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| <b>Independent Chem. Corp. v Puthanpurayil</b>   |
| 2017 NY Slip Op 30689(U)   |
| April 10, 2017   |
| Supreme Court, New York County   |
| Docket Number: 159142/2015   |
| Judge: Erika M. Edwards  |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 47

INDEPENDENT CHEMICAL CORPORATION,

Index No: 159142/2015

Plaintiff,

DECISION AND ORDER

-against-

SUJANAN THUNDEL PUTHANPURAYIL and  
ARCADIA CHEMICAL AND PRESERVATIVE, LLC,

Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

| Papers   | Numbered |
|--|----------|
| Notice of Motion and Affidavits/Affirmations/<br>Memos of Law annexed                      | <u>1</u> |
| Notice of Cross-Motion and Opposition and<br>Affidavits/Affirmations/ Memos of Law annexed | <u>2</u> |
| Opposition to Cross-Motion and Reply Affidavits/<br>Affirmations/Memos of Law annexed      | <u>3</u> |
| Reply to Cross-Motion  | <u>4</u> |
| Letter Motion  | <u>5</u> |
| Opposition to Letter Motion  | <u>6</u> |

**ERIKA M. EDWARDS, J.:**

Plaintiff Independent Chemical Corporation (“Plaintiff”) now moves, by notice of motion, dated October 31, 2016, for an Order compelling 1) Defendants Sujanan Thundel Puthanpurayil (“Sujanan”) and Arcadia Chemical and Preservative, LLC (“Arcadia”) (collectively “Defendants”) to produce documents and answer interrogatories; 2) Defendants to appear for a deposition following the production of such documents; and 3) Defendants to execute a Confidentiality Stipulation and Order to allow for the production of confidential documents from both sides. By letter motion, dated April 3, 2017, Plaintiff requested the court to add Darn It Inc. to the list of companies to be deposed in Massachusetts which were set forth in the court’s previous Order and Open Commission. Defendants opposed Plaintiff’s motion and

letter motion and cross-moved for a protective order regarding Plaintiff's discovery demands and to compel Plaintiff to produce documents and answer interrogatories. Plaintiff opposed Defendants' cross-motion.

Plaintiff alleges that the formula for I-tessa Seafood, including its sources and method of blending the materials, are confidential and proprietary to Plaintiff and that Defendants misappropriated Plaintiff's trade secrets and created a competing product. Defendants deny these claims. The court grants Plaintiff's motion to compel in part as set forth herein; grants its motion to conduct Defendants' depositions; grants its motion to compel Defendants to execute a Confidentiality Stipulation and Order to the extent that both parties must agree to the same terms to facilitate the exchange of confidential documents; and denies its letter motion for an Order and Open Commission to depose Darn It Inc. The court grants Defendants' cross-motion for a protective order and to compel in part as set forth herein.

As a preliminary matter, the parties continue to disagree as to what conduct the court's previous protective order prohibited. Justice Geoffrey Wright's Decision and Order, dated October 15, 2015, and his clarification Order, dated January 12, 2016, prohibited Defendant Sujanan from soliciting business in six states, which included Massachusetts, and prohibited him from doing business in any state with people or entities who were customers of Plaintiff or on the verge of becoming customers of Plaintiff during the time Defendant Sujanan was employed by Plaintiff. The injunction was in effect until August 3, 2016, and the court denied Plaintiff's motion to extend it. Clearly, this portion of the injunction only applied to Defendant Sujanan and did not apply to Defendant Arcadia. Therefore, Plaintiff's request for additional discovery based on allegations that Defendant Sujanan violated the injunction or the parties' agreement must be limited in scope and not merely a fishing expedition.

The parties also disagree as to whether the court ruled that there was no trade secret in Justice Wright's previous decision, dated October 15, 2015. Based on the express language of the decision, Justice Wright did not rule that there was no trade secret, but he simply discussed the arguments of both parties on the issue.

The parties mentioned that this case involves a history of contentious litigation, however, it is clear that these issues involved prior counsel for both parties. Now that new counsel has appeared and the case has been transferred within this court, the court expects the discovery process to be completed in a smoother, more expeditious manner, without the need for unnecessary motion practice.

Based on the arguments submitted by both parties, the court determines that Defendants did not effectively waive their objections to Plaintiff's demands since this matter was transferred to new counsel and Defendants provided a reasonable excuse for the delay in responding to Plaintiff's demands.

Plaintiff alleges that the formula for I-tessa Seafood, including its sources and method of blending the materials are confidential and proprietary to Plaintiff and that Defendants misappropriated Plaintiff's trade secrets and created a competing product. Plaintiff also claims that Defendant Sujanan had knowledge of the development of Plaintiff's I-tessa Blend SAP product and there is a risk of this confidential proprietary information being disclosed. Defendants deny these claims.

Based on the pleadings, the court determines that the majority of the objected to discovery demands and interrogatories requested by both parties are overbroad, unduly burdensome and improper for various reasons. However, the court declines to rule on each party's alleged outstanding discovery demand individually and the court will not alter the

language of each demand to comply with this Order. Both parties are entitled to disclosure of the documents and information relevant to all claims and defenses raised by the other party, but such disclosure must be limited in scope.

Therefore, as a general matter, the court determines that Plaintiff is entitled to Defendants' documents and information which directly relate to the development and manufacturing of Defendant Acadia's treatment product(s) primarily used on scallops and shrimp which Plaintiff alleges were based on Defendants' misappropriation of Plaintiff's confidential and proprietary information. Plaintiff is also entitled to Defendants' documents related to its solicitation of and sales to any customers or entities which would have been in violation of the parties' agreement or the court's protective order, including, but not necessarily limited to Sujanan's solicitation of or contact with Plaintiff's clients whom Defendant Sujanan had contact with while he was employed by Plaintiff and any customers in the six prohibited states during the period of the parties' agreement or the Court's preliminary injunction.

Defendants are not required to provide Plaintiff with access to their complete customer list, nor Defendant Sujanan's LinkedIn accounts. Since Defendant Sujanan's list of customers while he was employed by Plaintiff is limited in scope, Plaintiff is entitled to obtain information regarding Defendants' contact with these specific customers subsequent to Defendant Sujanan's departure from Plaintiff and Defendants are entitled to the list of customers that Plaintiffs allege Defendant Sujanan solicited or sold to while he was employed by Plaintiffs.

Additionally, Defendants are entitled to all of Plaintiff's documents related to Plaintiff's claims and Defendants' defenses, including, but not necessarily limited to, whether Plaintiff has any confidential and proprietary information regarding its I-tessa Seafood and I-tessa Blend SAP products; Defendant Sujanan's involvement and access to the development and manufacturing of

I-tessa Seafood product; Plaintiff's alleged loss of profits from the sales of its I-tessa Seafood product, loss of confidentiality of its proprietary information regarding both I-tessa Seafood and I-tessa Blend SAP products, loss of good will and business reputation and loss of existing and potential clients.

Additionally, the court will limit Plaintiff's financial disclosures to any documents or information which Plaintiff intends to rely upon to support its case at trial, Plaintiff's federal and state tax returns from 2013 to present and any financial records related to I-tessa Seafood product from 2013 to present. Defendants are also entitled to documents and information regarding the extent of Plaintiff's security measures to maintain the confidentiality and secrecy of its alleged trade secrets regarding both I-tessa Seafood and I-tessa Blend SAP products during the time of Defendant Sujanan's employment, including, but not necessarily limited to, the non-compete and non-solicitation agreements of other employees who had access to Plaintiff's alleged trade secrets; its computer security measures; and the amount of time and money spent to develop its alleged trade secret.

The court directs the parties to negotiate in good faith and enter into a Confidentiality Agreement to govern the exchange of confidential information by both sides within thirty (30) days of the date of this Order. In light of the conditions set forth herein, the parties may serve supplemental demands and interrogatories within thirty (30) days of the date of this Order and the parties are directed to serve supplemental and complete responses to the supplemental demands and interrogatories, or to the objected to discovery demands and interrogatories, if no supplemental demands or interrogatories are served, within thirty (30) days of the date that the court so-orders the parties' Confidentiality Stipulation. Once the documents and information are

exchanged, the parties must appear for depositions at a mutually agreeable time and place no later than August 1, 2017.

The court denies Plaintiff's letter motion to depose Darn It Inc. in Massachusetts, without prejudice, as the court determines that Plaintiff failed to meet its burden to support a court order to add Darn It Inc to the court's previous Order and Open Commission. The remainder of both parties' motions to compel discovery is denied, without prejudice, based on the scope and language of the current outstanding requests.

Accordingly, it is hereby

**ORDERED** that Plaintiff's motion to compel Defendants to produce documents and answer interrogatories and to appear for depositions following the production of such documents is granted in part to the extent decided herein; and it is further

**ORDERED** that Plaintiff's motion to compel Defendants to execute a Confidentiality Stipulation and Order to allow for the production of confidential documents from both sides is granted to the extent that both parties must execute a Confidentiality Stipulation, which must be provided to the court to be so-ordered, to allow the exchange of confidential information from both sides within thirty (30) days of the date of this Order; and it is further

**ORDERED** that Plaintiff's letter motion requesting the court to add Darn It Inc. to the list of companies to be deposed in Massachusetts which were set forth in the court's previous Order and Open Commission is denied without prejudice; and it is further

**ORDERED** that Defendant's cross-motion for a protective order regarding Plaintiff's discovery demands and to compel Plaintiff to produce documents and answer interrogatories is granted in part to the extent decided herein; and it is further

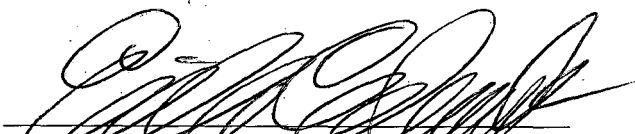
**ORDERED** that in light of the conditions of this Order both parties may serve the other with supplemental demands and interrogatories within thirty (30) days of the date of this Order and the parties are directed to serve the other party with supplemental and complete responses to the supplemental demands and interrogatories, or to the objected to discovery demands and interrogatories, if no supplemental demands or interrogatories are served, within thirty (30) days of the date that the court so-orders the parties' Confidentiality Stipulation; and it is further

**ORDERED** that once the documents and information are exchanged, the parties must appear for depositions at a mutually agreeable time and place on or before August 1, 2017; and it is further

**ORDERED** that the parties must appear for a status conference on August 10, 2017, at 9:30 a.m., in Part 47, Room #320, 80 Centre Street, New York, New York. ✓

This constitutes the decision and order of the court.

Date: April 10, 2017

  
HON. ERIKA M. EDWARDS, J.S.C.