

Malekan v Malekan

2025 NY Slip Op 33130(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 652507/2023

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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MICHAEL MALEKAN,

Plaintiff,

- v -

ALBERT MALEKAN, 466-26 SOHO LLC (NOMINAL
DEFENDANT), 75-26 SOHO LLC (NOMINAL
DEFENDANT), DAYAN 26-552, LLC, ALBERTO MAKALI,
LTD., 466-26 DELAWARE LLC, and SHAHRAM
GOLPANIAN,

Defendants.

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INDEX NO. 652507/2023

MOTION DATE --

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 334, 335, 336, 337, 338, 339, 340, 341, 359, 360

were read on this motion to/for DISCOVERY.

In motion sequence 009, plaintiff Michael Malekan moves pursuant to CPLR 3124 for an order compelling nonparties Ki Wan Kim and Ki Young Kim (together, the Kims) to comply with subpoenas duces tecum and ad testificandum dated June 13, 2025 by producing responsive documents and providing a date-certain for their depositions and awarding plaintiff costs and legal fees incurred in making this motion. The order to show cause and accompanying papers were served on the Kims (NYSCEF Doc Nos. [NYSCEF] 359 & 360, affs of service of order to show cause) who filed no opposition papers.

Discussion

“[I]f a person fails to comply with a subpoena which is not returnable in a court, the issuer or the person on whose behalf the subpoena was issued may move in the supreme court to compel compliance.” (CPLR 2308[b][1]; see *a/so* CPLR 3124 [“If a

person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response”].) “There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by ... any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.” (CPLR 3101[a][4].)

The subpoenas were served on the Kims on June 17, 2025. (NYSCEF 335, Gelber¹ aff ¶ 8; NYSCEF 337, affs of service of subpoena.) “[T]he affidavit of a process server constitutes prima facie evidence of proper service.” (*Matter of de Sanchez*, 57 AD3d 452, 454 [1st Dept 2008].) Per the subpoenas, the Kims were to produce certain documents by July 8, 2025, and sit for a deposition on July 22 and 23, 2025. (NYSCEF 336, Subpoenas.) The Kims, however, failed to comply with the subpoenas. (NYSCEF 335, Gelber aff ¶¶ 10-11.)

Plaintiff argues that the Kims own 552 Frame Inc. (d/b/a Frame Café), a tenant at 552 7th Avenue, a building owned by Dayan 26-552 LLC, a Malekan family company. The Kims signed a confession of judgment of \$200,000 in favor of defendant Albert Malekan. (NYSCEF 338, aff of confession of judgment.) Plaintiff argues that

“It appears that Albert Malekan was negotiating a side-deal with the guarantors of Dayan, taking some financial benefit for himself, rather than accepting it for Dayan to whom any debts owed by the Kims should have been paid. On the surface this appears to be yet another egregious breach of fiduciary duty by Albert Malekan to Dayan.” (NYSCEF 340, MOL at 2/6.)

¹ R. Zachary Gelber is plaintiff’s counsel. (NYSCEF 335, Gelber aff ¶ 1.)
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Motion No. 009

The subpoenas seek documents relating to “any payments made to, or for the benefit of, Albert Malekan, including copies of any cancelled checks, bank wires, or other transfers of money or assets,” the confession of judgment, and any liabilities to Albert Malekan (NYSCEF 336, Subpoenas at 4, 7/7), and thus, seek relevant information. (See CPLR 3101[a][4].)

“If the court finds that the subpoena was authorized, it shall order compliance and may impose costs not exceeding fifty dollars. A subpoenaed person shall also be liable to the person on whose behalf the subpoena was issued for a penalty not exceeding fifty dollars and damages sustained by reason of the failure to comply.” (CPLR 2308[b].)

The Kims shall comply with the subpoenas by the dates stated *infra*. Additionally, plaintiff is entitled to recover from the Kims the damages caused by their noncompliance, i.e. reasonable attorneys’ fees incurred in making this motion which would have been unnecessary had the Kims complied.² (See CPLR 2308[b]; *Cet Painting II Corp. v Kosl Bldg. Group, LLC*, 2023 NY Misc LEXIS 34016, *5 [Sup Ct, Westchester County].)

Accordingly, it is

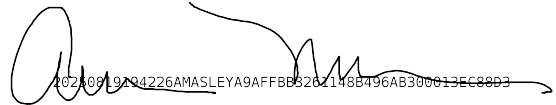
ORDERED that the motion is granted, and Ki Wan Kim and Ki Young Kim shall produce the documents requested in the subpoenas by September 5, 2025 and sit for depositions by September 19, 2025. The specific deposition dates shall be coordinated with plaintiff’s counsel; and it is further

ORDERED that plaintiff’s application for costs and attorneys’ fees in bringing this application is contingent on the Kims’ compliance with the deadlines provided in this

² Plaintiff does not seek imposition of a penalty not exceeding fifty dollars which is authorized by CPLR 2308(b).

order; if the Kims do not comply with the court-issued dates above, they will be responsible for plaintiff's attorneys' fees in making this application; and it is further

ORDERED that plaintiff shall serve this order with a notice of entry upon Ki Wan Kim and Ki Young Kim via overnight mail by August 25, 2025.



8/19/2025
DATE

ANDREA MASLEY, 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: