

Scuoppo v Elizabeth Arden Spas LLC
2016 NY Slip Op 31373(U)
June 20, 2016
Supreme Court, Bronx County
Docket Number: 309303/11
Judge: Laura G. Douglas
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 11

Index No. 309303/11
Motion Calendar No.
Motion Date:

STEPHANIE SCUOPPO, BLANCA VALLADARES,
BRENDA PEDERSEN, ANGIE FLORES,
ANNA GALAZKA, HOLLY BROMBERG,
LOUIS HUGHES, ANNA M. CSERNOVICS,
MARISOL HERRERA, IRIS NIVAR, LEE HAIRSTON,
SHARYN PINKERTON, ROSIBER LABARCA,
JENNIFER YUEH-CHUAN, SOL HINCAPIE,
ALTAGRACIA GUTTIERREZ, THOMAS VIOLA,
and CARMEN RAMIREZ,

Plaintiffs,

-against-

ELIZABETH ARDEN SPAS LLC,
ELIZABETH ARDEN SALONS INC.,
RED DOOR SPA HOLDINGS LLC,
RED DOOR SALONS INC., RED DOOR SALONS LLC,
RAHA ASHRAFI, TERESA MCKEE, ZAHIR ZIANI,
and TODD WALTER,

Defendants.

DECISION/ORDER

Present:
Hon. Laura G. Douglas
J.S.C.

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this motion to compel discovery:

<u>Papers</u>	<u>Numbered</u>
Plaintiffs' Notice of Motion, Affirmation of Eric M. Baum, Esq. dated April 7, 2016 in Support of Motion, and Exhibits ("A" through "N").....	1
Memorandum of Law by Eric M. Baum, Esq. dated April 7, 2016 in Support of Motion.....	2
Affirmation of Robert Vaught, Esq. dated May 2, 2016 in Opposition to Motion and Exhibits ("A" through "I").....	3
Memorandum of Law by Evan Glassman, Esq. dated May 3, 2016 in Opposition to Motion.....	4

Reply Affirmation of Eric M. Baum, Esq. dated May 9, 2016 and Exhibit (“A”).....	5
Reply Memorandum of Law by Eric M. Baum, Esq. dated May 9, 2016.....	6
Material Submitted by Plaintiffs under Seal in Support of Motion.....	7

Upon the foregoing papers and after due deliberation, the Decision/Order on this motion is as follows:

The plaintiffs seek an order compelling the defendants to furnish certain items previously withheld as privileged material or exchanged in heavily redacted form, as well as compelling the further depositions of Deborah Venuti, defendant Raha Ashrafi, and defendant Teresa McKee. The motion is granted solely to the extent ordered below and is denied in all other respects.

Essentially, the plaintiffs seek monetary damages for the defendants’ purportedly hostile and discriminatory employment practices, including termination, arising from their preference for French employees at the plaintiffs’ expense. Defendants served a privilege log asserting that certain material was shielded from discovery by the attorney-client privilege. Specifically, the defendants acknowledge that certain emails have not been disclosed since they consist of communications between or among defendants’ corporate agents that reflect advice rendered by legal counsel. The defendants concede that these emails specifically discuss the plaintiffs’ employment, conduct, or separation. The plaintiffs argue that since no attorney was involved in these communications, the emails are discoverable in this action.

Given the significance of the content of these emails and the fact that any attorney-client privilege would be indirect at best, the Court will review these items *in camera* to determine whether they are immunized from disclosure (*see Spectrum Systems International Corp. v. Chemical Bank*, 78 NY2d 371, 381 [Ct App 1991] (“[I]t would have been better practice for the trial court . . . to have conducted an in camera review”) and *Nama Holdings, LLC v. Greenberg Traurig, LLP*, 133 AD3d 46 [1st Dept 2015]). Absent a review of these items, it cannot be determined whether these communications do reflect advice rendered by counsel and circulated only among those corporate employees responsible for the subject matter discussed in the emails.

The plaintiffs argue that the confidentiality agreement in place obviates the need for the extensive redactions made by the defendants to certain material provided. However, an agreement to limit

distribution of certain discovery does not preclude the redaction of specific material within the items exchanged (*see Seaman v. Wyckoff Heights Medical Center, Inc.*, 25 AD3d 596 [2nd Dept 2006]).

The plaintiffs seek additional discovery of several items:

- (1) wholesale employee salary and contact information, not limited to the plaintiffs and their French counterparts, for “anyone else who is a potential comparator of the plaintiffs”, since the plaintiffs “have the right to see how all employees were treated and to compare any non-French employee to the French comparators in order to show discrimination” (Baum Affidavit, April 7, 2016, paragraph 23) and such information may lead to contact with potential witnesses to the plaintiffs’ allegations;
- (2) the names and contact information of all “guests served by either the plaintiffs or the defendants” (Baum Affidavit, April 7, 2016, paragraph 25), since positive feedback from these clients with respect to the services performed by the plaintiffs relative to their replacements would undercut the defendants’ claim that the replacements performed better at their jobs; and
- (3) “salon financial information” (Baum Affidavit, April 7, 2016, paragraph 26), in addition to that which has already been produced, since it might reveal that the salon’s profitability/success was no different under the replacement workers.

Such sweeping and unconditional discovery is speculative and unwarranted (*see Forman v. Henkin*, 134 AD3d 529 [1st Dept 2015], *Manley v. New York City Housing Authority*, 190 AD2d 600 [1st Dept 1993], and *Conway v. Bayley Seton Hospital*, 104 AD2d 1018 [2nd Dept 1984]). The plaintiffs are free to seek depositions of those employees it has reason to believe possess information material and necessary to prosecute their claims that has not already been addressed through other defense witnesses. The plaintiffs may also serve more narrowly tailored discovery demands.

Venuti, Ashrafi, and McKee have already been deposed. The plaintiffs argue that they are entitled to a further deposition of Venuti to question her about email correspondence exchanged by the defendants only after her deposition had concluded. Venuti’s deposition notice requested the production of such correspondence at her deposition, and it appears that she testified to her involvement with these particular emails. Venuti has already been deposed for two days. The plaintiffs may depose her for one additional day, limited to questions regarding these specific emails.

With respect to Ashrafi and McKee, their respective depositions were not completed. The

Compliance Conference Order dated October 9, 2012 contemplated more than two days for each of their depositions. Given the number of plaintiffs joined in this action, the extensive documentary discovery produced, and the central role of these witnesses to the underlying allegations, Ashrafi may be deposed for an additional three days, while McKee may be deposed for an additional two days. The depositions shall continue for full consecutive days, from 10:00 a.m. to 4:30 p.m. daily with a one-hour break for lunch, and be held in New York, unless otherwise agreed to by all parties.

The plaintiffs request that the Court review those items redacted by the defendants due to the sensitive personal information contained therein. Such information may be subject to redaction, but the defendants shall first identify with specificity the types of information that have been redacted as "Sensitive Employment/Personal Information".

Finally, the plaintiffs request an order clarifying that the defendants' document exchange should include material beyond electronically stored e-mails, such as other electronic records and paper files. Here, discoverable material has not been limited to any particular format.

Given the amount of discovery remaining, the deadline to file a note of issue will be extended.

Accordingly, it is hereby

ORDERED, that the defendants shall submit to this Court for *in camera* review those Bates-numbered documents identified on pages 7-8 of the plaintiffs' memorandum of law dated April 7, 2016 to determine whether they are discoverable in this action or shielded by the attorney-client privilege; the items are to be submitted directly to Room 521 no later than 30 days following service of a copy of this Order with notice of entry, accompanied by a copy of this Order; and it is further

ORDERED, that the defendants shall exchange all responsive discovery material contained in any recorded source or format; and it is further

ORDERED, that the defendants shall identify with specificity the types of information that has been redacted as "Sensitive Employment/Personal Information" in writing within 30 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that Deborah Venuti shall appear for a further deposition of one full day limited to inquiry regarding those emails exchanged by the defendants after her initial deposition no later than 45 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that defendant Raha Ashrafi shall appear for a continued deposition not to exceed three

full days no later than 45 days following service of a copy of this Order with notice of entry; and it is further

ORDERED, that defendant Teresa McKee shall appear for a continued deposition not to exceed two full days no later than 45 days following service of a copy of this Order with notice of entry; and it is further

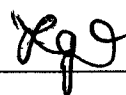
ORDERED, that the deadline to file a note of issue is extended to September 30, 2016.

The foregoing constitutes the Decision and Order of this Court.

DATED:

6-20-16

Bronx, New York



HON. LAURA G. DOUGLAS
J.S.C.