d 430 [1968]). Discovery demands which are overly broad or tend to confuse pertinent case issues should be denied (*Brandes v. North Shore University Hosp.*, 1 AD3d 550, 767 NYS2d 999 [2d Dept 2003]). The Court’s review is limited to determining whether there has been an abuse of the discovery process (*Kavanagh v. Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954, 683 NYS2d 156, 705 NE2d 1197 [1998]).

On March 29th, 2024, counsel for JJSB filed a letter with the Court which states that it is uncontroverted that CPC received monetary reimbursement for all materials provided and \$10,000 for plaintiffs’ labor on each of the three projects (NYSCEF Doc. No. 36).

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On April 15th, 2024, JJSB filed its notice of discovery and inspection which forms the basis of the instant motion.

The Court will examine defendants' request to compel production of documents demanded in that D&I.

JJSB argues that CPC has failed to provide it with copies of all 2016 and 2017 documents in their possession, custody or control, consisting of: 1) all federal and state payroll records related to the subject residential projects; 2) Schedules C and E of the federal and state tax returns filed by Christopher Campbell; 3) all documents provided by plaintiffs to their accountants, federal and New York State tax returns with schedules; and 4) authorizations to obtain the requested records ("Documents"). They also request that CPC explain the loss or destruction of any requested document.

Counsel for JJSB argues that the requested documents are relevant and necessary to ascertain whether CPC "paid any of the persons they hired to provide labor on the jobs in 2016-2017, and if so, the remedies for plaintiffs' loss or destruction of such records" (NYSCEF Doc. No. 47, para. 3) Counsel contends that the requested documents will demonstrate whether monies paid to CPC for labor costs were paid to their workforce or withheld, unjustly enriching them. He states that should CPC prevail in the breach of contract action, JJSB would assert an offset for any such funds.

Counsel also asserts that, if CPC has lost its tax documents, pursuant to demand number 7, they must supply an authorization for JJSB to obtain the records from their accountants. To date, this demand has been refused.

On June 24th, 2024, counsel for CPC sent an e-mail to counsel for JJSB stating that the records in its possession responsive to demands 2-6 were lost during 2017 or 2018,

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while CPC principal Christopher Campbell was incarcerated (NYSCEF Doc. No. 70). Counsel provided JJSB with the name and town of the accountant who had prepared the requested tax returns, but not the accountant's street address.

Counsel for CPC argues in opposition that the requested documents are irrelevant; and that counsel for JJSB conceded their irrelevance in their March 29th, 2024 letter to the Court (NYSCEF Doc. No. 36). Counsel for CPC states that all documents in his clients' possession, including "irrelevant documents", to the extent that they exist, have already been provided (NYSCEF Doc. No. 67, para. 3). He notes that the amended complaint alleges that JJSB has failed to pay the balance of a \$50,000 flat fee for each of the three (3) projects. He argues that payments made to other subcontractors are not relevant.

The Court finds the movants argument lacks merit.

22 NYCRR 202.7 (a) requires that all motions related to discovery, including a motion to compel, must include an affirmation by movant counsel stating that they have conferred with their adversary and made a good faith effort to resolve the issues raised by the motion. **22 NYCRR 202.20-f**, based upon **Commercial Division Rule 14**, states that absent exigent circumstances, prior to contacting the Court regarding a disclosure dispute, counsel must first confer in good faith to resolve all discovery disputes. The supporting affirmation must attest to counsel having conducted an in-person or telephonic conference, stating the date and time of each such conference, the persons who participated, and the length of time of each conference. If the moving party was unable to conduct a conference due to an unreasonable failure or refusal of the adverse party, the movant must detail his efforts to obtain a conference and set forth the responses received (**22 NYCRR 202.20-f [b]**).

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The affirmation of good faith, supporting affirmation and the affirmation in reply do not contain the required attestations. The relief requested in the motion will be denied.

It is apparent that the parties have reached a discovery impasse. The Court will refer the issue to a discovery master. The parties are directed to consult the Commercial Division list of neutrals and submit a proposed order; whereupon the Court will assign a master to decide all matters relating to discovery.

Accordingly, it is

ORDERED, that the motion (seq. no. 001) by the defendants, JJSB Development Holdings LLC, JJSB Holdings LLC, Michael Alessi and Gregory Schneider, is denied in its entirety; and it is further

ORDERED, ADJUDGED and DECREED that the Court will appoint a Special Case Discovery Master to hear and resolve all case discovery issues.

Submit Order.

This memorandum also constitutes the Order of the Court.

Dated: October 3rd, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court