

**Functional Life Achievement, Inc. v Aspiring
Munchkins LLC**

2022 NY Slip Op 32819(U)

August 18, 2022

Supreme Court, New York County

Docket Number: Index No. 655583/2016

Judge: Arlene Bluth

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. ARLENE BLUTH PART 14

Justice

-----X

FUNCTIONAL LIFE ACHIEVEMENT, INC.,

Plaintiff,

- v -

ASPIRING MUNCHKINS LLC, MEI HAR CHEW, QI GUO,
ELAINE CHING-YEE LO A.K.A. ELAINE CHING-YEE
CHOW, MARIAN SHENG, JILIN YIN, YINSHENG
FLUSHING LLC

Defendants.

-----X

INDEX NO. 655583/2016

MOTION DATE 08/08/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 91, 92, 93, 94, 95, 96, 97, 98, 99

were read on this motion to/for DISCOVERY.

The motion by plaintiff to compel discovery and to extend the time to file the note of issue is denied.

Background

Plaintiff contends it operates an agency that provides services for infants and toddlers with disabilities under the New York State Early Intervention Program. It claims that this case involves its former clinical director, service coordinator, and another staff member and their combined efforts to use plaintiff's confidential and proprietary information to start a competing business. Plaintiff explains that defendant Chew was the clinical director and had full access to plaintiff's proprietary information.

In this 2016 case, plaintiff moves to compel defendants to produce financial documents, which plaintiff claims are essential for plaintiff's calculation of damages at trial. Plaintiff says it wants documents relating to the income received by the corporate defendant related to a state servicing contract, the profits from this contract and the value of the corporate defendant.

In opposition, defendants claim that they offered objections to a demand seeking the requested information back in 2017 (when they received this demand from plaintiff) and plaintiff did nothing to secure discovery until this Court directed that a note of issue be filed by July 27, 2022. Defendants insist that they did not take any of plaintiff's clients with them and so there is no reason for them to share such broad-based financial information.

In reply, plaintiff insists that the documents it seeks consist of information that defendants previously agreed to produce or objected on the ground they were premature. It questions how defendants could now argue that it is too late. Plaintiff argues that defendants could comply by producing full and complete copies of (i) the invoices directed to and the checks received from the State of New York and New York City pursuant to the corporate defendant's contract with them, expense records and the corporate defendant's profit and loss statements.

Discussion

As an initial matter, the Court's analysis must begin with the most recent conference order. The parties submitted an order (signed by the Court on June 1, 2022) stating that "Both sides have requested certain additional documents from the other. Counsel anticipate that they can reach agreement with respect to these items and complete production by the end of June"

(NYSCEF Doc. No. 87). The Court, after reviewing this order, directed that a note of issue be filed by July 27, 2022 given that there appeared to be little remaining discovery.¹

More than a month later, plaintiff suddenly submitted a letter demanding discovery and eventually made the instant motion. The Court is perplexed to say the least. This case has had numerous conferences over the six years it has been pending. The Court has also decided two motions concerning discovery disputes. And yet, plaintiff is suddenly concerned with a more than five-year-old demand, from *April 21, 2017* (NYSCEF Doc. No. 95). Why this was not included in any of the previous discovery orders or motion practice is beyond comprehension.

If plaintiff really wanted this discovery, it would have done something about it in the more than five years the demand has remained pending. Moreover, defendants objected to this demand back in 2017 (NYSCEF Doc. No. 96) and, still, plaintiff did nothing to compel defendants to produce this information. The Court has no idea whether plaintiff forgot about the information or suddenly thinks this information is now vital (because it was clearly not before). But the fact is that this Court declines to compel defendants to produce information to which they properly objected more than five years ago and where plaintiff did not include this request on the previous discovery order. The vague language included in that order did not require defendants to do anything. Plaintiff had ample opportunity to seek this information from defendants and it did nothing. It is time for this case to finally proceed to trial.

Accordingly, it is hereby

¹ The order also contained directives about expert discovery, but that is irrelevant for purposes of this motion as expert disclosure need not be done before the note of issue is filed.

ORDERED that the motion by plaintiff to compel discovery and for an extension of time to file the note of issue is denied. Plaintiff must file a note of issue by August 25, 2022 (it already ignored the Court's first deadline).

8/18/2022

DATE



ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE