

Consolidated Sewing Mach. Corp. v Sanford

2008 NY Slip Op 32956(U)

October 17, 2008

Supreme Court, New York County

Docket Number: 604384/05

Judge: Martin Shulman

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

MARTIN SHULMAN

PRESENT: ~~_____~~ J.S.C.

PART 4

Index Number : 604384/2005
CONSOLIDAATED SEWING MACHINE
 VS.
SANFORD, GREGORY
 SEQUENCE NUMBER : 009
 OTHER RELIEFS

INDEX NO. 604384/05

MOTION DATE _____

MOTION SEQ. NO. 009

MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

1, 2

3

4

Notice of Motion/ ~~Order to Show Cause~~ - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits + Exh.

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the attached decision and order.

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

FILED
OCT 21 2008
COUNTY CLERK'S OFFICE
NEW YORK

OCT 17 2008

Dated: _____

MARTIN SHULMAN J.S.C.

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

-----x
CONSOLIDATED SEWING MACHINE CORP.,
CHANDLER MACHINE USA, LLC and
UNLIMITED PARTS & SUPPLIES, INC.,

Index No: 604384/05

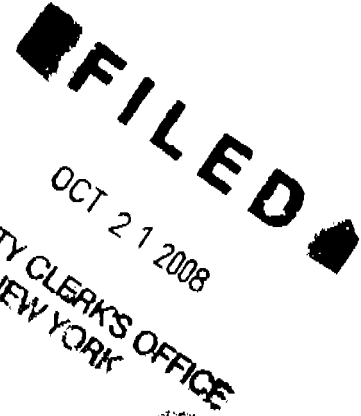
Plaintiffs,

-against-

GREGORY SANFORD, UNLIMITED EQUIPMENT,
INC., CHANDLER MACHINE COMPANY SALES
WV LLC, JOHNNIE DUART SANFORD, CHARLES
MAXANT, OLEG POTSELUYKO, TATIANA
DEMIDENKO, JOHN DOE 1 a/k/a MARCO MELENDEZ
and JOHN DOES 2 through 10,

Defendants.
-----x

Decision and Order



Hon. Martin Shulman, J.S.C.:

Plaintiffs, Consolidated Sewing Machine Corp., et al. ("Consolidated" or collectively, "plaintiffs"), have moved to reopen discovery to depose defendants Gregory Sanford ("Sanford"), Johnnie Duart Sanford ("Duart"), Chandler Machine Company Sales, WV LLC ("Chandler West Va.") and Charles Maxant, its president ("Maxant"). Defendants oppose the motion.

Plaintiffs previously deposed the foregoing defendants. However, plaintiffs contend that "[a]n important development has occurred in the case recently which requires that Maxant and Sanford be called back for deposition." Glauber Aff. in Supp. at ¶2. Specifically, plaintiffs claim to have discovered a witness, Ronald O. Ward ("Ward"), who will be called as a witness at trial. Ward submits an affidavit alleging *inter alia*:

- he worked for Maxant for approximately ten years and lived in his home;

- in the fall of 2005, defendant Sanford brought Maxant "a large number of sewing machines and related parts";
- Sanford's company, co-defendant Unlimited Equipment Inc., "shipped a number of sewing machines and related items to Mr. Maxant";
- Maxant kept the sewing machines in the basement of his store and in his son's garage;
- after this action was commenced, he moved 20 to 30 machines to a storage facility with the help of Maxant's grandson, at Maxant's instruction;
- Maxant subsequently sold the machines but before doing so, Ward removed plaintiffs' name from the machines and other equipment, also at Maxant's direction;
- through Chandler West Va., Maxant "fill[ed] orders diverted to him by Mr. Sanford"; and
- he observed Maxant on "numerous occasions" reviewing a CD-Rom containing customer and account information of "the New York Chandler Company".

Plaintiffs filed the note of issue in this action on July 3, 2008. At that time, plaintiffs were unaware of Ward's existence and his testimony. Plaintiff seeks to reopen Maxant's and Sanford's depositions so they "can be confronted with evidence of their theft." Depending on their responses, plaintiffs speculate that it may be necessary to amend the complaint to name Maxant's son, grandson and his other company of which Chandler West Va. is a division.

In opposition to the motion, defendants submit their attorney's affirmation contending that: 1) plaintiffs have prolonged discovery in this action while a preliminary injunction has been in place restricting defendants from earning a living, to defendants' prejudice; 2) granting plaintiffs the requested relief runs afoul of Uniform Rule 202.12(b), which *inter alia* requires discovery to be completed within 12 months from

filing a Request for Judicial Intervention in standard cases (15 months for complex cases); and 3) Ward is unlikely to appear at trial because he allegedly is “a fugitive from justice”. Defendants also attack Ward’s credibility by referencing his alleged criminal record.

Uniform Rule 202.21(d), which neither plaintiffs nor defendants cite, governs the determination of this motion and provides in relevant part:

. . . Where unusual or anticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice, the court, upon motion supported by affidavit, may grant permission to conduct such necessary proceedings.

See e.g., Price v. Bloomingdale’s, 166 A.D.2d 151 (1st Dept. 1990). Here, Wards’ allegations are clearly relevant to plaintiffs’ causes of action for unfair competition, trademark infringement, tortious interference with contract, conversion and similar claims. This court finds that plaintiffs have established that “unusual or anticipated circumstances” have developed requiring additional pretrial proceedings to prevent substantial prejudice.

While defendants attack Wards’ credibility, they do not submit an affidavit of a person with knowledge in any way refuting Ward’s claims. Further, there is no allegation that plaintiffs knew or should have known of Ward earlier in this litigation (*cf., Di Maria v. Coordinated Ranches, Inc.*, 114 A.D.2d 397, 398 (2nd Dept. 1985), nor do defendants refute plaintiffs’ counsel’s claim that defendants failed to produce documentation showing they paid for the machines referenced in Ward’s affidavit.

For the above reasons, plaintiffs’ motion is granted to the extent that discovery shall be reopened as to Maxant (in his individual capacity and as president of Chandler

West Va.) and Sanford, solely with respect to the matters referenced in Ward's affidavit. The motion is denied with respect to Duart, as Ward's allegations do not implicate, or even reference, her in any way. In light of both parties' valid claims of potential prejudice, the granting of this motion is conditioned upon plaintiffs' completing Maxant's and Sanford's depositions on or before December 1, 2008, and upon his serving any potential motion to amend the complaint within 30 days of completion of such depositions. Accordingly, it is

ORDERED that plaintiffs' motion is granted to the extent that plaintiffs are permitted to reopen discovery to depose Maxant (in his individual capacity and as president of Chandler West Va.) and Sanford as set forth herein, and is otherwise denied; and it is further

ORDERED that plaintiffs shall complete Maxant's and Sanford's depositions directed herein on or before December 1, 2008; and it is further

ORDERED that plaintiffs shall serve any motion to amend the complaint within 30 days of completion of such depositions.

The foregoing constitutes this Court's Decision and Order. A copy of this Decision and Order has been faxed to counsel for the parties.

DATED: New York, New York
October 17, 2008



HON. MARTIN SHULMAN, J.S.C.

FILED
OCT 21 2008
COUNTY CLERK'S OFFICE
NEW YORK