

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JEFFREY K. OING Justice

PART 48

Smart Win International Limited

INDEX NO. 651479/2010

Plaintiff,

-- against --

MOTION SEQ. NO. 005

Empire Energy Corporation International and Malcolm Bendall

Defendants.

The following papers, numbered 1 to were read on this motion to/for

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

Cross-Motion: Yes No

Defendants Empire Energy Corporation International ("Empire") and Malcolm Bendall, having moved by notice of motion dated April 30, 2013 for an order pursuant to CPLR 3126 compelling plaintiff Smart Win International Limited ("Smart Win") to produce certain witnesses for examination before trial in New York County, and for an order pursuant to CPLR 3126 conditionally striking Smart Win's complaint and reply to defendants' counterclaims, or in the alternative precluding plaintiff from calling the abovementioned witnesses at trial or presenting evidence regarding certain contentions at trial,

It is hereby

ORDERED, that sufficient cause being shown, defendants' motion to compel production is granted to the following extent:

1. Plaintiff shall produce Mr. Cheng Kam Chieu a/k/a Stewart Cheng and Mr. Terence S.T. Kong a/k/a Kong Siu Tim for deposition in New York County, unless the parties mutually agree to a video deposition. Plaintiff chose New York County as the forum for this dispute and may not now complain that it is inconvenient to produce its witnesses here. Plaintiff shall produce the witnesses on or before December 17, 2013;

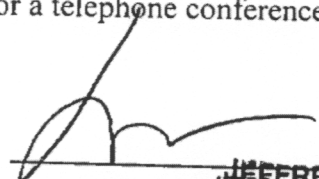
2. With respect to Mr. Fred Kwok, plaintiff shall produce an affidavit from a person with knowledge stating that Mr. Kwok is not under plaintiff's control and has not been since prior to the service of the notice of deposition, and provide defendants with Mr. Kwok's last known address. Plaintiff shall produce the affidavit on or before December 17, 2013; and it is further

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

ORDERED, that defendants' motion to strike plaintiff's pleadings, or in the alternative for discovery sanctions is denied. Defendants have not made the requisite showing of "willful, contumacious or ... bad faith" conduct to justify striking the pleadings (Fish & Richardson, P.C. v Schindler, 75 AD3d 219, 220 [1st Dept 2010]), and a ruling on what evidence may be offered at trial would be premature; and it is further

ORDERED, that the parties are directed to call chambers for a telephone conference on December 19, 2013 @ 11 AM.

Dated: 10/2/13



JEFFREY K. OING
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCES