

# **Chen Dongwu v New York City Regional Ctr. LLC**

Supreme Court of New York, New York County

April 21, 2022, Decided; April 21, 2022, Filed

Index No.652024/2017

## **Reporter**

2022 N.Y. Misc. LEXIS 1468 \*; 2022 NY Slip Op 50322(U) \*\*

**[\*\*1]** Chen Dongwu, et al., Plaintiffs, against New York City Regional Center LLC, GEORGE OLSEN, PAUL LEVINSOHN, THE NEW YORK CITY EAST RIVER WATERFRONT DEVELOPMENT FUND, LLC, Defendants.

**Notice:** THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

## **Core Terms**

requests, request for admission, defendants', plaintiffs', first set, protective order, question of fact, further order, uncontroverted, documentation, referenced, paperwork, Investor, e-filing, dispose, managed, matters, bulk

**Judges:** **[\*1]** **Robert R. Reed**, J.

**Opinion by:** Robert R. Reed

## **Opinion**

This is an action arising out of the participation of 136 Chinese nationals ("plaintiffs") in an EB-5 Immigrant Investor Program. The EB-5 program was created by Congress to stimulate economic development through foreign investment while simultaneously affording foreign nationals the opportunity for United States citizenship. The plaintiffs were participants in the EB-5 program. Defendant New York City Regional Center LLC was responsible for raising capital for the EB-5 investment program. Defendants George Olsen and Paul Levinsohn managed the New York City Regional Center, who in turn, managed the New York City East River Waterfront Development Fund, LLC (collectively "defendants"). The plaintiffs in this action assert claims, *inter alia*, for fraud and breach of fiduciary duty involving their investment in the Waterfront Development Fund, taken solely for the purpose of supporting their

application to the EB-5 program. Plaintiffs move pursuant to [CPLR 3103 \(a\)](#) for a protective order (motion seq no. 005) striking defendants first set of requests for admissions.

## **DISCUSSION**

A notice to admit is to be used only for disposing of uncontroverted questions of fact or those **[\*2]** that are easily provable ([CPLR 3123](#); [Hodes v City of New York](#), [165 AD2d 168](#), [170](#), [566 N.Y.S.2d 611 \[1st Dept 1991\]](#)). Its use "is not to obtain information in lieu of other disclosure devices, such as the taking of depositions before trial" ([DeSilva v Rosenberg](#), [236 AD2d 508](#), [509](#), [654 N.Y.S.2d 30 \[2d Dept 1997\]](#)) or to obtain "admissions to facts that [go] to the heart of the matter"; [Morreale v Serrano](#), [67 AD3d 655](#), [655](#), [886 N.Y.S.2d 910 \[2d Dept 2009\]](#), quoting [Lolly v Brookdale Univ. Hosp. & Med. Ctr.](#), [45 AD3d 537](#), [537](#), [844 N.Y.S.2d 718 \[2d Dept 2007\]](#)).

Contrary to the defendants' assertions, defendants' first set of requests for admissions dated October 5, 2020, seek admissions regarding disputed facts. The bulk of the request seeks admissions relevant to whether the plaintiffs fully appreciated the scope and form of their submitted I-526 and I-829 applications in addition to any investment paperwork that accompanied it. The plaintiffs understanding of the EB-5 investment, their representation, communications and actions undertaken in support of their I-526 and I-829 applications are not matters where "there can be no substantial dispute at trial" ([CPLR 3123\(a\)](#); see [Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison](#), [214 AD2d 453](#), [453](#), [625 N.Y.S.2d 202 \[1st Dept 1995\]](#)).

The Court also finds the defendants' request for an admission as to the plaintiffs' "sophistication" as an investor, and the requests seeking admissions regarding plaintiffs' net worth and personal investment values to be inappropriate and not a line of inquiry proper for a request for admission ([DeSilva](#), [236 AD2d at 509](#)).

Since here, the bulk of the requests seek [\*3] admissions regarding fundamental matters and do not dispose of uncontroverted questions of fact, the Court finds that those requests are improper ([CPLR 3123](#); *Washington v. Alco Auto Sales*, 199 AD2d 165, 605 N.Y.S.2d 271 [1st Dept 1993]; [Hodes v. City of New York](#), 165 AD2d 168, 566 N.Y.S.2d 611; *Miller v. Hilman Kelly Co.*, 177 AD2d 1036, 578 N.Y.S.2d 319).

However, the Court finds that the requests that seek to authenticate the plaintiffs' signature on documentation submitted by the plaintiffs in support of their I-526 and I-829 paperwork, and requests as to residency and the status and/or acceptance of the I-526 and I-829 applications are proper.

## CONCLUSION

Accordingly, it is

ORDERED that the plaintiffs' motion for a protective order (motion seq no. 005) is granted only as to items no. 1-5, 7-13, 15-20, and 24-34. It is further

ORDERED that within 30 days of the date of e-filing of this order, plaintiffs must respond to requests 6, 14, 21, 22, and 23 of defendants' first set of requests for admissions dated October 5, 2020. It is further

ORDERED that defendants shall provide plaintiffs with courtesy copies of the documents referenced in request nos. 6 and 14 and/or disclose the document bate number for each referenced document to plaintiff within 5 business days of the e-filing of this order.

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ROBERT R. REED, J.S.C.