

Union CT Telecom LLC v Vision Phonecard Distributors Inc.
2015 NY Slip Op 31145(U)
June 4, 2015
Supreme Court, Bronx County
Docket Number: 250398-2009
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, PART 11

UNION CT TELECOM LLC and
UNION TELECARD ALLIANCE LLC,

Plaintiffs,

Index No. 250398-2009

- against -

DECISION AND ORDER

VISION PHONECARD DISTRIBUTORS
INC.,

Defendant

HON. LAURA G. DOUGLAS:

In this action to recover for unpaid goods sold and delivered to defendant, the plaintiffs Union CT Telecom LLC and Union Telecard Alliance LLC. seek to compel defendant Vision Phonecard Distributors Inc., to produce all documents responsive to Plaintiffs' Request for Production of Documents ("Plaintiffs' Request for Documents") dated March 27, 2013, to respond to Plaintiff's Demand for Interrogatories dated March 27, 2013, and to produce a corporate representative of defendant for deposition. The defendant has cross-moved to compel compliance by plaintiffs with the defendant's First Request for the Production of Documents ("Defendant's Request for Documents") dated February 14, 2011 to respond to defendant's First Set of Interrogatories dated February 14, 2011, and failing such compliance, striking the plaintiffs' pleadings and entering judgment in favor of defendant together with punitive damages, costs, expenses, attorneys fees.

After this motion and cross-motion were submitted, the plaintiffs moved for summary judgment. This motion was denied by order of the Hon. Lucindo Suarez, J.S.C. dated October 7, 2014. Justice Suarez then denied the plaintiffs' motion to renew or reargue by

order dated December 23, 2014. The Court also granted the plaintiff's application for an order protecting the confidentiality of information exchanged in discovery.

The Plaintiffs' Request for Documents consists of 14 categories of documents, including an over broad demand for "any and all documents concerning or relating to affirmative defenses asserted in the Answer." The plaintiffs' demand for interrogatories consists of 13 separate demands. The defendant provided a limited response to the Plaintiffs demand for interrogatories and a partial response to the Plaintiffs' Request for documents. It also provided certain documents on November 21, 2013, while asserting that it intended to produce additional documents "on a rolling basis" [Exhibit "J" to the cross-motion].

In its Request for Documents, the defendant seeks 49 separate categories of documents, including "all other documents relevant or material to this action." The defendant's demand for interrogatories consists of 38 distinct inquiries, including a demand for the identification of any employee of plaintiffs "with knowledge or information concerning the allegations in the complaint."

Both parties have alleged that good faith efforts were made to resolve this dispute without judicial intervention. The Uniform Rules for Trial Courts §202.7 (a) provides that a motion relating to disclosure must be supported by an affirmation that counsel "has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion." These court rules further state that the affirmation of good-faith effort "shall indicate the time, place, and nature of the consultation and the issues discussed and any resolutions, or shall indicate good cause why no such conferral with counsel for opposing parties was held".

It is incumbent upon the party seeking discovery to demonstrate that a diligent effort

was made to resolve the discovery dispute (*see Deutsch v. Grunwald*, 110 AD 3d 949 [2nd Dept 2013]). Here, the parties have met repeatedly to resolve this dispute, both bi-laterally and at a series of compliance conferences. After this motion and cross-motion were made, the parties continued to negotiate, and proposals have been made by each side -- although not stipulated to -- to resolve these disputes. These proposals should have been the starting point that preceded the filing of this motion and cross-motion, not raised for the first time in reply papers, which cannot be responded to by the opposing party.

Given the over broad nature of the disclosure demands made by both sides, the Court would be justified in simply striking all demands without prejudice to service of new demands after depositions have been completed. It is well-established that where a party's document demands are so vague and over-broad as to be palpably improper, the Court may properly choose to vacate the entire demand and interrogatories rather than prune them (*see Lerner v. 300 West 17th Street Housing Development Fund Corp.*, 232 AD2d 249 [1st Dept 1996]). However, it is manifest that the parties are capable of focusing their document demands more sharply; indeed, they have now done so, although the effort has delayed these proceedings. To simply strike all discovery demands would unnecessarily extend these preliminary proceedings even further. These more focused demands are a good starting point for a process which has been unnecessarily protracted.

There shall be full disclosure of all evidence material and necessary in prosecution or defense of an action, regardless of burden of proof in order to permit discovery of testimony that is sufficiently related to the issues to make effort to acquire such information in preparation for trial reasonable (*see Allen v. Crowell-Collier Pub. Co.*, 21 NY2d 403 [Ct App 1968]). The amended, or "pared down" demands of both parties meet the material and necessary standard.

The Plaintiffs' amended discovery demands, which are referenced in the affirmation of counsel in further support of the motion, are as follows:

a. All purchase orders and invoices sent to or received from either of the Plaintiffs during the period beginning November 1, 2007, through and including June 30, 2010;

b. All documents including but not limited to, cancelled checks, ledgers, and correspondence, concerning monies paid by Defendant to either of the Plaintiffs in connection with the invoices Bates-stamped UNION00320-UNION00602;

c. All documents evidencing the assertions in Defendant's response to Plaintiffs' Interrogatory No. 16, that [a] "Carlos Gomez instructed Washwell to 'dump IDT's products into the market;" [b] that "Carlos Gomez instructed Washwell that there would (be) no reason for Vision to make payment on those cards because IDT was willing to cover the associate expenses" and [c] that "Washwell was instructed by Mr. Gomez to provide Visions customers with increased lines of credit as part of this effort to compete in the marketplace and, in return, Vision's presumed payments for Union's cards would be forgiven."; and

d. All documents responsive to Plaintiff's Interrogatory No. 18, which relate to amounts refunded for returned card or payments withheld by Defendant's customers because of Plaintiffs' alleged reduction of minutes, as alleged in paragraph 23 and 30 or Defendant's Verified Answer and Counterclaims." [hereinafter "Plaintiffs' amended discovery demands."]

The 'pared down' discovery demands of the defendant, as contained in the defendant's "reply affidavit", are as follows:

a. All purchase orders or invoices between the parties for the entirety of the parties' business relationship, including those which were signed and acknowledged by Vision;

b. All documents reflecting Vision's payment for cards/services provided by Union and/or which provide a payment history between the parties for the entire relationship;

c. All documents reflecting the application of Vision's payments to Union's invoices;

d. All documents reflecting Vision's requests for refunds, rebates or credits and/or basis for all such requests;

e. All documents reflecting refunds, rebates or credits given by Union to Vision;

f. All documents reflecting the manner in which refunds, rebates or credits were applied by Union to Vision's account;

g. Representative samples of calling cards purchased by Vision from Union;

h. Any and all written contracts between the parties or other documents reflecting any such contract(s) between the parties (other than the initial credit application, purchase orders and invoices);

i. Any writing showing Vision's pricing, discounts, etc. and/or the parties' agreement(s) respecting same;

j. All documents reflecting the "rate decks" applicable to the cards purchased by Vision and/or any changes to the rate decks;

k. All documents reflecting the activation of cards purchased by Vision, the deactivation of cards, any reduction of minutes available on cards, and/or usage of the cards purchase[d] by Vision, and

l. All documents regarding changes to the rates/rate decks for cards purchased by Vision from Union." (collectively, "Defendant's amended discovery demands.").


Accordingly, the Court herewith directs that the plaintiff comply with the defendant's amended discovery demands within 45 days after service of a copy of this order with notice of entry thereon, and that the defendant comply with the plaintiff's amended discovery

demands within the same time period, without prejudice to service of further discovery demands *after the completion of all depositions in this matter*. If any document requested is no longer in the possession of a party, the latter shall provide an affidavit by a party with knowledge stating the good faith efforts made to locate said document. The parties are also directed to appear for depositions within 45 days after the date of compliance with said amended discovery demands.

All remaining branches of the motions are denied.

This constitutes the decision and order of the Court.

Dated: 6-4-15



LAURA G. DOUGLAS
J.S.C.