

**Goodwin v Cirque du Soljel, Inc.**

2012 NY Slip Op 31308(U)

May 14, 2012

Sup Ct, NY County

Docket Number: 117151/09

Judge: Judith J. Gische

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDITH J. GISCHE  
J.S.C. Justice

PART 10

Index Number : 117151/2009  
GOODWIN, JOHN  
vs.  
CIRQUE DU SOLIEL  
SEQUENCE NUMBER : 002  
COMPEL

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ [No(s)] \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ [No(s)] \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ [No(s)] \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

*and a compliance conference is set  
for Thursday, July 12, 2012 @ 9:30am,  
in room 232, located at 60 Centre St*

## FILED

MAY 17 2012

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: MAY 14 2012

  
\_\_\_\_\_  
J.S.C.  
**HON. JUDITH J. GISCHE**

1. CHECK ONE:  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

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

Supreme Court of the State of New York  
County of New York: Part 10

John Goodwin,

Plaintiff,

-against-

Cirque du Soleil, Inc., and Cirque du Soleil America Inc.,

Defendants.

**Decision/Order**

Index No.: 117151/09

Seq. No. : 002

**Present:**

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Plt's n/m [compel] w/ KFM affirm, exhs. ....	1
Def's opp. and x-mo [prtective order] w/ BVK affirm. ....	2
Plt's opp w/ KFM affirm, exhs. ....	3
Transcript . ....	4

Hon. Judith J. Gische, J.S.C.:

*Upon the foregoing papers, the decision and order of the court is as follows:*

Plaintiff, John Goodwin ("plaintiff" or "Goodwin"), has asserted personal injury claims against defendants Cirque du Soleil, Inc. ("Cirque") and Cirque du Soleil America Inc. ("Cirque America") (collectively "defendants"). Having denied defendants motion for summary judgment (motion sequence 001), the court now addresses plaintiff's motion to compel the defendants' compliance with the December 6, 2010 First Notice of Discovery and Inspection and the June 1, 2011 First Supplemental Notice of Discovery and Inspection ("discovery demands"). Defendants oppose this motion and have cross-moved for a protective order and a confidentiality order.

**FILED**

**MAY 17 2012**

NEW YORK  
COUNTY CLERK'S OFFICE

### Discussion

CPLR § 3101 (a) broadly defines the scope of disclosure as "all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof." Allen v. Crowell-Collier Pub. Co., 21 N.Y.2d 403 [1968]. The words, "material and necessary," are interpreted liberally so as to require disclosure of "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity." Allen v. Crowell-Collier Pub. Co., *supra* at 407. The test is one of "usefulness and reason." *Id.* The burden of showing that the disclosure sought is improper is upon the party seeking the protective order. Roman Catholic Church of the Good Shepherd v. Tempco Systems, 202 A.D.2d 257, 258 [1st Dept 1994].

Ordinarily, when a defendant fails to challenge the propriety of a notice for discovery and inspection (CPLR § 3120) and to timely seek a protective order (CPLR § 3122), the court will be foreclosed from inquiring into the propriety of the discovery requests. Aetna Ins. Co. v. Mirisola, 167 A.D.2d 270, 271 [1st Dept 1990] [internal citations and quotations omitted]; see also Haller v N. Riverside Partners, 189 A.D.2d 615, 616 [1st Dept. 1993]. However, an exception to this general rule is recognized where discovery requests are palpably improper or seek information (CPLR § 3101), of a confidential and private nature, not relevant to the issues. *Id.* Overtly broad or unnecessarily burdensome demands may be considered palpably improper. Haller v N. Riverside Partners, *supra*, at 616.

#### *Protective Order*

The defendants contend that the plaintiff's use of the term "any and all," in the wording of the discovery demands, violates the "specified with reasonable particularity" requirement of CPLR § 3120(a). While in some contexts the term "any and all" may

indicate a lack of specificity (Stevens v. Metropolitan Suburban Bus Auth., 117 A.D.2d 733 [2d Dept. 1986]; Ehrlich v. Ehrlich, 74 A.D.2d 519 [1st Dept. 1980]), when narrowly defined, it is not so palpably improper as to warrant judicial interference (Ensign Bank v. Gerald Modell, Inc., 163 A.D.2d 149 [1st Dept. 1980]). To hold that the items lack specificity simply because they start with the word "All", would be to exalt form over substance and to frustrate the liberal discovery provisions which Article 31 of the CPLR was designed to accomplish. Scheinfeld v. Burlant, 98 A.D.2d 603 [1st Dept. 1983], Ensign Bank v. Gerald Modell, Inc., *supra*.

The court finds that numbers 1, 4, 16, and 38 of the December 8, 2010 First Notice of Discovery and Inspection are, for various reasons, over broad and cannot be answered in their current form. All other demands are proper. The court, therefore, grants a protective order only for demands 1, 4, 16, and 38 of the December 8, 2010 First Notice of Discovery and Inspection, but without prejudice to the plaintiff to recast the demands more carefully tailored to the prosecution of this action. The motion for a protective order is otherwise denied.

#### *Confidentiality Order*

As to the defendant's request for a confidentiality order, it is denied. The request is completely blunderbuss. The First Department has held that a protective order may be appropriate when a case involves trade secrets (CPLR §§ 3101, 3103) and has adopted a two-step analysis in Mann ex rel. Akst v Cooper Tire Co. (33 A.D.3d 24, 30 [1st Dept. 2006]) explaining that

when trade secrets are sought by an adverse party in litigation, the burden of establishing that the information sought is a trade secret lies with the disclosure objectant. If that burden is

met, the party seeking disclosure must show that the information appears to be indispensable and cannot be acquired in any other way. Mann ex rel. Akst v Cooper Tire Co., *supra*. [Internal citations and quotations omitted].

Thus, the burden of establishing any right to protection is on the party asserting it; the protection claimed must be narrowly construed; and its application must be consistent with the purposes of the underlying immunity. 148 Magnolla, LLC v Merrimack Mut. Fire Ins. Co., 62 AD3d 486, 487 [1st Dept. 2009] citing Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d 371, 377 [1991]. Here, the defendants claims that the financial budget (demand 4), infrastructures (demands 2 and 3), technical operations (demand 5), and internal meeting notes (demand 6) should be subject to a confidentiality order. Defendants have failed to particularize which documents might warrant protection (i.e., identification of the documents, their location, etc). The court cannot rule in the abstract about what documents are entitled to confidentiality.

#### Conclusion

In accordance with the foregoing, it is hereby,

ORDERED that plaintiff's motion to compel the defendants compliance with the December 6, 2010 First Notice of Discovery and Inspection and the June 1, 2011 First Supplemental Notice of Discovery and Inspection is granted to the extent that except as otherwise provided herein, defendants are to comply with both of plaintiffs Discovery and Inspection notices within 60 days of this decision becoming available on the Supreme Court On-line Library (SCROLL); and it is further

ORDERED that the defendants cross-motion for a protective order is granted as to demands 1, 4, 16, and 38, without prejudice to the plaintiff to recast the demands. The

defendant's cross-motion for a protective order is otherwise denied; and it is further

ORDERED that the defendants cross-motion for a confidentiality order is denied; and it is further

ORDERED that any relief requested that has not been addressed has nonetheless been considered and is hereby expressly denied.

ORDERED that this constitutes the decision and order of the court.

Dated: New York, New York  
May 14, 2012

So Ordered:

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**

**MAY 17 2012**

NEW YORK  
COUNTY CLERK'S OFFICE