

4 Cent. Plaza Holdings, LLC v Bertel Dev., LLC

2025 NY Slip Op 33555(U)

September 22, 2025

Supreme Court, New York County

Docket Number: Index No. 652796/2023

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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4 CENTRAL PLAZA HOLDINGS, LLC,
 Plaintiff,

- v -

BERTEL DEVELOPMENT, LLC, RONALD S. LUBETSKY,
 NEAL LUBETSKY

Defendants.

INDEX NO. 652796/2023

MOTION DATE 08/28/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
 MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 78, 79, 80, 81, 82, 83, 85, 86, 87, 88, 89, 90
 were read on this motion to COMPEL DISCOVERY.

Plaintiff 4 Central Plaza Holdings, LLC (“Plaintiff”) moves to compel Defendants Bertel Development, LLC (“Bertel”), Ronald Lubetsky, and Neal Lubetsky (collectively, “Defendants”) to produce documents responsive to Plaintiff’s Amended Second Notice of Discovery & Inspection. For the reasons discussed below, Plaintiff’s motion is **GRANTED IN PART**.

Plaintiff brings claims against Defendants for breach of contract and warranty, fraud, contractual attorney’s fees, and fraudulent conveyance arising out of the sale of certain real property by Bertel. Defendants’ motion for summary judgment dismissing these claims was denied by decision and order dated March 3, 2025 (NYSCEF 67).

Plaintiff seeks all tax returns filed on behalf of Bertel and a variety of Bertel’s financial records, arguing that such information is relevant to determining Bertel’s solvency for purposes of their fraudulent conveyance claim. Defendants object to the requests on the grounds that “the requested documents are irrelevant to the subject matter of the action” and/or that the requests

are “a premature attempt at a supplementary proceeding to satisfy judgment before liability has been adjudicated” (NYSCEF 81).

Defendants’ opposition largely relies on an argument that Plaintiff’s cause of action for fraudulent conveyance fails to state a claim because Plaintiff is not a creditor of Defendants (NYSCEF 85). The Court rejected this argument when Defendants asserted it the first time in connection with their motion for summary judgment (NYSCEF 66 at 8). Defendants’ reliance on the same argument now to avoid their discovery obligations is unavailing.

The documents sought are plainly relevant to the fraudulent conveyance claim. Contrary to Defendants’ assertion, it is not the case that “New York courts have long held that financial disclosures and income tax returns are generally discoverable only in post-judgment proceedings aimed at enforcing a money judgment” (NYSCEF 85 at 6, citing *Jones Day v Serenity Pharms., LLC*, 213 AD3d 488 [1st Dept 2023]). *Jones Day* does not support that broad proposition; in fact, that court found that similar financial records “were material and necessary to prosecute...fraudulent conveyance [] claims,” rejecting the “characterization of [the] discovery requests as prematurely seeking postjudgment enforcement” (213 AD3d at 489). The court also noted that “attempts to relitigate the merits of [the] claims” were improper on a discovery motion (*id.*).

In order to obtain Bertel’s tax returns, Plaintiff “must make a strong showing of necessity and demonstrate that the information contained in the returns is unavailable from other sources” (*Williams v New York City Hous. Auth.*, 22 AD3d 315, 316 [1st Dept 2005]). While the Court is satisfied that the material in the tax returns would be relevant, Plaintiff understandably cannot demonstrate with certainty that the information is unavailable from other sources, as Defendants have refused to produce Bertel’s other financial records. However, other courts have found this

requirement to be met in analogous circumstances (*County of Warren on Behalf of Westmount Health Facility v Swan*, 203 AD3d 1504, 1508 [3d Dept 2022] [finding movant made the required showing of unavailability “particularly given defendants' reluctance to produce responsive documents or interrogatory responses that may have otherwise provided information contained in decedent's tax returns”]). That being said, some of the demands appear overbroad in that they do not limit the documents requested to a reasonable timeframe before and after the alleged conveyances, e.g. Demand Nos. 2-10 (NYSCEF 81). The parties are expected to confer in good faith to narrow the scope of these demands without further Court intervention.

Accordingly, it is

ORDERED that Plaintiff’s motion to compel is **GRANTED IN PART**, such that Defendants’ blanket objection to producing documents responsive to Demand Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, and 25 on the basis that the demands are irrelevant and/or premature attempts at post-judgment discovery is overruled, and such documents must be produced subject to the meet and confer prescribed below; it is further

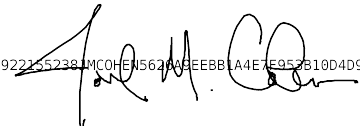
ORDERED that, within 14 days of the date of this order, the parties meet and confer as to narrowing the timeframe of Demand Nos. 2-10 and advise the Court via joint letter as to whether there are disputes requiring Court intervention as to the scope of production; it is further

ORDERED that pursuant to the stipulation in the preliminary conference order (NYSCEF 12), Plaintiff shall recover from Defendants their reasonable attorney’s fees and costs incurred in connection with this motion; and it is further

ORDERED that Plaintiff may submit an application for the attorney’s fees and costs awarded above within 30 days of the date of this order, and Defendants may file opposition to the application within 14 days of Plaintiff’s filing thereof.

This constitutes the decision and order of the Court.

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9/22/2025
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: