

Tribeca Space Mgrs., Inc. v Tribeca Mews Ltd.
2017 NY Slip Op 31407(U)
June 28, 2017
Supreme Court, New York County
Docket Number: 653292/13
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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TRIBECA SPACE MANAGERS, INC.,

Index No. 653292/13

Plaintiff,

-against-

Decision and Order

TRIBECA MEWS LTD., HAROLD THURMAN,
BRAD THURMAN, AND 25 MYRENTCO LLC,,

Defendants.

-----x
JENNIFER G. SCHECTER, J.:

Motion sequence numbers 005 and 006 are consolidated for disposition.

Plaintiff Tribeca Space Managers, Inc., an incorporated association of the owners of units in a building located at 25 Murray Street in Manhattan, commenced this action in 2013. It alleges that Tribeca Mews Ltd., the sponsor of the condominium, and its principals and their affiliate 25 Myrentco LLC breached agreements and fiduciary obligations based on, among other things, construction defects and failure to procure a permanent certificate of occupancy. Plaintiff also alleges that defendants engaged in fraudulent conveyances to render Tribeca Mews Ltd. insolvent and defeat any potential recovery.

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Motion Sequence Number 005

In March 2014, Melvin Brosterman, a partner at Stroock & Stroock & Lavan LLP, was elected to plaintiff's board of managers. In January 2015, Mr. Brosterman filed a notice of appearance in this action and he is the lead trial counsel. Defendants never sought to depose Mr. Brosterman. In fact, they ultimately waived their rights to depose any witnesses by failing to timely conduct examinations before trial.

In April 2017, defendants served a trial subpoena on Mr. Brosterman, who remains on plaintiff's board, to compel his testimony at trial. They also subpoenaed Michael Cohen, another member of plaintiff's board who was on the board even before this action was commenced.

Plaintiff moves for a protective order and to quash the subpoena served on Mr. Brosterman. Plaintiff's motion is granted. On this record, defendants have not shown any need for Mr. Brosterman's testimony nor have they shown that they cannot get any evidence sought from Michael Cohen. Because defendants can obtain trial testimony from Mr. Cohen, there is no basis for requiring Mr. Brosterman to serve as a witness. If it is later determined by the trial judge that Mr.

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Brosterman's testimony is essential to the defense of the action, an appropriate application may be made at that time.

Motion Sequence Number 006

Plaintiff's motion and defendants' cross-motion to preclude expert testimony are both denied.

The parties' preliminary conference order (PCO) mandated that "expert disclosure . . . be exchanged 90 days following last party EBT" (Affirmation in Opposition and in Support of Cross-Motion [Opp], Ex A at #5). It did not require a party to demand expert disclosure as a prerequisite for obtaining it. Despite the terms of the PCO, however, both parties waited until May 2017 to serve expert disclosure.

Plaintiff incorrectly maintains that it had no obligation to timely exchange expert disclosure because defendant did not request it and that its disclosure of the Thornton Tomasetti (TT) report, which was referenced in the complaint, along with counsel's mention at the preliminary conference that TT would be its expert at trial satisfied its expert disclosure requirements. Defendant's argument--that it had no obligation to exchange expert disclosure because party depositions were

never completed--is wrong too. Clearly, defendant was never to be rewarded for its lack of diligence in failing to timely conduct depositions by having no deadline for expert disclosure whatsoever. Rather, the 90-day deadline ran from March 31, 2015, which was the last date on which a "party EBT" could be conducted.

In the end, on this record, preclusion of either party's experts is denied. Neither party's compliance with the PCO is good cause for allowing both parties' late disclosures. Plaintiff had informal knowledge about defendants' potential experts since July 2016 and formal knowledge of the experts, who are being called to rebut plaintiff's experts, more than 60 days before trial. Plaintiff, moreover, was offered an adjournment of the trial date if it needed one and declined.

Accordingly, it is ORDERED that plaintiff's motion to quash the subpoena served on Mr. Brosterman (sequence number 005) is GRANTED; and it is further

ORDERED that plaintiff's motion to preclude defendants' experts and defendants' cross-motion to preclude plaintiff's experts are denied.

This is the decision and order of the court.

Dated: June 28, 2017


HON. JENNIFER G. SCHECTER