

Nina Penina, Inc. v Njoku
2006 NY Slip Op 30839(U)
October 4, 2006
Supreme Court, New York County
Docket Number: 106051/04
Judge: Emily Jane Goodman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17

-----X
NINA PENINA, INC.,

Plaintiff,

-against-

Index No. 106051/04

CHIEF I.O. NJOKU,

Defendant.
-----X

FILED
JUL 17 2006

EMILY JANE GOODMAN, J.S.C.:

Defendant Chief I.O. Njoku (Njoku) moves to disqualify Robert Teitelbaum (Teitelbaum) and his firm from representing plaintiff Nina Penina, Inc. (Nina Penina) in this action and to compel him to comply with a Subpoena, dated August 14, 2006. Plaintiff cross moves to vacate the Subpoena. The facts of this case were previously discussed in a Decision and Order, dated March 18, 2005, which denied disqualification at that time.

The motion to disqualify is held in abeyance pending the deposition of Robert Teitelbaum. Robert Teitelbaum is directed to appear for a deposition within thirty (30) days from receipt of a copy of this Decision and a new Subpoena. The cross motion to vacate the Subpoena, dated August 14, 2006, is denied as moot (the Subpoena was previously vacated by Decision dated March 18, 2005). The Court vacated the Subpoena in its prior decision because Defendant did not demonstrate relevance. Since that Decision, the First

Department has held that the Court must resort to parole evidence to interpreting the contract at issue. Robert Teitelbaum does not dispute Defendant's contention that he drafted the relevant contractual provisions at issue and therefore, his testimony may relate to the intent of the parties (See North Shore Neurological Gp., PC v. Levy, 72 AD2d 598 [2nd Dept 1979] [law firm was disqualified from representation because the firm represented the defendant during contract negotiations and would be called as witnesses to testify "as to the intentions of the parties in entering into the ... agreement"])).

However, it is not clear what portions of his testimony would be subject to a privilege claim. Therefore, because Robert Teitelbaum can only be compelled to testify to questions which are not subject to a privilege claim, absent his deposition, the Court cannot make a determination as to whether he is a necessary witness, whose testimony would be adverse to his client so as to warrant disqualification. The fact that other witnesses may be deposed does not support Plaintiff's argument that Robert Teitelbaum should not be deposed until those witnesses are deposed because he may possess knowledge of essential facts which differ from those other witnesses.¹

¹It is true that if Robert Teitelbaum's testimony is merely cumulative, disqualification may not be warranted (See, e.g., O'Donnell, Fox & Gartner, P.C. v R-2000 Corp., 198 AD2d 154 [1st Dept 1993]). However, the fact that other witnesses were present at the contract signing, does not support Plaintiff's argument that Robert Teitelbaum can only be deposed after those witnesses are deposed because he apparently drafted the clauses in question.

It is hereby

ORDERED that the motion to disqualify is held in abeyance pending the deposition of Robert Teitelbaum, who is directed to appear for a deposition within thirty (30) days from receipt of a copy of this Decision and a new Subpoena; and it is further

ORDERED that the cross motion to vacate the Subpoena, dated August 14, 2006, is denied as moot.

This constitutes the Interim Decision and Order of the Court.

Dated: October 4, 2006

Enter:


J.S.C.
EMILY JANE GOODMAN

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