

Pataky v 1199 Hous. Corp.

2025 NY Slip Op 31775(U)

May 7, 2025

Supreme Court, New York County

Docket Number: Index No. 156654/2022

Judge: Emily Morales-Minerva

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

ROBERTO JAVIER CRUZ PATAKY, Plaintiff, - v - 1199 HOUSING CORP., SKYLINE RESTORATION INC. Defendant. INDEX NO. 156654/2022 MOTION DATE 03/06/2025 MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 61, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 114

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

APPEARANCES:

Gorayeb & Associates, P.C., New York, New York (Jonathan D. Moran, Esq., of counsel) for plaintiff.

Chartwell Law, New York, New York (Tiffany S. Fendley, Esq., of counsel) for defendants.

HON. EMILY MORALES-MINERVA, J.S.C:

In this action for, among other things, negligence, defendants 1199 HOUSING CORP., and SKYLINE RESTORATION INC. move, by order to show cause (motion seq. no. 003), for an order, (1) pursuant to CPLR §§ 6301 and 6313, granting them a preliminary injunction and temporary restraining order against plaintiff ROBERTO JAVIER CRUZ PATAKY; (2) pursuant to CPLR § 3025 (b), granting defendants leave to amend their answer and to assert a counterclaim for fraud; (3)

pursuant to CPLR § 3124, compelling plaintiff and plaintiff's counsel to submit to a deposition; and, (4) pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1 (c), granting defendants "costs associated with Plaintiff's further deposition and the preparation, filing, and appearance of the instant application" (New York State Courts Electronic Filing System [NYSCEF] Doc. No. 33, order to show cause, dated May 24, 2024). Plaintiff submits opposition to the application.

The court marked the matter returnable in Part 42M, on April 09, 2024, at 2:00 P.M. At the call of the calendar, defendants appeared, by counsel, and plaintiff appeared, by counsel.

On the record, defendants withdrew their application for a preliminary injunction and temporary restraining order. Therefore, such application is denied as withdrawn.

Moving next to defendants' application, pursuant to CPLR § 3025 (b), seeking leave to amend their answer to assert counterclaims, the court denies the relief. Rule 3025 (b) of the CPLR provides: "Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading" (emphasis added). However, defendants do not

include the proposed amended answer and counterclaims in their application.

Defendants' request for an order, pursuant to CPLR § 3124, compelling both plaintiff and one of plaintiff's counsel in a workers' compensation claim to appear for a deposition post note of issue, is also unavailing. A court may grant a party permission to conduct discovery post note of issue, upon motion supported by an affidavit, "[w]here unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice" (Uniform Rules for the Supreme Court and the County Court [22 NYCRR § 202.21 [d)]). Here, defendants do not allege or establish any unusual or unanticipated circumstances, or substantial prejudice, warranting such discovery.

In any event, even if note of issue was not filed or vacated, the court would deny defendants' application to compel discovery at this time. Pursuant to 22 NYCRR § 202.7 (c), all motions relating to disclosure or to a bill of particulars must include "an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion" (Uniform Rules for the Supreme Court and the County Court [22 NYCRR] § 202.7 [a])). Further, "[t]he affirmation of the good faith effort to resolve the

issues raised by the motion shall indicate the time, place and nature of the consultation and the issues discussed and any resolutions or shall indicate good cause why no such conferral with counsel for opposing parties was held" (id. 22 NYCRR § 202.7 [c]). Failure, as here, to provide an affirmation of good faith which substantively complies with 22 NYCRR § 202.7 (c) warrants denial of the motion (see Cashbamba v 1056 Bedford LLC, 172 AD3d 415, 416 [1st Dept 2019]; see also 241 Fifth Ave. Hotel, LLC v GSY Corp., 110 AD3d 470, 471-472 [1st Dept 2013]).

Finally, defendants request -- that the court issue an order, pursuant to CPLR § 3126, sanctioning plaintiff for refusal to disclose and an order, pursuant to 22 NYCRR § 130-1 (c), "awarding Defendants costs associated with Plaintiff's further deposition and the preparation, filing, and appearance of the instant application" -- is unavailing. These applications are part of the discovery dispute for which there has been no showing that defendants have made a good faith to resolve.

Accordingly, it is

ORDERED that defendants-movant 1199 HOUSING CORP., and SKYLINE RESTORATION INC.'S motion, by order to show cause (motion seq. no. 003), is denied in its entirety; and it is further

ORDERED that the clerk shall thus mark the calendar.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

5/7/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE