

**Carpezzi-Leibert Group Inc. v Henn**

2015 NY Slip Op 30132(U)

January 28, 2015

Supreme Court, New York County

Docket Number: 651005/2014

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 15

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CARPEZZI-LEIBERT GROUP INC, dba CLG,  
CLG INSURANCE and/or CLG FINANCIAL,

Plaintiff,

- v -

THOMAS V. HENN and MARSH USA INC.,

Defendant.

-----X  
HON. EILEEN A. RAKOWER, J.S.C.

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**DECISION  
and ORDER**

Mot. Seq. 001, 003

This is an action for a permanent injunction and damages based on a sales representative’s alleged failure to comply with the terms of a non-solicitation agreement with his former employer, plaintiff, Carpezzi-Leibert Group Inc., d/b/a CLG, CLG Insurance and/or CLG Financial (“Plaintiff” or “CLG”). Plaintiff is a full service insurance brokerage engaged in the business of providing risk management, insurance and surety solutions for businesses and individuals. Plaintiff hired defendant, Thomas V. Henn (“Henn”), as an insurance/surety sales representative or “producer” (“Producer”) in January 2010. Henn and CLG entered into an employment agreement (the “Employment Agreement”) containing a non-solicitation provision (the “Non-Solicitation Provision” or “Non-Solicitation Clause”), in September 2010, approximately nine months later. Plaintiff claims that the Employment Agreement’s terms, including the Non-Solicitation Provision, were extensively negotiated in the interim. The Non-Solicitation Clause prohibits Henn from, *inter alia*, soliciting, servicing, engaging in business discussions and dealings with and accepting business from clients and entities with whom he had a direct business relationship during his employment with CLG, for a period of two years following the termination of Henn’s employment with CLG.

On February 20, 2014, Henn resigned from CLG, without prior notice to CLG, effective immediately. On February 21, 2014, Henn joined defendant Marsh USA Inc. (“Marsh”) (and together with Henn, collectively, “Defendants”), CLG’s competitor, with whom Henn currently is employed. Plaintiff claims that, following

Henn's resignation, Henn misappropriated several major clients from CLG "in a matter of weeks", and "thwarted other key business relationships" belonging to CLG. Additionally, Plaintiff claims that Henn, on Marsh's behalf, continues to solicit CLG clients, interfere with CLG's surety relationships, and misappropriate CLG's confidential, proprietary, and trade secret information, in violation of the Non-Solicitation Provision. Plaintiff brings this action to enjoin Defendants for a period of two years from soliciting CLG's clients, engaging in business dealings with non-party underwriter NAS Surety ("NAS") as to certain former CLG clients, and using CLG's confidential, proprietary, and trade secret information.

Plaintiff now moves (Mot. Seq. #003) for an Order, pursuant to CPLR § 3124, compelling Defendants to respond to Plaintiff's interrogatories and to produce all documents responsive to Plaintiff's discovery requests in unredacted form.

Defendants oppose. Oral argument was heard on Plaintiff's motion. At oral argument, Plaintiff's motion to compel items which were redacted during disclosure by defendants was resolved as follows: "Defendant is to submit to this Court a privilege log with the redactions for the Court to determine whether or not they are relevant and should be turned over pursuant to the stipulation between the parties and for attorneys' eyes only."

CPLR § 3101(a) generally provides that, "[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." The Court of Appeals has held that the term "material and necessary" is to be given a liberal interpretation in favor of the disclosure of "any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity," and that "[t]he test is one of usefulness and reason" (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]). In addition, CPLR § 3130 and 3131 permit a party to serve interrogatories that "relate to any matters embraced in the disclosure requirements of [CPLR § 3101]". Accordingly, Defendants are directed to respond to Plaintiff's interrogatories.

With respect to that portion of Plaintiff's motion seeking to compel production of documents in unredacted form, Defendants have produced, for the Court's *in camera* review, unredacted portions of Defendants' document production, along with a redaction log documenting Defendants' reasons for redacting the corresponding information from production. Plaintiff, in turn, submits a list of clients that Henn allegedly serviced on CLG's behalf during the period of Henn's employment with CLG. Plaintiff further submits an additional list of clients that Henn allegedly solicited or was tasked with soliciting on CLG's behalf during the

period of Henn's employment with CLG. Defendant does not submit opposition these documents.

Here, upon review of the attached documents and privilege log submitted, the following documents are not properly redacted:

- The document which is Bates stamped # D004214, in which the line identified as "redacted line 7" is not properly redacted;
- The document which is Bates stamped # D004229, in which the line identified as "redacted line 7" is not properly redacted;
- The document which is Bates stamped # D004234, in which the line identified as "redacted line 7" is not properly redacted;
- The document which is Bates stamped # D004317, in which the lines identified as "Row 21", "Row 23", and "Row 25" are not properly redacted;
- The document which is Bates stamped # D005057, in which the lines identified as "Row 25" and "Row 34" are not properly redacted;
- The document which is Bates stamped # D005063, in which the lines identified as "Row 210" and "Row 211" are not properly redacted; and,
- The document which is Bates stamped # D005075, in which the line identified as "Redacted line 3" is not properly redacted.

However, with respect to the remaining redacted information contained in the attached documents, Defendants' privilege log does not provide sufficient detail for the Court to determine whether the remaining redactions, particularly with respect to Henn's text messages and iphone calendar entries, are properly redacted. Accordingly, Defendants are directed to provide a more detailed privilege log, identifying the names of the individuals with whom Henn exchanged the redacted text messages in the attached documents, and providing further, non-conclusory, explanation as to whether such individuals, as well as the individuals identified in the redacted iphone calendar entries, are CLG clients, prospects, employees, or former employees.

Wherefore, it is hereby

ORDERED that Plaintiff's motion to compel discovery is granted only to the extent that Defendants are directed to serve responses to Plaintiff's interrogatories; and it is further

ORDERED that Defendants are directed to produce documents in unredacted form only to the extent indicated above; and it is further

ORDERED that Defendants are directed to provide a more detailed privilege log for the Court to determine whether or not Defendants' redactions are relevant and should be turned over pursuant to the stipulation between the parties and for attorneys' eyes only.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: January 28 2015

**JAN 28 2015**

  
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EILEEN A. RAKOWER, J.S.C.