Locks v PRC Indus., Inc.
2014 NY Slip Op 31933(U)
July 9, 2014
Supreme Court, Suffolk County
Docket Number: 12-20168
Judge: Joseph C. Pastoressa
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SHORT FORM ORDER

INDEX No. 12-20168

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 34 - SUFFOLK COUNTY

COPY

PRESENT:

Hon. JOSEPH C. PASTORESSA
Justice of the Supreme Court

Mot. Seq. # 001 - MotD

CLIFFORD LOCKS, Plaintiff, - against - PRC INDUSTRIES, INC., ARTHUR KRANTZ, and DARREN KRANTZ, Defendants.	WECHSLER & COHEN, LLP Attorney for Plaintiff 17 State Street, 15th Floor New York, New York 10004 FRANKLIN, GRINGER & COHEN, P.C. Attorney for Defendants 666 Old Country Road, Suite 202 Garden City, New York 11530

Upon the following papers numbered 1 to 28 read on this motion to compel/preclude ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 12 ; Notice of Cross Motion and supporting papers ____; Answering Affidavits and supporting papers 15 - 22 ; Replying Affidavits and supporting papers 23 - 26 ; Other memoranda of law 13 - 14, 27 - 28 ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED that all requests for oral argument are denied; and it is further

ORDERED that the motion by the plaintiff Clifford Locks for an order pursuant to CPLR 3124 compelling the defendants to produce documents and information responsive to his discovery demands within 20 days and extending the deadline for party depositions until 60 days after the defendants have complied with this order or, in the alternative, pursuant to CPLR 3126 precluding the defendants from presenting evidence at trial or relying upon any evidence in any future motion practice which has not been produced in response to the plaintiff's discovery demands is granted to the extent set forth herein, and is otherwise denied; and it is further

ORDERED that the defendants shall, within 20 days after service of a copy of this order with notice of entry, serve additional responses to the plaintiff's demands dated November 30, 2012 as set forth herein; and it is further

ORDERED that the deadline for party depositions is extended until 60 days after the defendants have complied with this order.

This is an action sounding in breach of contract, violations of the New York State Labor Law, quantum meruit, and unjust enrichment/restitution. In his complaint, the plaintiff alleges, among other things, that he was previously employed by the defendants, that they failed to pay him his earned sales commissions and guaranteed salary, and that the individual defendants are personally liable on the grounds that they are "employers" under the Labor Law, and as two of the ten largest shareholders of the defendant PRC Industries, Inc. (PRC). After commencing this action, the plaintiff served a First Request For Documents and First Set of Interrogatories (Requests) to which the defendants served responses and objections (Responses) dated December 19, 2012. A number of the defendants' responses indicated that "[a]ny responsive documents will be provided under separate cover." A preliminary conference order, dated March 18, 2013, directed the defendants to respond to all outstanding demands for discovery and interrogatories by May 1, 2013, and required that all party depositions be held by June 12, 2013. The defendants failed to serve their outstanding responses by May 1, 2013.

The plaintiff now moves for an order compelling the defendants to produce documents and information responsive to his Requests and extending the time for party depositions or, in the alternative, precluding the defendants from offering evidence at trial regarding any document or information not produced. It is undisputed that the defendants thereafter submitted responses including some, if not all, of the documents to be forwarded under separate cover. By letter dated November 6, 2013, counsel for the plaintiff narrowed the issues herein and advised the Court and opposing counsel as to "the discovery requests still at issue in [the plaintiff's motion]." Thus, the undersigned will address only those discovery items currently in dispute between the parties according to said letter.

Generally, the parties to litigation are entitled to full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof" (CPLR 3101[a]). Thus, it has been held that a party is entitled to disclosure "of any facts bearing on the controversy which will assist [the parties'] preparation for trial by sharpening the issues and reducing delay and prolixity" (Allen v Crowell-Collier Publ. Co., 21 NY2d 403; see also Hoenig v Westphal, 52 NY2d 605; Yoshida v Hsueh-Chih Chin, 111 AD3d 704). However, 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; Foster v Herbert Slepoy Corp., 74 AD3d 1139; Gilman & Ciocia, Inc. v Walsh, 45 AD3d 531; Vyas v Campbell, 4 AD3d 417), and a party will not be compelled to comply with disclosure demands that are unduly burdensome, lack specificity, seek privileged material or irrelevant information, or are otherwise improper (see e.g. Geffner v Mercy Med. Ctr., supra; Gilman & Ciocia, Inc. v Walsh, supra; Astudillo v St. Francis-Beacon Extended Care Facility, Inc., 12 AD3d 469; Crazytown Furniture v Brooklyn Union Gas Co., 150 AD2d 420).

Initially, it is determined that the plaintiff is entitled to further responses to his document request numbered 32, and interrogatories numbered 14 and 15, as the defendants have agreed to provide same under separate cover. The undersigned is aware that the defendants' document response dated June 11, 2013 and their interrogatories response dated June 7, 2013 purport to furnish the requested documents or information. To the extent that the e-mails contained in the CD ROM provided in response to document

request numbered 32 are not in their "native, and in a searchable and sortable format," or without all attachments thereto, they are to be properly produced. To the extent that the responses to interrogatories numbered 14 and 15 indicate that additional documents/information shall be provided, or that a certain document/information is not in their "possession," the defendants shall provide all documents and information also in their custody and control. A party is required to produce those items "which are in the possession, custody or control" of that party (CPLR 3120 [1] [i]; see also Gatz v Layburn, 9 AD3d 348; Castillo v Henry Schein, Inc., 259 AD2d 651; Forestire v Inter-Stop, Inc., 211 AD2d 751; Lear v New York Helicopter Corp., 190 AD2d 7). To the extent that any requested document or information is not in the possession, custody or control of the defendants, they are directed to submit an affidavit of due diligence (Castillo v Henry Schein, Inc., supra; see also Fugazy v Time, Inc., 24 AD2d 443.

It is determined that the plaintiff is entitled to further and complete responses to his interrogatories numbered 11, 13, 17, and 32 for the reason set forth herein. Interrogatory numbered 11 asks the defendants, in pertinent part, to identify "all persons who had, at any time, the authority and/or responsibility to (and/or did): (a) form PRC; (b) hire PRC employees and/or independent contractors (including without limitation Locks), managers, officers, directors, principals, and/or consultants ...; (c) terminate PRC Personnel; (d) supervise and/or control the work schedules of PRC Personnel; (e) supervise and/or control the work assignment, roles, and/or responsibilities of PRC Personnel; (f) determine the amount of Compensation for PRC Personnel; ... (m) execute employment agreements, term sheets, and/or incentive compensation plans and/or agreements on behalf of PRC; (n) open and/or apply for bank accounts, loans, and/or line of credits for the benefit of and/or on behalf of PRC; and (o) open and/or maintain employment benefit plans, including without limitation profit sharing, 401k, pension, and/or retirement plans for PRC."

Article 6 of the Labor Law sets forth a comprehensive set of statutory provisions enacted to strengthen and clarify the rights of employees to payment of wages, and an employer who violates the requirements of article 6 is subject to civil and, in some cases, criminal penalties (Truelove v Northeast Capital & Advisory, 95 NY2d 220; Labor Law 191-c [3], 198). A corporate officer can be held liable as an employer under the Labor Law based, among other things, on his or her control of the corporation's day to day operations and consideration of the "economic realities of the case" (Bonito v Avalon Partners, Inc., 106 AD3d 625; see also Karic v Major Auto. Cos. Inc., ___ F Supp2d ___, 2014 WL 1508448; Martinez v Alubon, Ltd., 111 AD3d 500). Here, the plaintiff asserts causes of action against the individual defendants as employers and the subject interrogatory seeks information which is relevant to the prosecution of the cause of action.

The interrogatory numbered 13 seeks the identity of each person involved in drafting the plaintiff's employment agreement, reviewing the agreement; and/or negotiating the agreement. Interrogatory numbered 17 requests the identity of all non-parties with whom the defendants have communicated about this action. It is determined that the information requested will aid the plaintiff in preparation for a trial in this action in a general sense. In addition, to the extent that these inquiries bear on the plaintiff's claim that the defendant violated the Labor Law, they are highly relevant. The defendants' general objections are without merit, and their objection regarding attorney/client privilege is belied by the fact that the requests only ask that persons be identified and do not seek the content of the communications between individuals (see Hoopes v Carota, 74 NY2d 716).

Interrogatory numbered 32 seeks the factual basis for the eight affirmative defenses set forth in the defendants' verified answer. A plaintiff is entitled to responses to interrogatories that pertain directly to a defendant's affirmative defenses (E. Cuker, Inc. v New York Prop. Ins. Underwriting Assn., 98 AD2d 621; Hamdan v New York Prop. Ins. Underwriting Assn., 116 Misc2d 706).

In addition, it is determined that the plaintiff is entitled to further limited responses to his document request numbered 29, and interrogatories numbered 18 and 19. Document request numbered 29 seeks production of "[a]ll documents created by PRC's agents and/or representatives, including internal and/or external counsel, concerning the payment and/or non-payment of Compensation to Locks during and/or after his employment at any of the Defendants and/or the time he was performing services for any of the Defendants." The defendants object on the ground, among other things, that the request calls for "documents protected by attorney-client privilege or the work product doctrine."

Confidential communications between an attorney and a client deemed privileged under CPLR 4503 are shielded from disclosure (see CPLR 3101 [b]; Spectrum Sys. Intl. Corp. v Chemical Bank, 78 NY2d 371; Rossi v Blue Cross & Blue Shield of Greater N.Y., 73 NY2d 588). While the attorney-client privilege extends to communications from attorneys to clients, such communications must be made "for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship" and must be primarily legal in nature (Spectrum Sys. Intl. Corp. v Chemical Bank, 78 NY2d at 377-378; see Rossi v Blue Cross & Blue Shield of Greater N.Y., supra). The attorney-client privilege applies only to confidential communications and does not immunize the underlying factual information from disclosure to an adversary (Niesig v Team I, 76 NY2d 363; Muriel Siebert & Co., Inc. v Intuit Inc., 32 AD3d 284; Miranda v Miranda, 184 AD2d 286).

CPLR 3101 (c) creates an absolute privilege for the work product of an attorney (Spectrum Sys. Intl. Corp. v Chemical Bank, supra). Although "designed to permit the attorney to communicate freely and candidly with his [or her] client uninhibited by any concern that his [or her] communications will be available to his [or her] client's adversaries" (Beasock v Dioguardi Enters., 117 AD2d 1016, 1016, 499 NYS2d 560 [4th Dept 1986]), the attorney work product privilege is narrowly construed to include only that material prepared in an attorney's professional capacity and which necessarily involved his or her learning and professional skills (see Bras v Atlas Const. Corp., 153 AD2d 914; Bloss v Ford Motor Co., 126 AD2d 804; Hoffman v Ro-San Manor, 73 AD2d 207). Thus, the attorney work product doctrine essentially shields from disclosure written materials involving "interviews, statements, memoranda, correspondence, briefs, mental impressions, and personal beliefs" produced by an attorney (Hickman v Taylor, 329 US 495; see Corcoran v Peat, Marwick, Mitchell & Co., 151 AD2d 443.

However, the burden of proving that demanded documents are privileged is on the party opposing disclosure of such documents (see Spectrum Sys. Intl. Corp. v Chemical Bank, supra; Ural v Encompass Ins. Co. of Am., 97 AD3d 562; Muriel Siebert & Co., Inc. v Intuit Inc., supra; Graf v Aldrich, 94 AD2d 823). Here, the defendants have failed to establish that any, let alone all, of the documents requested are privileged. To the extent that the documents requested do not involve "internal and/or external counsel," they are relevant to the prosecution of this action and not otherwise improper. To the extent that the documents requested do involve "internal and/or external counsel," the defendants are directed to produce a privilege log to enable a determination whether they are to be produced or not.

Interrogatory numbered 18 seeks, in pertinent part, the identification of "all communications by, to, and/or between any of the defendants and/or anyone on the respective Defendants' behalves concerning Locks's Compensation." Interrogatory number 19 seeks, in pertinent part, the identification of "all communications by, to, and/or between any of the Defendants and/or anyone on the respective Defendants' behalves concerning Locks's job responsibilities and/or employment status." The defendants object to these interrogatories on the ground, among other things, that they call for "documents protected by attorney-client privilege or the work product doctrine." As set forth immediately above, and for the reasons therein, to the extent that the communications requested do not involve any privilege they are relevant to the prosecution of this action and not otherwise improper. To the extent that the documents do involve a privilege the defendants are directed to produce a privilege log to enable a determination whether they are to be produced or not.

It is determined that the plaintiff is not entitled to further responses regarding the remaining discovery requests outlined in his counsel's letter dated November 6, 2013. Specifically, no further responses to the plaintiff's document requests numbered 8, 22, 36, 37, 38, 39, 40, 41 and 50, and interrogatories numbered 20, 21, 22, 23, 24, 25 and 26 are required for the reasons set forth herein.

Document request numbered 8, seeks "documents sufficient to establish the base salary paid to all . . . employees [of PRC), with identifying information redacted, from May 2011 to February 2012." Document request numbered 22 asks for "documents concerning any ... complaint(s), grievance(s), and/or issue(s) (whether formal or informal) initiated and/or raised by any PRC employee and/or independent contractor . . . concerning any alleged failure by any of the Defendants to timely and/or fully pay any Compensation." Document request number 50 seeks "[a]ll documents concerning the payment of Compensation to any and all former employees of any of the Defendants who were not employed at the time of payment" and "the amount of such Compensation paid and when." Interrogatory number 20 seeks the identity of "all bank accounts maintained by PRC." Said requests are improper, as they are overbroad and unduly burdensome or seek business documents that are confidential and not relevant to the instant litigation (see Taji Communications, Inc. v Bronxville Towers Apts. Corp., 48 AD3d 551; Law Offs. Binder & Binder, P.C. v O'Shea, 44 AD3d 626; Chang v SDI Intl. Inc., 15 AD3d 520; Latture v Smith, 304 AD2d 534).

Document requests numbered 36, 37, 38, 39, 40, and 41, and interrogatories numbered 22, 23, 24, 25 and 26, in summary, seek information regarding the individual defendants' personal finances, and their financial transactions with PRC. Litigants do not have carte blanche to demand production of any documents or other tangible items that they speculate might contain useful information (see Beckles v Kingsbrook Jewish Med. Ctr., 36 AD3d 733; Smith v Moore, 31 AD3d 628; Vyas v Campbell, 4 AD3d 417). Here, the various requests, using general language such as "all documents, all statements, any payments, any purchases" are overbroad and merely speculate that responses may contain relevant information. In addition, a disclosure request will be considered palpably improper if it seeks information of a confidential and private nature that does not appear to be relevant to the issues in the case, is vague, or is overly broad and burdensome (see Accent Collections, Inc. v Cappelli Enters., Inc., 84 AD3d 1283; Velez v South Nine Realty Corp., 32 AD3d 1017; Holness v Chrysler Corp., 220 AD2d 721). Considering that depositions of the parties have not been held, it is determined that the plaintiff has failed to establish that the enumerated requests are sufficiently specific or that they are relevant in

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this action (see e.g. Astudillo v St. Francis-Beacon Extended Care Facility, Inc., supra]; Bettan v Geico Gen. Ins. Co., 296 AD2d 469, lv dismissed 99 NY2d 552; Crazytown Furniture v Brooklyn Union Gas Co., supra).

Finally, interrogatory numbered 21 seeks a response whether "a management committee or other governing committee and/or board of PRC was established," and, if so, "(a) The date of such establishment(s); (b) The title of such committee(s) and/or board(s); (c) The members and the dates of such respective members' service on such committee (s) and/or board(s); (d) The date(s), time(s), and place(s) of the meeting of any such committee(s) and/or board(s); and (e) the date, time, place, and substance of any discussion about Locks." Said request is improper, as it is overbroad and unduly burdensome or seeks, in part, information that is confidential and not relevant to the instant litigation (citations omitted).

That branch of the plaintiff's which seeks to preclude the defendants from presenting evidence at trial or relying upon any evidence in any future motion practice which has not been produced in response to the plaintiff's discovery demands is denied without prejudice. That branch of the plaintiff's motion which seeks to compel the defendants to produce certain documents and information is granted as set forth herein.

The plaintiff is directed to serve a copy of this order with notice of entry upon counsel for the defendants.

Dated: July 9, 2014

HON. JOSEPH C. PASTORESSA, J.S.C.

_____ FINAL DISPOSITION __X__ NON-FINAL DISPOSITION