

A-1 Technology Private Limited v Kapila

2006 NY Slip Op 30100(U)

July 26, 2006

Supreme Court, New York County

Docket Number: 0060124/2006

Judge: Emily Jane Goodman

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

PRESENT: EMILY JANE GOODMAN
Justice

PART 17

A-1 Technology, Inc
et al

- v -

Nana Kapela

MOTION INDEX NO. 601243/06
MOTION DATE XX
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

*The motion is denied in accordance with
the attached*

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

Dated: 7/26/06

[Signature]
HON. EMILY JANE GOODMAN

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : I.A.S. PART 17

-----X
A-1 TECHNOLOGY PRIVATE LIMITED and
A-1 TECHNOLOGY, INC.

Index No. 601243/06

Plaintiff(s),
- against -

NAINA KAPILA, YOGESH NANNA and
SILVERLINE TARGET,

Defendant(s).
-----X

By Order to Show Cause, dated April 17, 2006, Plaintiffs move for a preliminary injunction against Defendants, prohibiting them from "contacting any of Plaintiffs' past or present clients or soliciting business from any of Plaintiffs' past or present clients," "soliciting any of Plaintiffs' employees or consultants," and from "using any source code or confidential information that Defendant NAINA KAPILA and YOGESH NANNA took from A-1 TECHNOLOGY that is the property of A-1 TECHNOLOGY or any of A-1 TECHNOLOGY'S clients." The motion was based upon two contracts containing identical language; one signed between A-1 Techology Private Limited and Kapila and the other between A-1 Techology Private Limited and Nanna. A limited PFO was granted in the Order to Show Cause, but was dissolved by the Court on June 1, 2006, the return date, by oral directive. Kapila, who is pro se, apparently lives in India, but worked for some period of time at the office of A-1 Technology, Inc. in the United States. She opposes the motion on the basis that her contract is only with A-1 Techology Private

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Limited, and not A-1 Technology, Inc.; that the contract, which contains anti-solicitation and confidentiality provisions provides that disputes shall be governed in the courts of Chandigarh India; and that a lawsuit was already filed in Chandigarh India and therefore, this action should be dismissed. Yogesh Nanna and Silverline Target have not appeared in this action.¹

Due to the Court's questions regarding jurisdiction, Defendants submitted, at the Court's request, a Supplemental Affidavit In Support Of The Order To Show Cause. In that affidavit, Plaintiffs claimed that the Court has jurisdiction pursuant to paragraph 6 (II) of the contracts, regarding "Official Visits To US Office." That provision provides:

II. The employee shall not be entitled to resign/leave the company during the validity of business visa granted to the employee to Visit Company's US office. The company shall be entitled to initiate appropriate legal proceedings under the US/Indian laws to claim damages for the business loss, including visa and traveling expenses and daily allowance in the case of breach of agreement by employee.

However, as pointed out by Ms. Kapila, paragraph 12 provides:

12. Governing Law

This agreement is to be governed by and construed according to the laws applicable in India. The parties agree that any dispute relating to this Agreement shall be resolved in court at Chandigarh.

It is a function of the court to determine whether a contract is ambiguous, and to interpret contracts which are unambiguous. *See W.W.W Associates v Giancontieri*, 77

¹Plaintiffs have alleged that Silverline Target is the name of the business started by Naina Kapila and Yogesh Nanna.

NY2d 157 (1990); *Petracca v Petracca*, 302 AD2d 576 (2d Dept 2003). “[I]t is well settled that when parties set down their agreement in a clear, complete document, their writing should ... be enforced according to its terms [internal quotation marks omitted].” *South Road Associates, LLC v International Business Machines Corporation*, 4 NY3d 272, 277 (2005); see also *W.W.W Associates v Giancontieri*, 77 NY2d 157, *supra*.

Moreover, clauses of a contract should be read together to give each clause meaning and where two seemingly conflicting provisions can be reconciled, the court must do so in order to give both clauses effect (See *HSBC Bank v National Equity Corp.*, 279 AD2d 251, 253 (1st Dept 2001). Thus, it is “important to read the document as a whole to ensure that excessive emphasis is not placed upon particular words or phrases.” *South Road Associates, LLC v International Business Machines Corporation*, 4 NY3d at 277. It would, therefore, be improper to ignore the clear limitation of paragraph 12 of the contracts, which Plaintiffs implicitly request the Court to do. Both paragraph 6 (II) and paragraph 12 of the contracts can be read together, in harmony, to provide that all disputes involving the contracts are to be brought in India, except that, legal proceedings may be initiated under US laws for disputes involving damages related to the costs of bringing the employee to the United States, if that employee resigns or leaves A-1 Technology Private Limited during the validity of business visa. Those damages include the cost of applying for the visa, the employee’s traveling expenses, and the amount paid per day to the employee while in the United States (the daily allowance). Here Plaintiffs

do not seek damages resulting from the employee's resignation or termination from A-1 Technology Private Limited during the validity of a business visa.²

Accordingly, Plaintiffs have not demonstrated that they are entitled to a preliminary injunction. The action is stayed against Defendants pending the outcome of the India action which has been commenced against Nina Kapila in Chandigarh India. The Court defers dismissal of the action against NAINA KAPILA, YOGESH NANNA and SILVERLINE TARGET at this time. The stay, however, does not apply to any claims that Plaintiffs have asserted against Erevolution LLC, which was served with a Supplemental Summons with Notice subsequent to the filing of this Order to Show Cause.

It is hereby

ORDERED that the motion is denied; and it is further

ORDERED that the action is stayed with respect to Defendants NAINA KAPILA,

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²The Court does not reach the argument, raised by Plaintiffs' counsel for the first time, orally, on the return date, that an injunction can be granted in favor of A-1 Technology, Inc. under common law. In response to the Court's concerns about disregarding paragraph 12 of the contracts in favor of paragraph 6 (II), Plaintiffs' counsel maintained that A-1 Technology, Inc. would not be limited to the contractual language because it signed no contract with Defendants (*Cf. MGM Court Reporting Service, Inc. v Greenberg*, 74 NY2d 691 [1989] [court refused to imply a broader agreement concerning the non-solicitation of clients than agreed to in the contract for the purchase of the outstanding shares of one partner by the other]). Although counsel's spontaneous argument was creative, the Court has serious questions about its validity, especially because the connection between A-1 Technology, Inc. and Defendants is unknown and because based on the record before the Court, A-1 Technology Private Limited-not A-1 Technology, Inc.-was Defendants' employer. In any event, the argument is disregarded as it was not timely raised. Notably, the Court gave Plaintiffs an additional opportunity to explain to the Court why it had jurisdiction, and the issue of common law was never raised in the Supplement Affidavit In Support Of The Order To Show Cause.

YOGESH NANNA and SILVERLINE TARGET, pending the outcome of the action in
India.

This Constitutes the Decision and Order of the Court.

Dated: July 26, 2006

ENTER:



J.S.C.

EMILY JANE GOODMAN