

A. Link Partners, Inc. v Senderwicz

2009 NY Slip Op 32084(U)

September 8, 2009

Supreme Court, New York County

Docket Number: 601576/08

Judge: Emily Jane Goodman

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SCANNED ON 9/14/2009

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

PRESENT: EMILY JANE GOODMAN

PART 17

Index Number : 601576/2008
A. LINK PARTNERS
vs.
SENDEROWICZ, MENACHEM
SEQUENCE NUMBER : 001
COMPEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided*

per attached

FILED

SEP 14 2009

COUNTY CLERK'S OFFICE
NEW YORK

Dated: 9/8/09

[Signature]
EMILY JANE GOODMAN, S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

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

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

-----X
A. LINK PARTNERS, INC.,

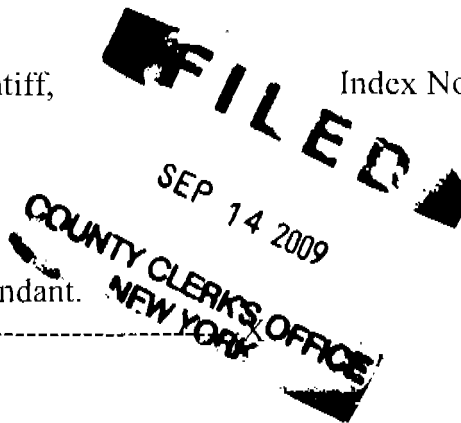
Plaintiff,

Index No. 601576/08

-against-

MENACHEM SENDERWICZ

Defendant.



EMILY JANE GOODMAN, J.S.C.:

In this action, Plaintiff sues Defendant for breach of contract and conversion concerning a single diamond and diamond bracelet which Plaintiff gave to Defendant on 2/28/08. It is undisputed that on or about 3/3/08, Defendant returned a cubic zirconium instead of the single diamond and paid for the bracelet with counterfeit bills. Defendant claims that non-party Zvi Hager switched the loose diamond for a fake diamond and provided Defendant with the counterfeit currency, without Defendant's knowledge. The matter has allegedly been reported to the police and the U.S. Secret Service.

In motion sequence 001, Defendant seeks to compel Plaintiff to produce records responsive to Defendant's Demand for Document Production, dated January 29, 2009, regarding requests number 2, 3, and 4. Those requests concern documents relating to transactions between Plaintiff and Ideal Brilliant Co., Inc., (who apparently supplied the diamonds at issue), documents related to any of Plaintiff's dealings in brokerage or consignment sales of loose diamonds, and Plaintiff's brokerage or consignment sales and transactions of loose diamonds with Amron Ungar, Plaintiff's part time employee who

also has an independent diamond brokerage business. Defendant maintains that the information is critical because if Plaintiff does not own the diamonds, then Plaintiff cannot recover from Defendant.

Plaintiff opposes that motion on the grounds that the documents sought are irrelevant to the fact that the single diamond and diamond bracelet contracts both stated that they were made with Plaintiff, and not Ungar. Further, Plaintiff concedes that although it has not yet paid for the diamonds, it possesses the certificate of authenticity of the single diamond and therefore, Defendant may not question Plaintiff's ownership of the diamonds at issue.

In motion sequence 002, Defendant seeks to compel Amirón Ungar to answer deposition questions which Ungar refused to answer on the basis that those questions related to Ungar's independent diamond brokerage business, which was irrelevant to the transaction at issue, which Ungar claims was made in the course of his employment with Plaintiff.

Plaintiff opposes motion sequence 002 on the grounds that the testimony sought is irrelevant to Defendant's liability because the single diamond contract and the diamond bracelet contract both stated that they were with Plaintiff, and not Ungar. Plaintiff also argues that it does not have the power to compel Ungar to answer questions about his personal business.

To support his claim that the transaction was not made in the course of Ungar's

employment, Defendant points out that the single diamond came into Ungar's possession along with a memorandum from Ideal Brilliant Co., Inc. addressed "On Memo To" "Amron Ungar 580 Fifth Ave. C/O D.D.C. New York NY 10036" with the same "Ship To" address—which is not Plaintiff's address. Further, Defendant cites to an insurance claim form submitted by Ideal Brilliant Co., Inc. regarding a "lost" diamond given to Amron Unger (and not Plaintiff), for a diamond purportedly lost on or about 3/10/08. Additionally, although the transaction at issue took place at Plaintiff's office, Defendant points to Plaintiff's deposition testimony conceding it does not deal in loose diamonds.

Motion sequence 001 is granted to the extent that Plaintiff provide documents responsive to requests numbers 2 and 4 for the period commencing from February 28, 2007 through 12/31/08. Discovery is broad and the Court cannot say at this time that the issue of ownership has been conclusively established by Plaintiff. However, request number 3, which does not relate to either Ideal Brilliant Co., Inc. or Ungar is not sufficiently relevant to this action, especially because Plaintiff has already conceded that it does not deal in loose diamonds.

Motion sequence 002 is denied with leave to renew if Amron Hager does not comply with a non-party subpoena which Defendant may serve on him. If Defendant is correctly in maintaining that the transaction was not made in connection with Ungar's employment, then Plaintiff is correct in maintaining that it cannot compel its employee to respond to those questions. However, the Court agrees that discovery of Ungar's

independent diamond brokerage business, specifically limited to any diamond bearing a similar description to the diamonds at issue here (e.g., the color, clarity and weight) may be relevant to Defendant's defense.

It is hereby

ORDERED that motion sequence 001 is granted to the extent that Plaintiff provide documents responsive to Defendant's Demand for Document Production, dated January 29, 2009 requests numbers 2 and 4 for the period commencing from February 28, 2007 through 12/31/08; within 20 days after service of a copy of this Decision and Order; and it is further

ORDERED that motion sequence 002 is denied with leave to renew if Amron Hager does not comply with a non-party subpoena which Defendant may serve on him; and it is further

ORDERED that, absent further order of the Court, the automatic stay imposed by the CPLR shall not apply if a motion for summary judgment is made before the completion of discovery as the discovery which has not yet been provided may be relevant to opposing such a motion.

This constitutes the Decision and Order of the Court.

Dated: September 8, 2009

ENTER:

J.S.C.

EMILY JANE GOODMAN

FILED

SEP 14 2009

COUNTY CLERKS OFFICE
NEW YORK