

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

HIGH ROCK WESTMINSTER :
STREET, LLC :
 :
v. : C.A. No. 13-500S
 :
BANK OF AMERICA, N.A. :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) is Defendant’s Motion to Compel Production by Cornish Associates, L.P. (Document No. 81). Plaintiff and non-party Cornish object primarily on relevance grounds. (Document Nos. 84 and 85). A hearing was held on September 24, 2014.

This is an atypical landlord-tenant dispute arising out of a ten-year lease for the twenty-six story office building located at 111 Westminster Street, Providence, Rhode Island. Plaintiff, the owner/landlord, alleges that Defendant, the successor tenant to Fleet Bank, breached certain maintenance and repair provisions of the lease. The lease expired on April 30, 2013. Plaintiff alleges approximately \$20,000,00.00 in damages to repair, maintain and/or replace aspects of the building damaged by neglect, including the building facade, windows, electrical system and HVAC system. Plaintiff alleges that Defendant ignored the upgrade and/or maintenance recommendations of its various third-party consultants and engineers and took a “do the minimum” approach as the end of the lease term neared.

This discovery dispute centers on a document subpoena served by Plaintiff on non-party Cornish. Cornish was hired by Plaintiff as a real estate development consultant in the fall of 2012 to advise it on post-lease options for the now vacant office building in issue. On March 14, 2014,

Defendant served a document subpoena on Cornish broadly seeking communications between Cornish and Plaintiff, and Cornish and others, “relating in any way” to the building in issue, as well as documents regarding public and private funding requests, marketing or development plans , and lobbying efforts related to the building.¹

Cornish objects primarily on relevance grounds arguing that the subpoena is “entirely over broad and seeks information wholly unrelated to any claim or defense asserted in this litigation.” The subpoena essentially seeks production of all communications and documents in Cornish’s possession having anything to do with the building in issue. It is overly broad and necessarily seeks the production of irrelevant documents. Defendant contends that Plaintiff’s and Cornish’s concerns regarding the production of documents containing sensitive and proprietary business and financial information can be adequately addressed by way of the confidentiality protective order already in place. While that may be true, it begs the question since Defendant is only entitled to demand production of relevant documents as defined in Rule 26(b)(1), Fed. R. Civ. P. Cornish concedes, and I conclude, that communications or documents containing information regarding the physical condition and value of the property are relevant and should be produced to Defendant.²

For the foregoing reasons, Defendant’s Motion to Compel Production by Cornish Associates, L.P. (Document No. 81) is GRANTED in part and DENIED in part as provided herein. Cornish shall produce all non-privileged, responsive communications and documents (including ESI) which

¹ Defendant also sought production of any agreements between Cornish and Plaintiff. Cornish represents that it has produced the engagement letter which constitutes the agreement between Cornish and Plaintiff so this request is moot. Defendant has also not moved to compel as to Requests 9 and 11 which seek documents regarding the physical condition or valuation of the building presumably because Cornish represents that it has or will produce such documents.

² Cornish’s counsel indicated that the review of potentially responsive emails was still ongoing and that Cornish intends to produce a privilege log as to any withheld documents.

refer or relate in any way to the condition or value of the building located at 111 Westminster Street, Providence, Rhode Island, by October 24, 2014. Cornish shall also produce a privilege log pursuant to Rule 45(e)(2)(A), Fed. R. Civ. P. by that same date if it withholds any responsive documents under a claim of privilege.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 25, 2014