

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE
DAVIDSON COUNTY

7th AVENUE NASHVILLE HOTEL)
OWNER, LLC,)
)
Plaintiff/Counter-Defendant,)
)
v.) CASE NO: 22-1259-BC
)
W.G. YATES & SONS CONSTRUCTION) JURY DEMAND-CONSOLIDATED
And THE STRAUSS COMPANY, INC.,) **controlling case**
)
Defendant/Counter-Plaintiff,)
)
and)
)
ALLEGHENY MILLWORK, INC.,)
BERNHARD MCC, LLC, and GROOVE)
CONSTRUCTION COMPANY,)
)
Intervening Plaintiffs.)

ONELIANCE, LLC,)
)
Plaintiff,)
)
v.) CASE NO: 23-0061-II
)
W.G. YATES & SONS CONSTRUCTION)
COMPANY, 7th AVENUE NASHVILLE)
HOTEL OWNER, LLC, MERITZ)
SECURITIES CO., LTD., and YALE)
RILEY, Esq., TRUSTEE,)
)
Defendants.)

GROOVE CONSTRUCTION, INC.,)
)
Plaintiff,)
)
v.) CASE NO: 23-0127-II
)

7th AVENUE NASHVILLE HOTEL)
OWNER, LLC, W.G. YATES & SONS)
CONSTRUCTION COMPANY, YALE)
RILEY, TRUSTEE, F/B/O MERITZ)
SECURITIES CO., LTD.)
Defendants.)

FEYEN-ZYLSTRA, LLC)
Plaintiff,)
v.)
W.G. YATES & SONS CONSTRUCTION)
COMPANY, 7th AVENUE NASHVILLE)
HOTEL OWNER, LLC, MERITZ)
SECURITIES CO., LTD., and YALE)
RILEY, Esq., TRUSTEE,)
Defendants.)

CASE NO: 23-0213-II

ORDER ON MOTION TO COMPEL

This matter came before the Court on June 6, 2024, upon W.G. Yates & Sons Construction Company’s (“Yates”) Motion to Compel seeking an Order compelling Plaintiff 7th Avenue Nashville Hotel Owner, LLC (“7th Avenue”) to respond to Yates’ Third Set of Requests for Production. Yates discovered through a news article that 7th Avenue is selling its interest in the Embassy Suites and 1 Hotel for more than \$100,000,000.00 in profit, which it argues is directly related to the damages 7th Avenue claims in this action as well as its own counterclaim. Yates seeks documents related to the sale or contract for sale, and 7th Avenue has objected based on relevancy.

The parties fully briefed the issues and argued them at the hearing. Having considered all those materials, including the Sur-Reply filed after the hearing on June 7, 2024 by 7th Avenue and

the Response filed on June 10, 2024 by Yates, the relevant caselaw and the arguments of counsel, the Court is now ready to rule.

Documents in Dispute

Yates seeks documents regarding the sale of a construction project commonly known as the Embassy Suites and 1 Hotel located at 710 Demonbreun St., Nashville, Tennessee (“Property”), the yearly “net cashflow” for the Property, the marketing of the Property, including any communications/documents regarding the condition of the Property, and the refinancing of debt on the Property. At issue are Requests for Production Nos. 2, 3A, 3C, 4, 5, 6, and 7.

Yates argues that (i) anything regarding the value of the Property is clearly relevant to its unjust enrichment/*quantum merit* claims as well as its legal and equitable defenses in this lawsuit; (ii) any information concerning the condition of the Property (including its value) is directly relevant to its claims and defenses; and (iii) both (i) and (ii) easily satisfy the standard of whether “the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Yates seeks relief for breach of contract claim and, alternatively, for unjust enrichment and *quantum meruit*, alleging that “Yates has supplied certain labor, equipment, materials, and/or services for the construction and/or improvements to the Project owned by [7th Avenue], and that 7th Avenue has failed to make full payment of the amounts owed for the improvements made.” (Am. Counterclaim, ¶¶ 40-41).

7th Avenue argues that it has not derived any profit from the transaction because the Property has not been sold and that it is still the record owner of the Property; instead, 7th Avenue contends that the holder of a controlling share of interests in 7th Avenue sold its interests to a third party. The Court sees this membership sale as a distinction without a difference—Yates seeks

information based upon the marketing of the Property and value of the hotels arguing that it goes to the heart of the issues in terms of quality of construction and damages.

i) Value of the Property

The Court does not agree that documents related to the sale or any purported sale of the Property are relevant to Yates' unjust enrichment/*quantum meruit* claim. The Court finds there is a significant distinction between the value of construction improvements to land and the value of a going business concern that includes or is associated with real property. Further, that the relevant damages inquiry is "based on the reasonable value of the *services* 'to be judged by the customs and practices prevailing in that kind of business.'" *Concrete v. Harmony Hosp., LLC*, No. M2020-00956-COA-R3-CV, 2021 WL 3523248, at *8 (Tenn. Ct. App. Aug. 11, 2021) (emphasis added) (quoting *Forrest Const. Co., LLC v. Laughlin*, 337 S.W.3d 211, 227–28 (Tenn. Ct. App. 2009)). Yates points to *V. L. Nicholson Co. v. Transcon Inv. & Fin. Ltd., Inc.*, 595 S.W.2d 474 (Tenn. 1980) to support its position; however, that case supports the proposition that a plaintiff seeking quasi-contractual damages is entitled to the reasonable value of the work performed based upon an implied-in-fact contract. Accordingly, the Court finds information related to the sale of the Property, yearly "net cashflow," and/or refinancing of the Property is not relevant, and, therefore, DENIES the Motion as it relates to Requests for Production Nos. 2, 3A, 3C, 4, and 5.

ii) Marketing of the Property

Yates also argues that some of the information is discoverable based upon 7th Avenue's claims in relation to the roof and other allegations of faulty work. Specifically, that the marketing of the Property is directly relevant to the condition of the Property and 7th Avenue's claims against Yates for faulty construction. The Court finds that any marketing of the Property that specifically discusses the quality of the construction would be relevant to the parties' claims and defenses.

Accordingly, the Court GRANTS IN PART the Motion as it relates to Requests for Production Nos. 6 and 7, but only as the communications relate to the quality of construction and condition of the Property (not the value of the Property).

It is THEREFORE, ORDERED, ADJUDGED, and DECREED that Yates' Motion is GRANTED IN PART and DENIED IN PART. Specifically, Yates' Requests for Production Nos. 2, 3A, 3C, 4, and 5 do not seek relevant information therefore it is not discoverable. Yates' Requests for Production Nos. 6 and 7 do seek relevant information as it relates to the quality of construction and condition of the Property. 7th Avenue is ORDERED to provide a supplemental response that complies with this Order on or before **June 24, 2024**.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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