

Rosenaur v Bowlmor Lanes, LLC

2014 NY Slip Op 33778(U)

March 5, 2014

Supreme Court, New York County

Docket Number: 109769/10

Judge: Paul Wooten

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

PRESENT: HON. PAUL WOOTEN
Justice

PART 7

ALICIA ROSENAUR, CHRISTOPHER FALLETTA,
DENESH SHEOMBER, SHAVONE BOSTON, and
TROY SACCO,

Plaintiff,

INDEX NO. 109769/10

-against-

MOTION SEQ. NO. 004

BOWLMOR LANES, LLC, BOWLMORE TIMES
SQUARE, LLC, STRIKE HOLDINGS, LLC, STRIKE
HOLDINGS GROUP, LLC, and THOMAS FOOTE
SHANNON, individually,
Defendants.

The following papers, numbered 1 to 4, were read on this motion by plaintiff to compel discovery.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1</u>
Answering Affidavits — Exhibits (Memo) _____	<u>2, 3</u>
Reply Affidavits — Exhibits (Memo) _____	<u>4</u>

Cross-Motion: Yes No

In this discrimination action, Alicia Rosenaur (Rosenaur) and Christopher Falletta (Falletta) (plaintiffs)¹ move by Order to Show Cause (OSC) for an order, pursuant to CPLR 3124, compelling defendant Thomas Foote Shannon (Shannon) to surrender his computer hard drive or a forensic image thereof on which the document marked "HH" at Falletta's deposition was created. Defendants are in opposition to the herein motion and seek their costs and fees for opposing this motion pursuant to 22 NYCRR 130-1.1.

FILED

MAR 07 2014

COUNTY CLERK'S OFFICE
NEW YORK

¹ Shavone Boston discontinued her claims against the defendants on or about July 23, 2010, and by an Order of this Court, the claims of plaintiffs Denesh Sheomber and Troy Sacco were dismissed.

DISCUSSION

In support of their motion, plaintiffs submit the affidavit of Louis Coppola (Coppola) who maintains that someone with a little computer "know how" could have changed the creation date of the document which was provided to plaintiffs in its "native format" by the defendants (Coppola Affidavit at ¶¶ 6). Coppola maintains that in looking at the properties of the document he was able to ascertain that this was not the original version, but instead a second revision dated January 26, 2010 (*id.* at ¶ 4). It is through the hard drive or a forensic copy that Coppola maintains he will be able to discover the date the document was created and possibly other deleted versions. The Court notes that Coppola does not provide any documentation of his qualifications and experience in digital forensics which would demonstrate whether he is qualified to render expert testimony on the document in question. Coppola merely states that "[He is] an electronic forensic specialist who is consulting with and providing technological support to Plaintiffs in the above-captioned matter" (Coppola Affidavit ¶ 1).

In opposition, defendants submit the Affidavit of Peter Coons (Coons) who provides his curriculum vitae showing his extensive background and experience in digital forensics and electronic discovery. Coons states that Coppola is mistaken in his opinion that this is not the original version of the document at issue, and has confused the distinction between a document's "revision" number and how many versions of a document exist, and uses the two interchangeably (Coons Affidavit ¶¶ 12, 13 & 19). This mistake accounts for Coppola's opinion that the document provided by defendants was not the original, Coons proffers, and in support Coons attaches screen shots during various stages of his analysis of the document that show that in his investigation no other versions of the document existed (*id.* at ¶ 27). The Court notes that defendants in their opposition seek their costs and fees for opposing this motion pursuant to 22 NYCRR 130-1.1. The Court will not consider same as it is improperly requested in opposition papers and not in a notice of motion.

"The IAS court has broad discretion in supervising pretrial discovery" (*Lewis v Hertz Corp.*, 193 AD2d 470, 470 [1st Dept 1993], citing *Duracell Intl. v American Employers' Ins. Co.*, 187 AD2d 278 [1st Dept 1993]). "A motion to compel responses to demands and interrogatories is properly denied where the demands and interrogatories seek information which is irrelevant, overly broad, or burdensome" (*Accent Collections, Inc. v Cappelli Enterprises, Inc.*, 84 AD3d 1283, 1283-84 [2d Dept 2011]). After reviewing the papers, the Court finds it appropriate to deny plaintiffs' motion as overly broad. Plaintiffs seek Shannon's entire hard drive, or forensic image thereof, to verify the creation date of one Microsoft Word document, which addressed Falletta's performance while working for the defendants, in order to verify whether it was created before or after Falletta was terminated from his employment. Shannon's hard drive most certainly contains personal and confidential information private in nature which is unrelated to this litigation. Accordingly, Shannon is directed to search for and provide any other versions of the document on his hard drive and forward same, if found, in native format to the plaintiffs within 30 days of Entry of this Order, or to provide an affidavit that none exist. Additionally, plaintiffs are given leave to serve a more narrowly tailored demand within 20 days of entry this Order.

CONCLUSION

Accordingly it is hereby,

ORDERED that plaintiffs' motion, pursuant to CPLR 3124, compelling defendant Thomas Shannon to surrender his computer hard drive or a forensic image thereof on which the document marked "HH" at Falletta's deposition was created is denied, and plaintiffs have 20 days from the date of Entry of this Order to serve a more narrowly tailored demand, if any; and it is further,

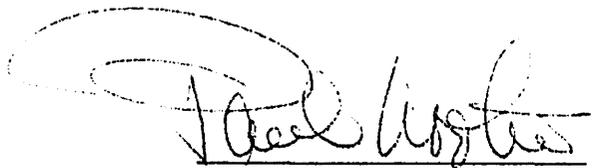
ORDERED that defendant Thomas Shannon is directed to search for and provide any other versions of the document on his hard drive and forward same, if found, in native format to

the plaintiffs within 30 days of Entry of this Order, or to provide an affidavit stating that none exist; and it is further,

ORDERED that defendants are directed to serve a copy of this order with notice of entry upon all parties.

This constitutes the Decision and Order of the Court.

Dated: 3-5-14


PAUL WOOTEN J.S.C.

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

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