

Iris Media Works, Ltd. v Singh
2014 NY Slip Op 32973(U)
November 18, 2014
Supreme Court, New York County
Docket Number: 651447/13
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

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IRIS MEDIA WORKS, LTD, ET AL,

Plaintiffs,

-against-

INDEX NO. 651447/13

JERNAIL SINGH,

Defendant.

-----X
JOAN A. MADDEN, J.:

Plaintiffs move to compel a non-party witness Penny Sandhu (Sandhu) to comply with subpoena duces tecum and ad testificandum (motion seq. no. 003). Sandhu opposes the motion and separately moves to quash the subpoena on various grounds (motion seq. no 005).¹

Background

Plaintiffs operate a Punjabi-language television station in the United States called “Get Punjabi.” In this action, plaintiffs allege that defendant, as an officer and investor in plaintiffs Get Punjabi USA Inc. and Pardes News Media engaged in numerous wrongful actions in favor of competing Punjabi-language station called “Jus Punjabi.” Jus Punjabi is owned and/or operated by Sandhu. The complaint alleges causes of action for breach of contract, breach of fiduciary duty, tortious interference with contract, tortious interference with economic relations, conversion and defamation. Defendant has answered the complaint and asserted counterclaims for breach of contract, fraud, unjust enrichment, breach of fiduciary duty and an accounting.

At issue on this motion is a non-party subpoena served on Sandhu on or about June 24, 2013, which was returnable on July 16, 2013. The subpoena requests that Sandhu appear for oral testimony and provide “all documents, including but not limited to agreements, letters, emails, any

¹Motion seq. nos. 003 and 005 are consolidated for disposition.

and all correspondence pertaining to either one of the parties to the action that are within Sandhu's custody and control." Plaintiffs allege that the majority of "malicious acts" committed by defendant against plaintiffs and their Punjabi-language television station as set forth in the complaint benefitted Sandhu's competing station, Jus Punjabi.

Sandhu opposes the motion and seeks to quash the subpoena, arguing that the subpoena did not include a notice as to the circumstances and reasons for the disclosure sought, is overly broad and burdensome, improperly served, did not include attendance fee, seeks vicarious discovery for Sandhu's employee, and is retaliatory and in bad faith.

In support of the motion to quash, Sandhu submits her affidavit in which she states that she does not have any information about the parties in this action, and has no business or personal relationship with the parties. However, Sandhu also states that before the subpoena was served, she commenced a proceeding for pre-action discovery against certain of the plaintiffs to "unearth their involvement in tortious interference with [her] business." Sandhu further states that her employee, Amit Khuranna, who is being prosecuted by the District Attorney's Office, was taking customers from her business and giving them to plaintiffs' television station.

Discussion

As a preliminary matter, the motion to quash is untimely since it was not "promptly made" as required under CPLR 2304, which has been interpreted to mean "prior to the return date." Santangelo v. People, 38 NY2d 536, 539 (1976). Here, the return date for the subpoena was July 16, 2013, and the motion to quash was not made until February 12, 2014, or almost eight months later.

As for the merits of the motion to quash, CPLR 3101 (a)(4) provides a mechanism by which a party may obtain discovery from a nonparty. It states that "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the

burden of proof, by: ... (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.” See Velez v. Hunts Point Multi-Serv. Ctr., Inc., 29 A.D.3d 104, 108 (1st Dep’t 2006) (holding that “[i]t is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding”). As the Court of Appeals recently noted that “material and necessary” standard provided under CPLR 3101(a)(4):

is in keeping with this state's policy of liberal discovery. The words “material and necessary” as used in section 3101 must “be interpreted liberally to require disclosure, upon request, of 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 Publ. Co., 21 N.Y2d 403, 406 (1968). Section 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty.

Kapon v. Koch, 23 NY3d 32, 38 (2014).

In accordance with the foregoing, “[a]n application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious ... or where the information sought is ‘utterly irrelevant to any proper inquiry. It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances.’” Id., at 39-40 (internal citations and quotations omitted).

Here, Sandhu has not met her burden of demonstrating that the information sought in the subpoena is “utterly irrelevant.” To the contrary the record shows that there is an ongoing dispute among plaintiffs, defendant and Sandhu involving two rival Punjabi-language television stations, and that the information sought by the subpoena is relevant to this dispute.. Next, Sandhu’s unsubstantiated assertions as to plaintiffs’ motive for serving the subpoena, including that it was in retaliation for Sandhu bringing proceeding for pre-action discovery and an attempt to obtain information from a former employee, are insufficient to meet her burden of showing

that the subpoena should be quashed. That being said, however, the documents sought should be limited to the time period at issue in the complaint, that is from 2010 to the present.

Next, contrary to Sandhu's position, plaintiffs have shown that Sandhu was properly served with subpoena in accordance with CPLR 308. In addition, plaintiffs provide proof that the subpoena has a check for fees attached to it and, in any event, plaintiffs shall be required to pay such fee.

Finally, while the subpoena does not include the notice of the circumstances or reasons such disclosure is sought or required, "this requirement [is] meant to apprise a stranger to the litigation ...why the requested disclosure was sought or required," and here, the record shows that Sandhu, who commenced a proceeding for pre-action discovery against certain of the plaintiffs with respect to issues related to this action, did not need to be apprised of the reasons for the subpoena.

Accordingly, it is

ORDERED that plaintiffs' motion to compel compliance with the subpoena is granted to the extent that within 30 days of e-filing this decision and order non-party witness Penny Sandhu shall appear for a deposition and provide the requested documents for the period from 2010 to the present; and it is further

ORDERED that the motion to quash is denied.

DATED: November 18, 2014


HON. JOAN A. MADDEN
J.S.C.