

Rivera v Matiz Architecture, PLLC

2025 NY Slip Op 35103(U)

February 18, 2025

Supreme Court, Bronx County

Docket Number: Index No. 29322-2020E

Judge: Myrna Socorro

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#11

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART IA9

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Edgar Rivera,
Plaintiff,

Index No. 29322-2020E
Motion seq #11

-against-

Matiz Architecture, PLLC d/b/a Matiz Arichitecture
& Design, Petracca Design & Engineering P.C., ME
Engineers, Jeffrey Zuckerman, John Doe, Richard Roe,
and 3 RSD LLC,

DECISION & ORDER
Hon. Myrna Socorro, J.S.C.

Defendants.

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Recitation as required by CPLR §2219 of the papers filed by Defendant 3 RSD LLC in motion sequence no. 11, for a protective order, marked submitted on July 30, 2024:

Papers	NYSCEF Document ID #
Defendant’s Notice of Motion, Affirmation in Support, and Exhibits	#280-285
Plaintiff’s Affirmation in Opposition	#286-300
Defendant’s Reply Affirmation	#301

Plaintiff commenced the instant action by filing a Summons and Complaint on August 25, 2020, for injuries he sustained while working on a renovation project on defendant 3 RSD LLC’s property (NYSCEF Doc. #1). Defendants 3 RSD LLC (“RSD”) moved for summary judgment to dismiss the Complaint and crossclaims against them under motion seq #6. By Hon. Lucindo Suarez’s Decision and Order dated March 14, 2022, the Court granted RSD’s motion, and dismissed the claims and crossclaims against them. In doing so, the Court found RSD had established its *prima facie* burden for dismissal of the Labor Law §§240(1) and 241(6) claims under the homeowner exception. In his Decision and Order, Hon. Lucindo Suarez stated:

“RSD demonstrated through the affidavit of Managing Member of Zoia Properties LLC, Adam Zoia, who averred that he intended to move into the subject property with his family and to use same solely for residential purposes. Moreover, it was undisputed that the subject property is a single-family home.”

Plaintiff filed an appeal of the Decision and Order, the First Department granted the appeal and reversed the decision of Hon. Lucindo Suarez, and referenced that motion seq #6 was premature as 3 RSD had not yet provided a managing member for deposition. RSD alleged that it has

subsequently moved to reargue or for leave to appeal the decision to the New York Court of Appeals,

On July 20, 2023, Plaintiff served counsel for defendants with a demand to produce documents (NYSCEF Doc #279). Within the demand, plaintiff seeks information as to: the names of employees/agents and/or servants of Defendant 3 RSD and non-party entity Zoia Properties LLC from the date of incorporation of each entity to the date of the subject accident; the names and identities of Banks- checkbooks for April 6, 2017 to February 7, 2010 for 3 RSD LLC; the name and identities of Banks- checkbook from the date of incorporation to the date of injury (February 7, 2019) for non-party Zoia Properties LLC; all contracts between 3 RSD, Zoia Properties LLC, Mr. Adam Zoia, and non-party Debono Brothers Buildings & Developers, Inc.; and corporate tax returns for 3 RSD and non-party entity Zoia Properties LLC for 2017, 2018, and 2019.

RSD served their response to plaintiff's demand wherein RSD objected to said demands as overbroad and unduly burdensome (NYSCEF Doc #285). Defendants counsel also states they made a good faith effort to resolve this discovery dispute, by calling plaintiff's counsel and requesting they withdraw the discovery demand dated July 20, 2023, to avoid motion practice.

After these attempts were unsuccessful, defendant RSD filed the instant motion pursuant to CPLR §3101, seeking an order to vacate or limit the discovery demands of plaintiff.

In support of their motion, RSD argues that plaintiff's demands as currently constituted would grant him unfettered access to RSD's financial records and finances, regardless of whether those records would lead to admissible discovery, and therefore they are improper. Defendant continues that Plaintiff has made no showing how knowing the names of RSD's employees, since its inception, will aide in the prosecution of his case. Similarly, defendant argues plaintiff has failed to show that all contracts RSD has entered into with Zoia Properties LLC ("Zoia") and Debono Brothers Buildings & Developers ("Debono") is probative to his case. In addition, RSD argues that plaintiff has not shown how the need for this information outweighs the burden of producing the same.

RSD continued that no depositions in this case have gone forward,¹ and futher, that no other discovery has been produced to provide a basis for plaintiff's demands of all of RSD financial records or employee information. Defendant cites to CPLR §3107, which provides the right for a corporate defendant to designate the witness to be deposed on their behalf in the first instance and argues that plaintiff's request for all of RSD's employees since its inception is an attempt of plaintiff

¹ However, it would appear that the deposition was held in June 2024.

to decide who to depose for themselves.

Finally, Defendant offers that considering the pending Decision of the First Department, RSD could be greatly prejudiced if its private communications were disclosed without any restrictions, in a case where the claims against them could be dismissed².

Counsel for Defendant RSD also argues to dismiss the demand for documents on behalf of non-party Zoia. RSD argues that the plaintiff's demand for documents does not mention in the Affidavit of Service that Zoia was served with notice of these demands or given the circumstances or reasons for such disclosure. Therefore, according to RSD, plaintiff's demand for documents from Zoia must be dismissed for wholly failing to comply with CPLR §3101(a)(4).

In opposition, plaintiff begins by arguing the names of employees/agents of RSD and Zoia from date of incorporation is a proper demand to identify witnesses to the purchase of 3 Riverside Drive and the purpose of acquiring that property. Next, plaintiff argues the demand for names and identity of banks and checkbooks is proper to identify the source of the funding used to purchase 3 Riverside Drive, which is relevant to refute Adam Zoia's claim that the primary purpose for purchasing the property for residential use. Further, plaintiff argues that the demand made for all contracts between RSD, Zoia, Adam Zoia, and Debono, is relevant to the apparent business of Zoia in purchasing, renovating, and selling real estate. Finally, plaintiff argues the corporate tax returns are relevant to establish if 3 Riverside Drive was listed as an asset and determine the treatment of the property for tax purposes. Plaintiff notes that he is unable to give further specifics as to the relevancy of these items, "since Plaintiff has received no discovery from RSD to date."

In reply, RSD argues repeatedly that Mr. Zoia will be produced for a deposition related to this matter, and at that time, plaintiff is entitled to question him regarding the employees of RSD, what personal knowledge they may obtain, the funding used to purchase 3 Riverside Drive, whether RSD and Mr. Zoia were engaged in the business of purchasing, renovating, and selling real estate, and how 3 Riverside Drive was reported on RSD's tax returns in previous years. According to defendant, to this point, plaintiff has provided only suppositions and speculation as to the arguments they use to support their demand for discovery documents, and therefore they are entitled to an order vacating or limiting the discovery demands of plaintiff.

² However, since the filing of the motion there does not appear to be any decision on the motion to reargue or leave to appeal the decision to the New York State Court of Appeals issued by the First Department since June 2023.

Discussion

CPLR § 3130(a) provides:

“The Court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device...”

CPLR § 3101(a)(4), provides that disclosure may be sought from non-parties, “upon notice stating the circumstances or reasons such disclosure is sought or required...”

Upon reading of the motion and after due deliberation, the Court finds that despite still being in discovery, it is necessary for RSD to provide a portion of the documents which have been demanded by plaintiff. However, the Court additionally finds that said demand by plaintiff requires several limitations. As such, defendant RSD’s motion for an order limiting or vacating plaintiff’s discovery demands is granted to the following extent:

Plaintiff’s Demands as to RSD

At this time the Court does not find sufficient information in the record, to compel RSD to provide the names of its Banks and its checkbooks from the date of inception to the date of the subject accident. Thus, RSD’s motion for a protective order as to this demand is granted. However, plaintiff may renew this demand at a later date, should discovery reveal said demand to be material and necessary.

Further, as to the branch of RSD’s motion seeking a protective order limiting or vacating plaintiff’s demands for RSD’s employees/agents and/or servants from the date of its inception to the date of the subject accident and corporate tax returns for RSD for 2017, 2018, and 2019, RSD’s motion is granted to an extent. Defendant RSD is ordered to provide plaintiff with responses to the names of RSD employees for the period of one year prior to and through the date of the accident; and copies of the corporate tax returns for RSD for 2017 through 2019. Defendant RSD is to provide these items within thirty (30) days of the Notice of Entry. Defendant RSD does not have provide the names of employees/agents and/or servants from date of incorporation.

As to all contracts between 3 RSD LLC, Zoia Properties LLC, Mr. Adam Zoia, and non-party Debono Brothers Building & Developers Inc , said contracts may be probative as it may contain the nature and/or designation of the property under construction and its intended use after completion. Accordingly, defendant RSD is to provide copies of these contracts to plaintiff within thirty (30) days of the Notice of Entry.

Plaintiff’s Demands as to non-party Zoia

Upon review of the motion papers, the Court finds that plaintiff has failed to comply with CPLR §3101(a)(4), as the affidavit of service of plaintiff’s demand does not indicate Zoia was served with said demands and the demands contain no explanation as to why non-party Zoia should produce the

documents plaintiff seeks. Accordingly, RSD's motion for a protective order vacating or limiting the demands directed at Zoia Properties LLC is hereby granted.

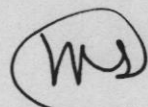
Accordingly, the motion is **GRANTED TO AN EXTENT**; and it is further

ORDERED, that defendant RSD is to provide plaintiff within thirty (30) days from the Notice of Entry, the names of employees for RSD for the period of one year prior to and through the date of the accident; corporate tax returns from 2017 through 2019 and all contracts between RSD, Zoia Properties LLC, Mr. Adam Zoia and non-party Debono Brothers Building & Developers Inc.; and it is further

ORDERED, that plaintiff shall serve and file a Notice of Entry of this Decision and Order upon all parties within fifteen (15) days from the date of this Decision and Order.

This constitutes the Decision and Order of the Court.

Dated: February 18, 2025



Hon. Myrna Socorro, J.S.C.