

Rosenfeld v Schreiber
2016 NY Slip Op 31433(U)
July 21, 2016
Supreme Court, New York County
Docket Number: 650360/2014
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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DR. STEVEN ROSENFELD,

Plaintiff,

-against-

JOEL SCHREIBER, DR. SAMUEL WAKSAL,
KADMON CAPITAL, LLC & KADMON
CORPORATION, LLC,

Defendants.

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DECISION AND ORDER

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Relief Requested

Plaintiff moves, pursuant to CPLR 3124, for an order compelling defendants to comply with certain of plaintiff's document demands.

Factual Background

This action arises out of an agreement the parties purportedly reached in or around July 2009 in which plaintiff and defendant Joel Schreiber ("Schreiber") agreed to raise approximately \$50 million for a joint venture in order for defendants Dr. Samuel Waksal ("Waksal"), Kadmon Capital, LLC ("Kadmon Capital"), and Kadmon Corporation, LLC ("Kadmon Corporation") (Kadmon Capital and Kadmon Corporation collectively referred to as the "Kadmon Defendants") to acquire pharmaceutical companies, reorganize them, and take them public (Second Am.

Compl., ¶¶ 13, 16). As compensation for successfully raising these funds, plaintiff and Schreiber were to receive a six percent equity interest in the joint venture (Second Am. Compl., ¶ 16). Plaintiff alleges that he and Schreiber introduced defendant Waksal to Colbeck Capital Management LLC ("Colbeck") in late 2009, who provided defendants with over \$250 million, and that he never received his promised equity interest in the joint venture (Compl., ¶¶ 33-34, 39). Plaintiff asserts claims for breach of contract or, alternatively, quantum meruit.

Discussion

Plaintiff is entitled to the disclosure of information that is material and necessary to the prosecution or defense of an action (CPLR 3101; Allen v Crowell-Collier Publishing Company, 21 NY2d 403 [1968]), but bears the burden of demonstrating "that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (Vyas v Campbell, 4 AD3d 417 [2nd Dept 2004]).

Plaintiff seeks to compel defendants to respond to his document demand number 13, which requests documents "sufficient to identify (a) any and all formal or informal agreements between [defendants] and any other Person or entity to raise funds for

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[defendants] during the period from May 2009 through the date of the Complaint and the amount of funds raised by each such Person or Entity" (Demand for Production of Documents, Meissner Affirm., Ex. A). Plaintiff argues that this demand is proper because pursuant to the alleged agreement between the parties he and defendant Schreiber were the exclusive fund-raisers for the Kadmon Defendants. This argument is unavailing.

The record demonstrates that plaintiff has not alleged a breach of any exclusivity provision. As such, plaintiff has not satisfied his CPLR 3101 burden. Accordingly, that branch of plaintiff's motion to compel the Kadmon Defendants to respond to this demand is denied.

Plaintiff next takes issue with defendants' refusal to search for relevant documents created after plaintiff filed the original complaint on February 3, 2014. Given that the alleged breach of contract occurred in or around July 2009, documents created well over four years after that breach are not reasonably likely to lead to information relevant to plaintiff's claim.

Accordingly, that branch of plaintiff's motion seeking to compel the Kadmon defendants to search for relevant documents created after February 3, 2014 is denied except that defendants are hereby ordered to respond to document demand number 30

(seeking documents establishing the current valuation of the Kadmon entities) because this information is reasonably likely to be necessary in determining plaintiff's damages.

Lastly, plaintiff objects to the Kadmon Defendant's classification of a May 19, 2015 transcript of Waksal's deposition in a prior litigation (the "Transcript") as confidential. A review of the Transcript demonstrates that it is devoted to defendants' efforts between 2009 and 2012 to raise financing and that it does not contain trade secrets, proprietary information, or competitively sensitive business information the disclosure of which could harm defendants' competitive standing. Given that these transactions have been concluded for years, and that the Transcript does not contain sensitive information, supra, (see e.g., Mancheski v Gabelli Group Capital Partners, 39 AD3d 499, 502-503 [2d Dept 2007] [emphasis added]), its designation as confidential is not necessary, and is hereby removed, with the exception of pages 21 through 23, which involve medications actively being developed by the Kadmon Defendants.

Accordingly, it is

ORDERED that plaintiff's motion to compel is granted to the extent of directing defendants to respond to plaintiff's document

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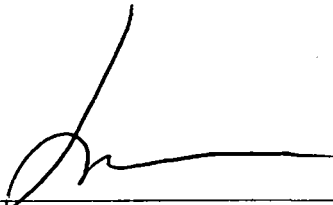
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confidential, with the exception of pages 21 through 23, and is otherwise denied; and it is further

ORDERED that counsel are directed to appear in Part 48, Room 242, 60 Centre Street, for a status conference on July 27, 2016 at 10 a.m.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 7/21/16



HON. JEFFREY K. OING, J.S.C.
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J.S.C.