

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Submitted - May 14, 2008

ROBERT A. SPOLZINO, J.P.
DAVID S. RITTER
MARK C. DILLON
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2007-11034

DECISION & ORDER

Dana Distributors, Inc., et al., plaintiffs,
v Crown Imports, LLC, et al., defendants,
Manhattan Beer Distributors, LLC, respondent;
Hopewell Oasis Beer & Soda, nonparty-appellant.

(Index No. 07-2643)

Vergilis, Stenger, Roberts & Davis, LLP, Wappingers Falls, N.Y. (Anthony M. DeFazio of counsel), for nonparty-appellant.

Tannenbaum Helpert Syracuse & Hirschtritt LLP, New York, N.Y. (Jamie B. W. Stecher and John E. Greene of counsel), for respondent.

In an action, inter alia, pursuant to Alcoholic Beverage Control Law § 55-c challenging the termination of a beer distribution agreement, nonparty Hopewell Oasis Beer & Soda appeals from an order of the Supreme Court, Orange County (Giacomo, J.), dated October 12, 2007, which denied its motion to quash a subpoena duces tecum, as amended, served upon it by the defendant Manhattan Beer Distributors, LLC.

ORDERED that the order is affirmed, with costs.

Contrary to the contentions of the nonparty-appellant, Hopewell Oasis Beer & Soda (hereinafter Hopewell), the Supreme Court properly denied its motion to quash a subpoena duces tecum, as amended, served upon it by the defendant Manhattan Beer Distributors, LLC (hereinafter Manhattan). The affidavit of Manhattan's chief operating officer demonstrated, inter alia, that the information sought was both very limited in scope, and material and relevant to issues in the action (*see* CPLR 3101[a][4]; *Matter of Terry D.*, 81 NY2d 1042; *O'Neill v Oakgrove Constr.*, 71 NY2d

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521). Moreover, Hopewell failed to satisfy its burden of demonstrating that the information sought constituted a trade secret (*see Ashland Mgt. v Janien*, 82 NY2d 395, 407; *Curtis v Complete Foam Insulation Corp.*, 116 AD2d 907, 909; *Sheldon v Kimberly-Clark Corp.*, 111 AD2d 912).

SPOLZINO, J.P., RITTER, DILLON, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court