

**Leeboo v Cohan**

2023 NY Slip Op 31331(U)

March 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 8560/2015

Judge: Carl J. Landicino

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At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 21<sup>th</sup> day of March, 2023.

P R E S E N T: HON. CARL J. LANDICINO, JSC

-----X  
THEODORE LEEBOO and ETHEL SCOTT aka  
ETHEL LEEBOO

*Plaintiffs,*

- against -

DAVID COHAN, LTE DEVELOPMENT INC.,  
and ALYCIANA A. AMA,

*Defendants.*

-----X  
Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Index No.: 8560/2015

DECISION AND ORDER

Motion Sequence #6 & #7

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion and Affidavits (Affirmations) Annexed.....	54, 55, 56-71
Opposing Affidavits (Affirmations).....	73-77
Affidavits (Affirmations) of Service.....	
Memorandum of Law .....	100, 101, 102

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After a review of the papers and oral argument, the Court finds as follows:

Plaintiffs, Theodore Leeboo and Ethel Scott (the "Plaintiffs") commenced this action on July 8, 2015 in relation to two parcels located in Brooklyn, New York, known as 86 Barbey Street (the "Barbey Property") and 50 Rochester Avenue (the "Rochester Property") (the "Properties"). Defendants, David Cohan ("Cohan") and LTE Development Inc. ("LTE") (collectively the "Moving Defendants") move (motion sequence #6) to: 1) vacate the Note of Issue, and 2) compel outstanding discovery. Plaintiffs cross-move (motion sequence #7) for an order: 1) striking the answer of the Moving Defendants based upon CPLR 3126 for an alleged fraud perpetrated by

Moving Defendants' counsel, 2) declaring void four deeds, and 3) disqualifying the Moving Defendants' counsel.

The Moving Defendants argue that the Note of Issue should be stricken because discovery has not been completed, and any representation that it has been is incorrect. The Moving Defendants contend that "the exchange of documents or at the least, examination before trial has yet to be conducted, and are material facts necessary prior to trial." Plaintiffs oppose the motion and contend that the Moving Defendants have "waived" disclosure "by failing to timely interpose discovery...despite numerous discovery orders."

Plaintiffs contend that Defendants have engaged in fraud, including in their dealings with the Court, and seek the disqualification of Defendants' counsel. Plaintiffs also seek dispositive declaratory relief relating to deeds concerning the properties. Plaintiffs assert allegations concerning the identity of Defendant Cohan, indicating that other courts have addressed this issue, and that Defendant Cohan has engaged in fraudulent activities resulting in damages to non-parties and their properties. Plaintiffs also argue that Cohan's activities before the Court constitute a "fraud on the Court." Plaintiffs also contend that Defendant's counsel has represented Cohan in a number of other actions.

Defendant LTE has substituted new counsel to represent it, pursuant to consent to change attorney, dated December 12, 2022 (NYSCEF Doc. #89). Defendant Cohan has failed to oppose this motion and is therefore in default. Defendant LTE argues that discovery is outstanding and Plaintiff Leebo's affidavit is insufficient to support the relief sought in Plaintiff's motion.

As an initial matter, as to Plaintiff's application to disqualify Defendant's counsel, the application in relation to Defendant's LTE is academic as Defendant LTE has retained new counsel. As to Defendant Cohan's counsel, Plaintiffs have failed to show why the Court's rare

order of disqualification should be made. *See Greenberg v. Grace Plaza Nursing & Rehabilitation Center*, 174 AD3d 510, 103 N.Y.S.3d 559, 2019 N.Y. Slip Op. 05390 [2d Dept 2019], and *Empire Medical Services of Long Island, P.C. v. Sharma*, 189 AD3d 1176, 134 N.Y.S.3d 225 (Mem), 2020 N.Y. Slip Op. 07545 [2d Dept 2020]. The allegations regarding Defendant Cohan, for purposes of this matter, are allegations, and Defendant Cohan's counsel's representation of him should not be disturbed upon Plaintiff's demand, at this time. Moreover, Defendant Cohan's counsel has recently sought withdrawal (motion sequence #8). That motion was denied without prejudice by Decision and Order dated January 11, 2023, for failure of the movant to properly serve the Order to Show Cause. Moreover, it is the trial of this matter that will address these allegations. As such, the application (motion sequence #7) for disqualification is denied.

#### Motion Sequence #6

The Note of Issue in this case was filed pursuant to this Court's Decision and Order, dated July 8, 2022. It will not be vacated. However, it is clear that a reasonable period should be permitted in order to afford the parties time to conduct depositions. Prior orders have not been complied with. Therefore, the parties shall proceed to trial on this 2015 action.

Accordingly, depositions of the Plaintiffs, both Leeboo and Scott, shall occur on or before May 5, 2023. Depositions of both Defendants, LTE and Cohan, shall occur on or before June 2, 2023. The parties shall appear in the Jury Coordinating Part on July 10, 2023 at 9:30a.m., at which time the Court shall have the opportunity to determine whether any failure to comply with this order warrants preclusion, striking of a pleading or other such measures, prior to the scheduling of the trial. The motion is granted to that extent.

Motion Sequence #7

The Court has already addressed the issue of disqualification and has found that Defendant Cohan is in default. In light of the determination in motion sequence #6, the remaining relief concerning striking Defendant's answer and declaring certain deeds null, and void are denied. The papers do not support this relief and as stated, the trial shall serve to address and resolve these issues. The parties are now on a clear path to trial. Therefore, motion sequence #7 is denied.

Accordingly, it is hereby ordered that:

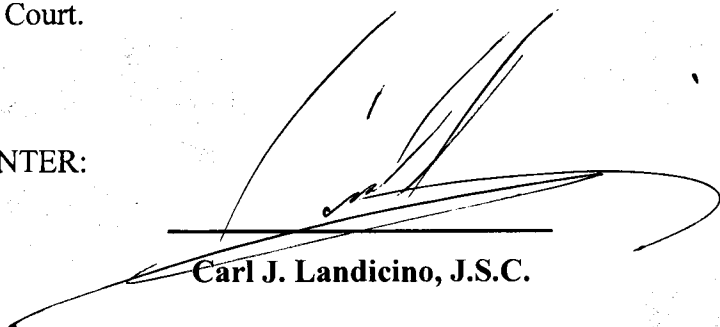
Defendants' motion to vacate the Note of Issue is granted solely to the extent that the parties are to appear for depositions in accordance with the time requirements provided in this decision and order. Plaintiffs' motion (motion sequence #7) is denied.

The parties are directed to appear in the Jury Coordinating Part (JCP) on July 10, 2023 at 9:30a.m.

The Part 81 clerk shall transfer this matter to JCP for appearance on the above date.

This constitutes the Decision and Order of this Court.

ENTER:



Carl J. Landicino, J.S.C.

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