

Nunez-Unda v Adrien

2025 NY Slip Op 30209(U)

January 17, 2025

Supreme Court, New York County

Docket Number: Index No. 650971/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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JESUS NUNEZ-UNDA,	INDEX NO.	<u>650971/2022</u>
Plaintiff,		
- v -	MOTION DATE	<u>12/21/2023, 09/18/2024</u>
THIBAUT LOUIS PHILIPPE ADRIEN, LAFAYETTE RE MANAGEMENT LLC, POL OPERATOR LLC,	MOTION SEQ. NO.	<u>005 008</u>
Defendant.	DECISION + ORDER ON MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 89, 90, 91, 92, 96, 108, 111, 112, 113, 114, 115, 116, 117, 121

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and for the reasons set forth below, (i) Lafayette Re Management, LLC and Thibault Adrien (collectively, **Lafayette**)’s motion (Mtn. Seq. No. 005) to quash the subpoena *duces tecum* (the **Advent Subpoena**; NYSCEF Doc. No. 91) issued by Jesus Nunez-Unda to non-party Advent International (**Advent**) and (ii) Mr. Nunez-Unda’s motion (Mtn. Seq. No. 008) to compel Lafayette to produce responsive documents to Mr. Nunez-Unda’s discovery requests are GRANTED solely to the extent set forth below.

DISCUSSION

CPLR § 3101 requires “full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” As a guiding principle, the words

“material and necessary” are to be “interpreted liberally to require disclosure of . . . any facts bearing on the controversy” (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009] [quoting *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 (1968)]). A party seeking to avoid disclosure bears the burden of showing that the disclosure sought is improper (*Roman Catholic Church of the Good Shepherd v Tempco Systems*, 202 AD2d 257, 258 [1st Dept 1994]).

I. Lafayette’s Motion to Quash is Granted in Part (Mtn. Seq. No. 005)

A motion to quash should be granted where “the futility of the process to uncover anything legitimate is inevitable or obvious . . . or where the information sought is utterly irrelevant to any proper inquiry” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]). CPLR § 3101 authorizes a party to obtain discovery from “a party, or the officer, director, member, agent or employee of a party,” or “any other person” (CPLR § 3101 [a] [1], [4]).

As relevant to the motion, on July 3, 2023, Mr. Nunez-Unda served the Advent Subpoena on non-party Advent seeking the following documents from Michael Ogrinz, head of Advent and a member of Lafayette:

No. 1. Documents and/or Communications between Ogrinz, on the one hand, and Advent, on the other hand, concerning Ogrinz's role with Lafayette as a shareholder and board member.

No. 2. Documents and/or Communications between Ogrinz, on the one hand, and Adrien and/or Lafayette, on the other hand, concerning Project Hamilton.

No. 3. Documents and/or Communications between Ogrinz, on the one hand, and Adrien and/or Lafayette, on the other hand, concerning any potential transactions to sell assets managed by Lafayette to funds managed by Carlyle.

No. 4. Documents and/or Communications between Ogrinz, on the one hand, and Adrien and/or Lafayette, on the other hand, concerning Plaintiff, including Plaintiff's Discovery Responses.

No. 5. Communications from any Person received by Advent regarding any of Adrien's, Ogrinz's and/or Lafayette's conduct alleged in the Complaint.

No. 6. Documents and/or Communications concerning any action taken by Advent to investigate, explore, research, vet, and/or check on Ogrinz's, Adrien's and/or Lafayette's conduct alleged in the Complaint.

No. 7. All of Lafayette's and Longview's financial statements received by Ogrinz.

No. 8. Documents and/or Communications received by Ogrinz regarding Lafayette Longview's board sessions.

No. 9. Communications between Ogrinz, on the one hand, and Adrien and/or Lafayette, on the other hand, concerning Lafayette's hiring of Miranda and Coleman.

No. 10. Documents evidencing any distributions to Ogrinz from Lafayette and/or Longview.

No. 11. Communications between Ogrinz, on the one hand, and Adrien and/or Lafayette, on the other hand, concerning the arbitration with POL, including the multi-million dollar settlement offers by Patch of Land and Adrien's decision to refuse such offers.

No. 12. Documents evidencing Lafayette's value.

(NYSCEF Doc. No. 91 at 9-10).

Lafayette objects to these requests on the grounds that the subpoena requests are excessively broad in scope and concern business and professional matters of Lafayette's that have no bearing on Mr. Nunez-Unda's claims. In addition, Lafayette argues that the Advent Subpoena is an improper attempt to harass Lafayette and its investment units rather than uncover legitimate evidence. They are not correct.

Mr. Nunez-Unda is entitled to explore his theory of damages, including the quantum of revenue attributable to Lafayette's investment in Longview.

In addition, the breach of fiduciary duty claim is partially premised on allegations that (i) Mr. Adrien deprived Mr. Nunez-Unda of his equity rights for the benefit of himself and other Lafayette members (including Mr. Ogrinz), and (ii) Mr. Adrien made fraudulent misrepresentations to potential investors, including Carlyle Group (NYSCEF Doc. No. 67 ¶¶ 482-483, 487, 490). In addition, as to Mr. Nunez-Unda's fraudulent inducement claim, he specifically alleges that business plans related to his hiring and the acquisition of POL Operator, LLC (**POL**) were approved at Lafayette advisory committee meetings (*id.* ¶ 227). As such, the discovery sought is appropriate because it is material and necessary and quashing the subpoena simply is not appropriate. However, to the extent that Mr. Nunez-Unda seeks documents from January 2019 to the present, this appears to capture more than is proportional under the circumstances. Mr. Nunez-Unda was not employed by Lafayette and Mr. Adrien until mid-year in 2019. As such, the motion is granted to the extent that Advent need not produce documents which predate March 1, 2019.

II. Mr. Nunez-Unda's Motion to Compel is Granted in Part (Mtn. Seq. No. 008)

Mr. Nunez-Unda moves to compel Lafayette to produce all relevant documents responsive to Mr. Nunez-Unda's written discovery demands. At oral argument (*tr.* 1.17.25), counsel indicated that Lafayette has recently made a substantial production, including, among other things, audited financial statements for the years 2019-2023, and that Lafayette would produce the 2024 financial statement once it is available. This would appear to capture the relevant information

that Mr. Nunez seeks – *i.e.*, the value of the units and any distributions that he claims he is entitled to. Although he indicates he would like to review all bank statements and credit cards statements, this would appear on this record to be overbroad given the production of the audited financial statements. Thus, production of this back-up information is not required at this time. To the extent that Mr. Nunez-Unda indicates that he has not reviewed this recent production yet, to the extent that he indicates there are remaining deficiencies, he shall meet and confer and if necessary, he may bring an order to show cause seeking appropriate relief.

However, Mr. Nunez-Unda is entitled to fulsome discovery as to the compensation and visas for foreign national employees of Lafayette from March 2019 to present. He alleges that he was part of a pattern of disparate treatment and retaliation whereby foreign employees are paid below market wages, promised visa and then kept at below market wages so that they can maintain the visa status. He also alleges disparate treatment which form the basis for his discrimination claims. The payroll invoices and employment ledger are simply not sufficient under the circumstances. Accordingly, Lafayette must produce its records as relevant to its employment practices regarding foreign-born nationals.

Lafayette must produce documents relevant to its arbitration with POL regarding the sale of POL's assets to a third-party. To the extent that Lafayette has indicated that no deposition was taken of POL's former CEO Jason Fritton during the arbitration, Lafayette's counsel represented that he would provide a letter to Mr. Nunez-Unda confirming the same. He shall do so and indicate which if any depositions did in fact occur.

Finally, as previously discussed, Mr. Nunez-Unda must provide any and all documents which form the basis for the statements he has made and is alleged to continue to be making about Mr. Adrien. He is now ordered to do so no later than January 24, 2025 or Mr. Adrien may bring an order to show cause seeking appropriate relief.

We have considered the parties remaining arguments and find them unavailing.

Accordingly, it is hereby

ORDERED that Lafayette's motion (Mtn. Seq. No. 005) to quash is GRANTED to the extent set forth herein; and it is further

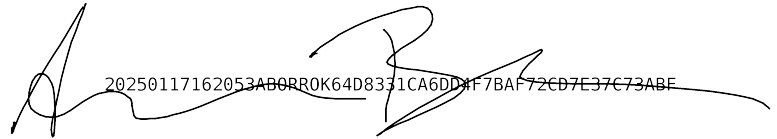
ORDERED that Advent shall respond to the Advent Subpoena within 30 days of this Decision and Order; and it is further

ORDERED that Mr. Nunez-Unda's motion (Mtn. Seq. No. 008) to compel is GRANTED to the extent set forth herein; and it is further

ORDERED that Lafayette shall produce all relevant documents responsive to Mr. Nunez-Unda's discovery requests in accordance with the rulings set forth herein within 30 days of this Decision and Order; and it is further

ORDERED that Lafayette’s counsel shall file a letter to Mr. Nunez-Unda on NYSCEF in accordance with the rulings set forth herein; and it is further

ORDERED that Mr. Nunez-Unda shall produce all documents relevant to any basis he has for making his inflammatory statements regarding Mr. Adrien, as set forth in the Court’s prior Decision and Order, dated November 4, 2024 (NYSCEF Doc. Nos. 283-285), by January 24, 2025. If Mr. Nunez-Unda fails to do so, Lafayette may move by Order to Show Cause for all appropriate relief.


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1/17/2025
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: