

Orr v Yun

2013 NY Slip Op 31381(U)

June 26, 2013

Supreme Court, New York County

Docket Number: 603423/06

Judge: Saliann Scarpulla

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Salvann Scarpulla
Justice

PART 19

Index Number : 603423/2006
ORR, KENNETH
vs.
YUN DANIEL
SEQUENCE NUMBER : 015
COMPEL DISCLOSURE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is determined in
accordance with the accompanying decision/orders.

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

FILED
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Dated: 6/24/13

(Signature), J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

-----X
KENNETH ORR,

Plaintiff,

Index No.: 603423/06
Submission Date: 6/19/13

- against-

DANIEL YUN AND BELSTAR GROUP, LLC,

DECISION AND ORDER

Defendants.
-----X

Plaintiff, *pro se*:
Kenneth Orr
2084 Windbrook Drive SE
Palm Bay, FL 32909

For Defendants:
Heller, Horowitz & Feitz, P.C.
292 Madison Avenue
New York, NY 10017

Papers considered in review of this motion to compel:

- Notice of Motion 1
- Aff in Opp 2
- Reply 3

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HON. SALIANN SCARPULLA, J.:

In this contract dispute, plaintiff Kenneth Orr ("Orr") moves to compel defendants Daniel Yun ("Yun") and Belstar Group, LLC ("Belstar Group") to produce documents containing updated financial information about Belstar Management Company, Belstar Investment Management, LLC, Belstar Holdings, LLC, Belstar SJ Credit Fund, LP, Belstar SJ Finance Investments, Belstar Altair Credit Fund, L.P., Belstar Credit Fund, Belstar Credit Opportunities Fund, Ltd., Belstar Multi Advisor Hedge Fund LLC, Belstar Lyxor Master Fund, Belstar Multi-Advisor Hedge Fund LP, Belstar Multi-Advisor Hedge Fund Ltd., Voyager Group LLC, Voyager Advisors Fund, Societe Generale-Lyxor platform Belstar funds, and Voyager Advisors, LLC ("the Belstar-related Entities"), and

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[* 3]

seeks to serve subpoenas on certain non-party financial institutions, accounting firms, and Belstar Group partners.

In February 2006, Orr entered into an employment agreement with Belstar Group, a hedge fund. Orr commenced this action in or about September 2006, seeking damages arising from Belstar Group's failure to honor the February 2006 agreement. Orr served an amended complaint in 2008.

The note of issue was filed on September 2, 2009. Since that time, the parties filed discovery motions, summary judgment motions and a related appeal. At a pre-trial conference conducted on January 23, 2013, Orr requested that Belstar Group and Yun produce updated financial information about Belstar Group. The Court directed Belstar Group and Yun to produce that information and then set a trial date for June 20, 2013.¹

Orr now moves, on the eve of trial, to compel production of documents containing updated financial information about the Belstar-related Entities, and seeks to serve subpoenas on certain non-party financial institutions, accounting firms, and Belstar Group partners. In support of his motion, Orr argues that updated financial information about the Belstar-related Entities is necessary to determine Orr's damages in that the subject agreement entitled Orr to a "25% interest in *Belstar*," and thus was not referring only to Belstar Group, but to all Belstar-related Entities. He also maintains that Yun and Belstar

¹ The trial date has since been adjourned to September 30, 2013 because of the filing of this motion. There is a pre-trial conference scheduled for September 25, 2013.

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Group are so closely intertwined with the Belstar-related Entities that information relating to those entities is required in order to obtain financial information about Belstar Group.

Orr also contends that he is entitled to this discovery because in the action *Schulte Roth & Zabel LLP v. Belstar Group, LLC*, Index No. 650572/2011, the Court directed Belstar Group to produce certain discovery about the Belstar-related Entities to assist Schulte Roth & Zabel LLP in obtaining satisfaction of a judgment against Belstar Group, and thus he should be entitled to discovery about the Belstar-related Entities as well. In addition, as further evidence of the closely intertwined relationship between Belstar Group and the Belstar-related Entities, thus necessitating further discovery about the Belstar-related Entities' financial information, Orr refers to Schulte Roth & Zabel LLP's allegation, in *Schulte Roth & Zabel LLP v. Daniel Yun and Belstar Investment Management LLC*, Index No. 650256/2013, that Belstar Group fraudulently transferred funds to Yun and Belstar Investment Management LLC in order to evade paying the judgment in the action under Index No. 650572/2011.

In opposition, Yun and Belstar Group argue that (1) many of the Belstar-related Entities listed by Orr were not even in existence at the time the subject agreement was executed; (2) the requested discovery is not necessary at this time because the subject agreement was only between Orr and Belstar Group, and not any other entity; and (3) the Court's decision in the two actions involving Schulte Roth & Zabel referenced by Orr in his motion papers have no bearing on the resolution of this motion.

[* 5]

Discussion

CPLR §3101(a) requires full disclosure of all evidence material and necessary to the prosecution or defense of an action. “Material and necessary” has been interpreted to mean 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 Publishing Co.*, 21 N.Y.2d 403, 406 (1968); *Friel v. Papa*, 87 A.D.3d 1108, 1110 (2nd Dept. 2011). Unlimited disclosure, however, is not permitted. *See Spohn-Konen v Town of Brookhaven*, 74 A.D.3d 1049 (2nd Dept. 2010); *Ackerman v. Landes*, 125 A.D.2d 620 (2nd Dept. 1986). A trial court is vested with broad discretion regarding discovery. *Foster v Herbert Slepoy Corp.*, 74 A.D.3d 1139 (2nd Dept. 2010); *148 Magnolia, LLC v. Merrimack Mut. Fire Ins. Co.*, 62 A.D.3d 486 (1st Dept. 2009) *affd* 81 A.D.3d 572 (2011); *Blagrove v. Cox*, 294 A.D.2d 526 (2nd Dept. 2002).

The Court denies Orr’s motion to compel Yun and Belstar Group to produce documents containing updated financial information about the Belstar-related Entities, and to serve subpoenas on certain non-party financial institutions, accounting firms, and Belstar Group partners. While both “Belstar Group” and “Belstar” are mentioned in the subject agreement, and “Belstar” is not defined in the agreement, the Court finds that “Belstar” refers to “Belstar Group” in the agreement. In addition, the Court’s directive to Belstar Group to provide certain discovery about the Belstar-related Entities to Schulte Roth & Zabel in an action seeking post-judgment damages has no bearing on Orr’s

request for discovery in the instant motion. Further, the claim of fraudulent conveyance made by Schulte Roth & Zabel against Belstar Investment Management LLC and Belstar Group in another action does not provide a basis for the discovery sought in this action at this time. The Court concludes that the information requested by Orr is not necessary for the resolution of his claims at this time.

In accordance with the foregoing, it is hereby

ORDERED that plaintiff Kenneth Orr's motion to compel defendants Daniel Yun and Belstar Group, LLC to produce documents containing updated financial information about Belstar-related Entities and to serve subpoenas on certain non-party financial institutions, accounting firms, and Belstar Group partners is denied; and it is further

ORDERED that the parties shall appear for a pre-trial conference on September 25, 2013 at 60 Centre Street Room 335.

This constitutes the decision and order of the Court.

Dated: New York, New York
June 26, 2013

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JUN 27 2013
NEW YORK
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Saliann Scarpulla
Saliann Scarpulla, J.S.C.