

**Chiagkouris v 201 W. 16 Owners Corp.**

2019 NY Slip Op 33584(U)

December 5, 2019

Supreme Court, New York County

Docket Number: 160540/2016

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X

LEO CHIAGKOURIS,
Plaintiff,

- v -

201 WEST 16 OWNERS CORP.,
Defendant.

-----X

201 WEST 16 OWNERS CORP.
Plaintiff,

-against-

WILLIAM SCOTTY SHERIFF AND JOHN AND JANE DOES 1-10
Defendant.

-----X

INDEX NO. 160540/2016
MOTION DATE 05/13/2018
MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

Third-Party
Index No. 595093/2017

The following e-filed documents, listed by NYSCEF document number (Motion 003) 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, 98, 99, 100

were read on this motion for DISCOVERY

Upon the foregoing documents, it is ordered that this motion is granted in part and denied in part.

Defendant moves, pursuant to CPLR 3124, 3126, and 3103, for an order to (1) compel plaintiff and third-party defendant to produce documents responsive to defendant's first and supplemental discovery notices, (2) for the production and exchange of certain information in a confidential manner, and (3) to award defendant reasonable attorney's fees and costs incurred in connection with the within motion. In opposition, plaintiff and third-party defendant argue that

defendant's discovery demands are irrelevant and palpably improper, and that as a shareholder of defendant, plaintiff is not required to sign a confidentiality order for the information he seeks.

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. However, "the principle of full disclosure does not give a party the right to uncontrolled and unfettered disclosure" (*JP Morgan Chase Bank, N.A. v. Levenson*, 149 AD3d 1053, citing *JFK Family Ltd. Partnership v. Millbrae Natural Gas Dev. Fund*, 83 AD3d 899). The discovery sought by defendant includes, among other things documents identifying alternate residences, homes, properties of plaintiff and third-party defendant; documents concerning the transfer of money between plaintiff and third-party defendant relating to the subject premises; documents concerning how plaintiff cured his mortgage default; and documents concerning whether plaintiff engaged third-party defendant as his attorney and communications between plaintiff and third-party defendant. Documents concerning alternate residences, homes, and properties belonging to plaintiff and third-party defendant may potentially be material and necessary to the exploration of certain issues arising in this action, and, thus, to the extent documents of this nature exist, they are as a general matter discoverable. Thus, defendant is presumptively entitled to such documents. Of course, plaintiff and third-party defendant may identify by appropriate log entries that they are withholding attorney-client privilege information, attorney work product, or trial preparation materials.

With regard to defendant's request to enter a confidentiality order or confidentiality agreement concerning what it considers confidential shareholder documents, it must be observed that "any person who shall have been a shareholder of record of a corporation ... shall have the right to examine ... its minutes of the proceedings of its shareholders and record of shareholders to make extracts therefrom for any purpose reasonably related to such person's interest as a

shareholder” (Bus. Corp. Law 624(b); *see also Pomerance v. McGrath* 143 AD3d 443).

Accordingly, by statute, plaintiff -- as a shareholder of defendant -- is entitled to see the minutes of shareholder meetings and to see a list of the identities of the shareholders of the corporation.

The common-law right of inspection of corporate records is broader than the statutory right and can go beyond the specific materials delineated in BCL 624(b) and (e) (*Retirement Plan for Gen. Empls. of the City of N. Miami Beach v. McGraw-Hill Companies, Inc.*, 120 AD3d 1052, 1056). This common-law right, however, is subject to the motion judge’s discretion (*Crane Co. v. Anaconda Co.*, 39 NY2d 14, 18). When asserting a common-law right of access, one must plead and prove that inspection is desired for a “proper purpose” (*id.*)

Plaintiff, defendant and third-party defendant have failed on this motion to annex plaintiff and third-party defendant’s document demands. Thus, the court is unable to make a determination on the appropriateness of the entirety of such demands in a vacuum. To the extent that plaintiff and third-party defendant’s document demands request inspection of documents beyond what is expressly required by BCL 624(b), a confidentiality agreement will be necessary to protect defendant’s confidential documents. Plaintiff and third-party defendant’s argument -- that signing a confidentiality agreement could potentially impose unforeseen liabilities -- is unconvincing.

The branch of defendant’s motion seeking attorney’s fees and costs is denied. Costs upon a motion may be awarded to any party in the discretion of the court (*see* CPLR 8106). Defendant has not demonstrated to the court that it is entitled to the relief that it seeks. Nor are sanctions appropriate pursuant to 22 NYCRR 130-1.1(c)(2), as defendant has not established conduct on the part of its adversaries that was “undertaken primarily to delay or prolong the resolution of this litigation, or to harass or maliciously injure another.”

Accordingly, it is

ORDERED that the portion of defendant's motion seeking to compel plaintiff and third-party defendant to respond to plaintiff's first notice for discovery is granted, in that plaintiff and third-party defendant are directed to provide responsive documents to document demand numbers 19, 20, 21, 22, 28, 29, and 43; and it is further

ORDERED that the portion of plaintiff's motion seeking documents responsive to defendant's supplemental demands is granted, in that plaintiff and third-party defendant shall produce all non-privileged documents and communications between plaintiff and third-party defendant and plaintiff's mortgage loan lender responsive to plaintiff's supplemental demands 1 – 9; and it is further

ORDERED that the portion of defendant's motion seeking the entry of an order directing the signing of a confidentiality agreement is granted to the extent that plaintiff and third-party defendant are hereby directed to sign a confidentiality agreement before the production and exchange by defendant of any confidential information other than the minutes of shareholder meetings or a list of the identities of the shareholders of defendant corporation; and it is further

ORDERED that the portion of defendant's motion seeking attorney's fees and costs incurred in relation to the within motion is denied.

This constitutes the Decision and Order of the court.



ROBERT R. REED, J.S.C.

12/5/2019  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE