

Exeter Law Group LLP v Immortalana Inc.
2017 NY Slip Op 30092(U)
January 17, 2017
Supreme Court, New York County
Docket Number: 161667/2014
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

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THE EXETER LAW GROUP LLP,

Plaintiff-Counterclaim Defendant,

- and -

MITCHELL WONG, ZHEJUN "SUSAN" TAN, and
LAW OFFICE OF Z. TAN PLLC,

Counterclaim Defendants.

-against-

IMMORTALANA INC. and ROBIN FARIAS-EISNER,
SALVAREGEN, INC., and KELLY DAY,

Defendants-Counterclaim Plaintiffs.

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

Exeter Law Group LLP ("Exeter") brings this action to collect legal fees allegedly owed by defendants Immortalana, Robin Farias-Eisner, Salvaregen, Inc., and Kelly Day (collectively, "Defendants"). Defendants have asserted counterclaims against Exeter and lawyers Mitchell Wong ("Wong"), and Zhejun "Susan" Tan ("Tan") (collectively, "the Exeter Parties").

By Notice of Motion filed on November 1, 2016, Defendants moved to compel certain discovery from the Exeter Parties. By Notice of Cross Motion filed on November 11, 2016, the Exeter Parties cross moved to compel certain discovery

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**DECISION
and ORDER**

Mot. Seq. 007

and to “declassify the Defendants’ blanket designation of all of its documents as ‘Confidential.’”

A compliance conference was held on November 23, 2016. An order was entered that resolved all the issues raised in the parties’ respective motions with the exception of the portion of the cross motion which seeks to “declassify the Defendants’ blanket designation of all of its documents as ‘Confidential.’”

On September 27, 2016, the parties entered into a Stipulation and Order For the Production and Exchange of Confidential Information (the “Confidentiality Order” or “Order”). The Order provides that “[a]ny party ... may designate Documents produced, or Testimony given, in connection with this action as ‘confidential’, either by notation on each page of the Documents so designated...”. “Confidential information” is defined as “all Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information or other information the disclosure of which would, in the good faith judgment of the Party, or as appropriate, non-party designating the material as confidential, be detrimental to the conduct of that Party’s or non-party’s or the business of any of that Party’s or non-party’s customers or clients.” The “Receiving Party,” the party receiving the designated confidential information “may, at any time, notify the Producing Party that the Receiving Party does not concur in the designation of a document or other material as Confidential Information. “If the Producing Party does not agree to declassify such document or material within seven (7) days of the written request, the Receiving Party may move before the Court for an order declassifying those documents or materials.” “If such motion is filed, the documents or other materials shall be deemed Confidential Information unless and until the Court rules otherwise. Notwithstanding anything herein to the contrary, the Producing Party bears the burden of establishing the propriety of its designation of documents or information as Confidential Information.”

The Exeter Parties allege that Defendants have failed to sustain their burden of proving the need for confidentiality. They allege:

Initially, the Defendants asserted confidentiality over their entire document production with a one-line statement that “All responsive documents are designated confidential ...” . . .

After the Plaintiff informed the Defendants that this one-line designation was inadequate, the Defendants declassified 13 pages, and created a computer generated spreadsheet which separately listed each of the 9,877 remaining pages of the document production. On the spreadsheet, for each of the 9,877 pages of the document production, the Defendants then copied-and-pasted 9,877 times the same statement that each and every page of the production, “if disclosed, could be detrimental to Defendants' business interests and reveal business strategies” ...

Once again, the Plaintiff advised the Defendants that repeating the same justification was frivolous. In response, the Defendants produced a third spreadsheet. The Defendants third spreadsheet again designated all 9,877 pages in the production as “Confidential.”

As with its the previous spreadsheets, the third spreadsheet used the same boilerplate justification for all 9,877 pages of the document production: the third spreadsheet again claimed that all 9,877 pages of the document production were “Confidential” because “if disclosed, could be detrimental to Defendants' business interests and reveal business strategies.”

The only difference between the third spreadsheet and its predecessors was a cosmetic one: the third spreadsheet now grouped all 9,877 pages of the document production into subgroups . . .

The Exeter Parties claim that Defendants’ “boilerplate assertion here - that all of their documents are entitled to confidential protection because those documents ‘could be detrimental to Defendants’ business interests’ - is simply inadequate to justify a blanket confidential treatment of the entire document production.” The Exeter Parties also argue that the designated Confidential Documents consist of “non-confidential materials, such as pleadings from this case, articles already published in scientific journals, and other documents that had been made readily available to third-parties”

Defendants, in turn, argue that they have sustained their burden of establishing the propriety of its designation of documents or information as Confidential Information. Defendants cite to the Confidentiality Order which provides that that the following information may be deemed confidential:

[A]ll Documents and Testimony, and all information contained therein, and other information designated as confidential, if such Documents or Testimony contain trade secrets, proprietary business information, competitively sensitive information, or other information the disclosure of which would, in the good faith judgment of the party designating the material as confidential, be detrimental to the conduct of that party's business or the business of any of that party's customers or clients.

Defendants claim:

[Defendants] provided specific and detailed explanations for each Designation, including that the Confidential Documents contain actual drafts of written business plans, advice regarding patents, documents provided to clients to review in determining business strategy, invoices which the Court has already deemed to contain confidential information, information on prospective and actual business associates and vendors, information regarding claims asserted on patents, information regarding countries in which to file patents and the rationale behind such advice, and other discussion regarding business strategies, associates, and plans. Each of these categories consist of information that competitors of [Defendants] would benefit from knowing.

Defendants further claim:

Moreover, Counterclaim Defendants' [the Exeter Parties'] characterization of the documents at issue are, at best, misleading. For instance, they assert that some of the Confidential Documents consist of pleadings in this matter. This assertion is completely without merit: Counterclaim Plaintiffs [Defendants] have not designated any pleadings as confidential, nor, indeed, have they even produced pleadings as responsive documents.

As to other documents such as articles in scientific journals, Counterclaim Defendants [the Exeter Parties] either innocently misunderstand or willfully misread the applicable language of the Protective Order, which does not require that confidential information be that which was never previously disclosed. As Counterclaim

Plaintiffs' [Defendants'] former counsel, Counterclaim Defendants [the Exeter Parties] are well aware that articles and other publicly-available information was circulated amongst the parties in order to determine business strategies, including but not limited to which patents should be pursued. A competitor could easily glean from a review of the articles studied by Counterclaim Plaintiffs [Defendants] what avenues of research and business opportunities were being pursued. For example, if a competitor knew which patents were reviewed by Counterclaim Defendants [the Exeter Parties], such competitor could ascertain Counterclaim Plaintiffs' [Defendants'] potential future patent strategy, their potential concerns, issues reviewed by Counterclaim Defendants [the Exeter Parties] that may have been abandoned or tabled, or simply insight into the ideas or matters in which the parties had taken interest.

Counterclaim Defendants [the Exeter Parties] also fail to note such documents among the production as drafts of written business plans, corporate bylaws, consents, minutes, purchase agreements, advice regarding patents, documents provided to clients to review in determining business strategy, invoices which the Court has already deemed to contain confidential information, information on prospective and actual business associates and vendors, information regarding claims asserted on patents, information regarding countries in which to file patents and the rationale behind such advice, and other discussions regarding business strategies, associates, and plans. Counterclaim Defendants are either ignoring the foregoing Confidential Documents or maliciously mis-designating them by asserting that not one of Counterclaim Plaintiffs' Confidential Documents warrant the confidential Designation.

Here, Defendants have failed to sustain its burden of establishing the propriety of its designation of documents or information as Confidential Information, and thus are directed to declassify the "confidential" designation and produce the subject documents without the "confidential" designation.

Wherefore, it is hereby

ORDERED that Plaintiff's cross motion is granted to the extent that Defendants are directed to declassify the "confidential" designation and produce

the subject documents without the “confidential” designation within 30 days from the date of this Order.

This constitutes the decision and order of the court. All other relief requested was resolved at the parties’ November 23, 2016 compliance conference.

DATED: JANUARY 17 2017

JAN 17 2017


EILEEN A. RAKOWER, J.S.C.