

Manas v VMS Assoc., LLC
2007 NY Slip Op 32326(U)
July 19, 2007
Supreme Court, New York County
Docket Number: 0602150/2006
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK- NEW YORK COUNTY
PRESENT: Hon. DORIS LING-COHAN, Justice

PART 36

-----X
DANIELA MANAS,

Index: 602150/06

Plaintiff,

Motion Seq. 002

-against-

DECISION/
ORDER

VMS ASSOICATES, LLC d/b/a VIOLY AND COMPANY,
and VIOLY McCAUSLAND-SEVE,

Defendants.
-----X

The following papers, numbered 1 to 4 were considered on this motion for a protective order:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause - Affidavits - Exhibits	_____ 1,2 _____
Answering Affidavits - Exhibits (Memo)	_____ 3 _____
Replying Affidavits (Reply Memo)	_____ 4 _____

FILED

JUL 26 2007

Cross-Motion: [] Yes [X] No

NEW YORK
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Upon the foregoing papers, defendants' motion for a protective order and to quash the subpoena for documents and deposition issued by plaintiff on January 19, 2007 to non-party HSBC Bank, USA, pursuant to CPLR §§ 2304 and 3103(a), is granted for the following reasons.

Plaintiff commenced this action seeking to recover monetary damages, stemming from her former employment as a vice president for VMS. Plaintiff alleges in the complaint, *inter alia*, the following: Defendant VMS Associates, LLC d/b/a Violy and Company ("VMS") is an international investment banking firm founded in 2003 by Violy. Plaintiff had been employed as a vice-president by VMS's predecessor, Violy, Byorum & Partners Holdings LLC ("VB & P"), which ceased doing business in 2003. To secure plaintiff's services for VMS, Violy McCausland-Seve ("Violy") represented to plaintiff that she would receive adequate salary and bonus compensation for past and future services. Those representations involved a short-term and long-term compensation plan which included salary, bonus compensation, and other benefits. Plaintiff joined VMS as a vice-president in reliance on Violy's representations. With the exception of one bonus, plaintiff did not receive the promised compensation, including bonuses, despite repeated assurances by Violy and her representatives that plaintiff would be appropriately compensated. In response to plaintiff's increasing complaints regarding outstanding sums of unpaid income, her services were terminated in April 2006. Thereafter, Violy made false and

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derogatory statements about plaintiff to members of the financial community, including plaintiff's former colleagues and clients.

The complaint asserts six causes of action referred to as "Counts".¹ Count I (breach of contract), asserted against VMS, alleges that VMS breached its contract with plaintiff by failing to pay the promised compensation. Count II (fraudulent inducement), asserted against both defendants, alleges that they fraudulently induced plaintiff to join VMS by falsely representing that she would receive certain short-term and long term compensation consisting of salary and bonuses. Count IV (unjust enrichment/restitution), asserted against VMS, alleges that defendant inequitably received and continues to receive the benefit of plaintiff's services without paying adequate compensation therefore. Count V (quantum meruit), asserted against VMS, tracks Count IV. Count VI (fraud), asserted against both defendants, alleges that they knowingly made false representations to plaintiff concerning her compensation to induce her to continue her employment at VMS. Count VII (defamation) asserted against Violy alleges that she knowingly made numerous false, derogatory, and humiliating statements about plaintiff and her lack of competence as an employee and banker to VMS clients and other influential members of the banking industry with the intent of causing emotional harm to plaintiff.

CPLR §3101 mandates that there "shall be full disclosure of all matter material and necessary in the prosecution or defense of an action...". The Court of Appeals has stated that the words "material and necessary" are to be liberally construed "to require disclosure, upon request, 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.*, 21 NY2d 403, 406 (1968). Thus, the CPLR "requires the disclosure of all evidence relevant to the case and all information reasonably calculated to lead to relevant evidence." *See Siegel, New York Prac.* § 344, at 551 (4th ed 2005).

A court, however, has discretion to limit disclosure and issue a protective order to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice." CPLR §3103; *Pomeranz v. Pomeranz*, 99 AD2d 407 (1st Dept 1984). "The burden of showing that discovery is improper is on the party seeking a protective order (*Roman Catholic Church of The Good Shepherd v. Tempco Sys.*, 202 AD2d 257, 258)." *Sage Realty Corp. v. Proskauer Rose LLP*, 251 AD2d 35, 40 (1st Dept 1998); *see also Koump v. Smith*, 25 NY2d 287, 294 (1969).

¹ By order of this Court dated March 30, 2007, plaintiff's claim for promissory estoppel (Count III) and claims for punitive damages were dismissed.

The subpoena at issue, seeks a deposition and the following from non-party HSBC Bank USA Inc (“HSBC”), for the time period from January 1, 1990 through the time of production: (1) any and all documents relating in any fashion to loans or lines of credit issued by HSBC to Violy, Byorum & Partners Holdings LLC (“VB & P”); (2) any and all communications between HSBC and defendants relating to any fashion to loans or lines of credit issued by HSBC to VB & P; (3) any and all documents relating in any fashion to defendants’ repayment of loans or lines of credit issued by HSBC to VB & P; (4) any and all documents relating in any fashion to financial services provided by HSBC to VB & P and/or defendants; (5) any and all communications between HSBC and defendants relating in any fashion to financial services provided by HSBC to VB & P and/or defendants; (6) any and all documents relating in any fashion to outstanding debts owed to HSBC by defendants; (7) any and all communications between HSBC and defendants relating in any fashion to outstanding debts owed to HSBC by defendants.

In seeking a protective order, plaintiff maintains that the subpoena has “nothing to do with plaintiff’s claims” [¶2, Affirmation in Support of Defendants’ Motion], and is overly broad in that it seeks “any and all documents’ over a 17-year period (dating back to 1990) concerning financial services, debts and loans with respect to defendant Violy, and Violy’s principal - defendant McCuasland-Seve - and a predecessor company - VB & P - which is not a party to this lawsuit. Plaintiff argues that there is no good faith basis for plaintiff’s demands. This Court agrees.

The subject subpoena is extremely broad in that it seeks numerous varieties of financial documents which do not appear to be relevant to this case in any way, spanning over a period of 17 years. Moreover, in opposition, plaintiff failed to detail how the disputed documents and deposition are relevant to this case, which involves the issue of whether plaintiff is entitled to certain unpaid bonuses by defendant VMS, while plaintiff was an at-will employee from mid-2003 through early 2006. In fact, in opposition, defendants merely agree to shorten the time period for the demanded records to 10 years, and laughably, argues that the subpoena is “narrowly tailored”. [¶2, Affirmation in Opposition]. Thus, defendants’ motion for a protective order is granted.

The Court notes that the subject subpoena is the broadest subpoena it has been requested to review, and the most frivolous, which subjects the party and the attorney to sanctions. While the Court declines, in its discretion, to sanction for such conduct, counsel are warned that should the discovery process on this simple case continue to proceed in this wasteful manner, sanctions will be imposed against the appropriate party and/or counsel.

Further, the Court notes that, in the moving papers, defendants appear to consent to provide access to some of the information sought. Further, in opposition, defendants maintain that “the

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parties are currently in the process of negotiating a Confidentiality Stipulation that will limit the use of certain discovery materials" [¶5, Affirmation in Opposition]; however, the Court is not aware that such a stipulation has been prepared. **Thus, at the next scheduled discovery conference on Friday, July 20, 2007, the parties shall confer with respect to stipulating to a more limited subpoena and/or providing any necessary authorizations to obtain the agreed upon records, as well as the finalization of the confidentiality stipulation.**

Accordingly, it is

ORDERED that defendants' motion for a protective order as to the subpoena dated January 19, 2007 served upon non-party HSBC Bank USA Inc is granted, and the subject subpoena is deemed quashed; and it is further

ORDERED that within 20 days of entry of this order, defendants shall serve a copy upon all parties and upon HSBC, with notice of entry.

Dated:

7/19/07



Hon. Doris Ling-Cohan, JSC

Check One: [] FINAL DISPOSITION [X] NON-FINAL DISPOSITION
Check if Appropriate: [] DO NOT POST

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