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

D35828
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_____AD3d_____ Submitted - June 21, 2012

RANDALL T. ENG, P.J.
REINALDO E. RIVERA
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

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2011-03200 DECISION & ORDER
2011-03206

Edward Kelley, etc., et al., appellants, v Ian Doaman, et al., respondents.

(Index No. 2104/07)

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La Reddola, Lester & Associates, LLP, Garden City, N.Y. (Steven M. Lester of counsel), for appellant Edward Kelley, and Storzer & Greene, PLLC, New York, N.Y. (Robert L. Greene of counsel), for appellants International Society for Krishna Consciousness, Inc., and the Governing Body Commission of the International Society for Krishna Consciousness (one brief filed).

Chittur & Associates, P.C., New York, N.Y. (Krishnan S. Chittur of counsel), for respondents.

In an action, inter alia, to enjoin an alleged trespass and usurpation of corporate authority, the plaintiffs appeal, as limited by their brief, from (1) so much of an order of the Supreme Court, Nassau County (Mahon, J.), dated January 28, 2011, as denied their motion to vacate so much of an order of a special referee dated July 19, 2010, as directed the plaintiffs to produce, within 21 days, certain documents pertaining to a California action entitled *Bhaktivedanata Book Trust International, Inc. v International Society for Krishna Consciousness, Inc.* (Los Angeles County, Super Ct No. BC170617), and (2) so much of an order of the same court, also dated January 28, 2011, as denied that branch of their motion which was to vacate so much of an order of the same court (Schellace, S. R.) dated June 25, 2010, as, upon reargument, adhered to an original determination in an order of the same court (Schellace, S. R.) dated May 4, 2010, in effect, granting that branch of the defendants' motion which sought a determination that the plaintiffs failed to meet the discovery deadline set forth in an order of the same court (Mahon, J.) dated December 4, 2007.

ORDERED that the first order dated January 28, 2011, is reversed insofar as appealed from, on the facts and in the exercise of discretion, the plaintiffs' motion to vacate so much of the order of the special referee dated July 19, 2010, as directed the plaintiffs to produce, within 21 days, certain documents pertaining to the California action is granted, and that portion of the order dated July 19, 2010, is vacated; and it is further,

ORDERED that the second order dated January 28, 2011, is reversed insofar as appealed from, on the facts, that branch of the plaintiffs' motion which was to vacate so much of the order dated June 25, 2010, as, upon reargument, adhered to an original determination in an order dated May 4, 2010, in effect, granting that branch of the defendants' motion which sought a determination that the plaintiffs failed to meet the discovery deadline set forth in the order dated December 4, 2007, is granted, that portion of the order dated June 25, 2010, is vacated, upon reargument, so much of the order dated May 4, 2010, as, in effect, granted that branch of the defendants' motion which sought a determination that the plaintiffs failed to meet the discovery deadline set forth in the order dated December 4, 2007, is vacated, and that branch of the defendants' motion is denied; and it is further,

ORDERED that one bill of costs is awarded to the plaintiffs.

At issue on these appeals are several orders of a special referee (hereinafter the Referee) appointed by the Supreme Court to resolve certain questions and motions regarding discovery. In an order dated May 4, 2010, the Referee found that the plaintiffs had failed to meet a discovery deadline set by an order of the Supreme Court dated December 4, 2007, directing that they respond to the defendants' first discovery demand by December 31, 2007. In an order dated June 25, 2010, the Referee, upon reargument, adhered to his determination in the order dated May 4, 2010. In another order dated July 19, 2010, the Referee directed the plaintiffs to produce, within 21 days, certain documents pertaining to a California case entitled *Bhaktivedanata Book Trust International, Inc. v International Society for Krishna Consciousness, Inc.* (Los Angeles County, Super Ct No. BC170617) (2010 WL 685320, 2010 Cal. App. Unpub. LEXIS 1435) (hereinafter the California litigation documents).

"After commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum: (i) to produce and permit the party seeking discovery . . . to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served" (CPLR 3120[1][I]). "This section may be satisfied by telling the party seeking the discovery where the materials are and providing a reasonable opportunity for that party to look at them and make copies" (*Zegarelli v Hughes*, 3 NY3d 64, 69).

Here, the defendants requested, pursuant to CPLR 3101, that the plaintiffs produce certain documents for inspection and copying at the offices of the defendants' attorney. The Supreme Court's order dated December 4, 2007, directed, inter alia, that the plaintiffs "respond to" the defendants' discovery demands by December 31, 2007.

The plaintiffs established that they responded to the defendants' discovery demands by December 31, 2007, and that they made the requested documents available for inspection and copying. Accordingly, contrary to the Referee's determination made in his order dated May 4, 2010, the plaintiffs did not fail to "timely comply with the order of December 4, 2007," and the Supreme Court should have, upon reargument, denied that branch of the defendants' motion which sought a determination that the plaintiffs failed to meet the discovery deadline set forth in the order dated December 4, 2007.

Furthermore, under the circumstances of this case, we conclude that the Supreme Court improvidently exercised its discretion in denying the plaintiffs' motion to vacate so much of the order of the Referee dated July 19, 2010, as directed the plaintiffs to produce, within 21 days, the documents pertaining to the California action (*see Auto Collection, Inc. v C.P.*, 93 AD3d 621, 622; *Maggio v RTI Donor Servs., Inc.*, 73 AD3d 711, 711-712).

ENG, P.J., RIVERA, LOTT and MILLER, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court