

**Aalco Transp. & Stor., Inc. v DeGuara**

2014 NY Slip Op 30736(U)

March 3, 2014

Supreme Court, Suffolk County

Docket Number: 17287/2010

Judge: William B. Rebolini

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK**

**I.A.S. PART 7 - SUFFOLK COUNTY**

**PRESENT:**

**WILLIAM B. REBOLINI**  
**Justice**

\_\_\_\_\_  
Aalco Transportation & Storage, Inc.,

Index No.: 17287/2010

Plaintiff,

-against-

Attorneys [See Rider Annexed]

Joseph DeGuara and  
Bel-Air Consulting & Design, LLC

Motion Sequence No.: 013; MOT.D

Motion Date: 11/20/13

Defendant.

Submitted: 12/18/13

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Joseph DeGuara,

Motion Sequence No.: 014; XMD

Motion Date: 11/20/13

Counterclaim Plaintiff,

Submitted: 12/18/13

-against-

Jeffrey S. Krevat,

Counterclaim Defendant.

Upon the following papers numbered 1 to 58 read upon these motions for an order compelling disclosure: Notice of Motion and supporting papers, 1 - 21; Notice of Cross-Motion and supporting papers, 33 - 39; Answering Affidavits and supporting papers, 22 - 26; 40 - 51; Replying Affidavits and supporting papers, 27 - 32; 52 - 54; 55 - 56; 57 - 58, it is

**ORDERED** that this motion by plaintiff, Aalco Transportation & Storage, Inc. (Aalco), and counterclaim defendant, Jeffrey S. Krevat, for an order compelling defendants, Joseph DeGuara and Bel-Air Consulting & Design, LLC (Bel-Air), to provide disclosure is granted to the extent indicated herein, and within thirty (30) days from the date of this order, defendants shall produce the following documents:

1. clear, legible, complete copies of invoices, cancelled checks, receipts, wire transfer records and bank records reflecting payments received by defendant DeGuara

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and/or defendant Bel-Air relating to “the Taconic Job”, “the Morgan Stanley Job”, “the Jane Street Job” and “the Madison Avenue Job” in 2010 and 2011; in the event such records have been destroyed or are otherwise not in the defendants’ possession, defendant DeGuara shall submit an affidavit setting forth in detail what happened to such records, and defendants shall also submit for an *in camera* inspection complete copies of all 2010 and 2011 tax returns, including all schedules, 1099 forms and other supplemental forms;

2. clear, legible, complete copies of notes, invoices and purchase orders kept by DeGuara relating to work with Brothers & Company, Inc. in 2010 and 2011, as testified to by DeGuara; in the event such records have been destroyed or are otherwise not in the defendants’ possession, defendant DeGuara shall submit an affidavit setting forth in detail what happened to such records;

3. clear, legible, complete copies of electronically stored information, hard copy documents, email, files, letters and memoranda relating to the solicitation by defendant DeGuara of “the Taconic Job”, “the Morgan Stanley Job”, “the Jane Street Job” and “the Madison Avenue Job”, including price quotes, bids, and project specifications;

4. duly executed authorizations to obtain copies of cell phone call records to defendant’s work phone number (516) 650-7089 for the period from January 1, 2010 to January 31, 2010;

5. clear, legible, complete copies of all emails sent from the address [joe@aalco.net](mailto:joe@aalco.net) to the address [belaircd@verizon.net](mailto:belaircd@verizon.net);

6. clear, legible, complete copies of all emails sent by DeGuara or received by DeGuara via the address [belaircd@verizon.net](mailto:belaircd@verizon.net) relating to “the Taconic Job”, “the Morgan Stanley Job”, “the Jane Street Job” and “the Madison Avenue Job”;

7. clear, legible, complete copies of all emails received at the address [belaircd@verizon.net](mailto:belaircd@verizon.net) from any electrical or mechanical contractor, subcontractor or rigging company for the period from November 1, 2008 through January 6, 2010 relating to any job or project that plaintiff solicited or for which it prepared a bid, or in the event defendants do not have such information, defendant DeGuara shall provide a duly executed authorization to obtain such information from Verizon; and it is further

**ORDERED** that defendant DeGuara shall appear for a continued deposition at the Courthouse in Riverhead, New York, on April 28, 2014 at 10 AM, such deposition to continue day-to-day until completed; and it is further

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**ORDERED** that the separate motion by defendants to compel disclosure, deemed herein to be a cross-motion, is denied for reasons set forth herein.

Plaintiff commenced this action to recover damages from its former employee, Joseph DeGuara, for his alleged misappropriation of confidential information used in the conduct of its business activities as a rigging company. Following extensive motion practice, four causes of action set forth in the second amended verified complaint remain: breach of contract and unjust enrichment against DeGuara for his alleged violation of a restrictive covenant not to compete, breach of duty of good faith and loyalty against DeGuara, and conversion of proprietary information against defendants DeGuara and Bel-Air. Three counterclaims asserted by the defendants against plaintiff Aalco and its corporate president Krevat in their second amended verified answer remain following motion practice: breach of contract, fraud/promissory estoppel and breach of duty of good faith and fair dealing. DeGuara was employed by Aalco from May 21, 2003 until his resignation from the company on January 5, 2010. Among the allegations asserted in the complaint is a claim that before his resignation, DeGuara had arranged with a competitor, Brothers & Company, Inc. (Brothers), to submit bids for jobs using information that had been obtained through his employment with Aalco, and that DeGuara was paid a finder's fee based on Brothers' net profits by payment remitted to Bel-Air. It is also alleged that on or about January 5, 2010, DeGuara intercepted a communication to Aalco from an electrical contractor regarding a change in specifications for a particular job (referred to in the complaint as "the Taconic job"), and that on or before January 15, 2010 he submitted a successful bid on behalf of Bel-Air for the job based upon a price quote that was less than the quote he had previously negotiated on behalf of Aalco.

Aalco and Krevat served a notice for discovery and inspection dated September 4, 2012 for financial information pertaining to its claims that defendants submitted bids on various jobs using proprietary information obtained through DeGuara's employment with Aalco. Among the items requested are portions of tax returns showing income from identified jobs, payment statements, cancelled checks or invoices relating to income received from Brothers or received in connection with certain jobs identified as "the Taconic Job", "the Morgan Stanley Job", "the Jane Street Job" and "the Madison Avenue Job" in 2010 and 2011, bank statements reflecting deposit of payments for the jobs, and notes written by DeGuara reflecting purchase orders, payments and commissions received from Brothers or received in connection with the aforementioned jobs, each to which defendants responded that they were "not in possession of any documents responsive to the request." In view of the claim by plaintiff that defendant DeGuara engaged in disloyal conduct in violation of duties of good faith and fair dealing which resulted in benefits to himself, disclosure of information pertaining to the profits received by defendants stemming from DeGuara's allegedly disloyal acts is appropriate (*see Gomez v Bicknell*, 302 AD2d 107, 756 NYS2d 209 [2d Dept 2002]). To the extent that plaintiff seeks disclosure of certain cell phone records, the request is granted only to the extent that defendant shall produce duly executed authorizations to obtain copies of cell phone call records to defendant's work phone number (516) 650-7089 for the period from January 1, 2010 to January 31, 2010 and in all other respects the request is denied, without prejudice, as it has not been demonstrated that such disclosure is material and necessary to the prosecution of this case or to the defense of the counterclaim.

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Plaintiff's request for disclosure of electronically stored information, hard copy documents, email, files, letters and memoranda relating to the solicitation by defendant DeGuara of "the Taconic Job", "the Morgan Stanley Job", "the Jane Street Job" and "the Madison Avenue Job", plaintiff has demonstrated that such records are material and necessary. In addition, plaintiff has shown that copies of all emails sent from the address [joe@aalco.net](mailto:joe@aalco.net) to the address [belaircd@verizon.net](mailto:belaircd@verizon.net) in the possession of either defendant DeGuara or defendant Bel-Air are discoverable, as are copies of all emails sent by DeGuara or received by DeGuara via the address [belaircd@verizon.net](mailto:belaircd@verizon.net) relating to "the Taconic Job", "the Morgan Stanley Job", "the Jane Street Job" and "the Madison Avenue Job". Plaintiff has also demonstrated its entitlement to discovery of copies of all emails received at the address [belaircd@verizon.net](mailto:belaircd@verizon.net) from any electrical or mechanical contractor, subcontractor or rigging company for the period from November 1, 2008 through January 6, 2010 relating to any job or project that plaintiff solicited or for which it prepared a bid.

To the extent that defendants seek the production of certain financial records in addition to the tax returns, the financial statements and other documents that have been exchanged, such request is denied. Sufficient information has been provided to defendants to enable an effective review whether defendant DeGuara's bonus was properly calculated upon the company's reported profits. Defendants' request for unfettered access to corporate books and records, including such records as "[a]ll bank and brokerage statement records," "customer lists" and "analysis of doubtful accounts", is neither warranted nor appropriate. Simply put, litigants do not have *carte blanche* to demand production of any documents or other tangible items that they speculate might contain useful information (*see Geffner v Mercy Med. Ctr.*, 83 AD3d 998 [2d Dept 2011]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]; *Vyas v Campbell*, 4 AD3d 417 [2d Dept 2004]).

Insofar as defendants seek production of electronically stored information in a format different than that in which such information previously had been disclosed, such application is denied. It is well-established that a party may be required to produce only those items "which are in the possession, custody or control of the party served" (CPLR 3120 [a] [1] [I]; *see Romeo v City of New York*, 261 AD2d 379, 689 NYS2d 517 [2d Dept 1999]; *see also Rosado v Mercedes-Benz of North America, Inc.*, 103 AD2d 395, 480 NYS2d 124 [2d Dept 1984]), and there is no requirement that electronically-stored information be copied in a specific format to satisfy the convenience of the requesting party.

To the extent that the parties each seek an order compelling disclosure of additional information, such application is denied, without prejudice to renew upon a showing that such additional information is material and necessary.

Dated:

3/3/2014




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 HON. WILLIAM B. REBOLINI, J.S.C.

\_\_\_\_\_ FINAL DISPOSITION \_\_\_X\_\_\_ NON-FINAL DISPOSITION

RIDER

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