

Iris Media Works, Ltd. v Vasisht
2017 NY Slip Op 30909(U)
April 28, 2017
Supreme Court, New York County
Docket Number: 652143/14
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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IRIS MEDIA WORKS, LTD. and IRIS MEDIA
WORKS USA, INC.,

Index No. 652143/14

Plaintiffs,

-against-

MANISH VASISHT, MANINDER SINGH, HARWINDER
SINGH, PARDES NEWS MEDIA, INC., IKK Onkar
MEDIA US INC., and SOUTH ASIAN MEDIA, INC.,
Defendants.

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JOAN A. MADDEN

Plaintiffs move, by order to show cause, for an order striking the answer of defendants Manish Vasisht ("Vasisht"), Pardes News Media, Inc., IKK Onkar Media US, Inc. and South Asian Media, Inc. (together "the Vasisht defendants"). Only Vasisht opposes the motion.

Background

Plaintiff Iris Mediaworks, Ltd. ("Iris") operated a Punjabi-language television station in the United States called "Get Punjabi," which plaintiffs allege DISH Network, LLC ("Dish") exclusively broadcasted on its satellite in the United States for more than five years. In late 2012, Iris formed Iris Mediaworks USA, Inc. ("Iris US") as a wholly-owned subsidiary with the purpose of facilitating its contracting with Dish and advertisers on Dish's broadcast. Iris appointed Vasisht as operations director of Iris US and retained defendant Pardes News Media, Inc. ("Pardes") as Iris US's exclusive advertising and marketing agency in the United States. Under a shareholders agreement entered into on November 2, 2011, non-party Jernail Singh ("Jernail") and defendants Maninder Singh ("Maninder") and Harwinder Singh ("Harwinder") became equal shareholders in Pardes. In July 2012, Pardes and Iris US formed a joint venture called Get Punjabi USA Inc. ("GPUS"), for the purpose of executing advertising contracts for

commercials broadcasting on "Get Punjabi." Iris US and Pardes each claimed fifty percent of GPUS's shares.

Plaintiffs allege that Vasisht and Pardes' two shareholders, Maninder and Harwinder (hereinafter "the Singh defendants"), developed a channel called IKK Onkar Media US Inc. ("IKK Onkar"), which directly competed with, and was intended to replace, "Get Punjabi." It is alleged that defendants misappropriated plaintiffs' resources in order to launch this channel in a short amount of time with little capital investment. In May 2014, Rajendra Karnik ("Karnik"), who is the Chairman of Iris' Board of Directors, terminated Vasisht for his alleged financial improprieties and his alleged role in misappropriating plaintiffs' employees, resources, and confidential information.

The complaint alleges that after Vasisht was terminated from his position, defendants engaged in a scheme to put "Get Punjabi" out of business. It is alleged that the scheme involved the defendants urging Dish to terminate its contract with Iris US, by falsely claiming that plaintiffs were infringing on the property rights belonging to "Get Punjabi" that were purportedly transferred to defendants. Plaintiffs allege that as a result of this scheme, Dish abruptly suspended, and then terminated, its broadcasting of "Get Punjabi" in May 2014, and since that time, plaintiffs have not obtained a broadcasting contract with another satellite or cable company in the United States.

In this action, plaintiffs assert causes of action for breach of fiduciary duty, breach of contract, unfair competition, misappropriation of trade secrets, tortious interference with contractual relations, tortious interference with prospective business advantage, unjust

enrichment, fraud, defamation, and conversion against defendants. As for each cause of action, plaintiffs seek an award of compensatory damages and punitive damages.

Defendants answered the complaint and in their amended answer, defendants Vasisht, Maninder, and IKK Onkar asserted counterclaims against Iris US, Karnik, and Iris' attorney Hoffman, Polland & Furman, LLC ("Hoffman & Polland") for tortious interference with prospective and actual contractual relations and for defamation, and against counterclaim defendants Iris US and Karnik for unjust enrichment. By decision and order dated October 14, 2015, the court granted the counterclaim defendants' motion to dismiss the counterclaims.

Plaintiffs subsequently moved to strike defendants' answer and for other relief based on allegations that Vasisht bribed Chetan Sanghvi ("Sanghvi"),¹ who has been employed as Iris' account and finance manager since April 2012. In support of their motion to strike, plaintiffs submitted various evidence including Karnik's affidavit in which he stated, *inter alia*, that Vasisht paid the bribe "to induce [Sanghvi] to systematically convey to him confidential and privileged information relating to this litigation from May 2014 to February 2015." Plaintiffs also submitted a "signed confession" from Sanghvi, which was not sworn or notarized. Plaintiffs argued that the evidence demonstrated that defendants stole plaintiffs' attorney-client communications and work product and/or proprietary and confidential information from Iris, and therefore defendants' pleadings should be stricken. By decision and order dated October 14, 2015, the court denied plaintiffs' motion to strike defendants' answers finding, *inter alia*, that the evidence relied on by plaintiffs was insufficient to demonstrate that defendants obtained

¹It appeared from the submissions that Chetan Sanghvi also goes by the surname Sanghavi.

confidential and/or privileged documents relevant to this litigation or stole plaintiffs' proprietary or confidential information.

On January 11, 2016, plaintiffs moved for a conditional order striking defendants' answer for failure to respond to discovery. By order dated May 27, 2016, the court granted the motion only to the extent of requiring the parties to appear for a discovery conference on June 9, 2016. At the June 9, 2016 conference, the court directed that the defendants respond to plaintiffs' document and interrogatory requests within 30 days of the order, and that "pursuant to CPLR 3126 failure to comply with the order would result in preclusion or the determination of issues which upon discovery is relevant and material in accordance with the claims of the demanding party and against the noncomplying party."

On or about July 5, 2016, the law firm of Serpe Ryan, LLP was substituted as counsel for only the Singh defendants. At the August 11, 2016 status conference, no counsel for the Vasisht defendants appeared. With respect to the Vasisht defendants, the court's August 11, 2016 order provided that:

Pursuant to this court's 6/9/16 order, and provided that (plaintiffs) submit[] an affirmation of noncompliance, issues (of whether) discovery is material and relevant shall be resolved against [the Vasisht defendants] due to their failure to answer by OTSC (i.e. order to show cause). The OTSC shall address the issues that [plaintiffs] contends are resolved based upon defendants' failure to comply with the demands. The format of the motion shall address each demand and interrogatory separately, or may be organized by category as to how defendants failed to comply with such demand and the factual support for the relevancy and materiality of each demand.

On October 25, 2016, plaintiffs filed a proposed order to show cause in connection with this motion to strike the Vasisht's answer based on their alleged failure to comply with multiple

orders requiring them to comply with discovery. While plaintiffs listed each demand and interrogatory separately, they failed to provide factual support for the relevancy and materiality of each demand.

By letter dated October 27, 2016, counsel for defendants informed the court, *inter alia*, that the Pardes, IKK Onkar, and South Asia Media Inc. “are, in substance, defunct,” and that on October 5, 2016, a stipulation was filed concerning the firm’s withdrawal as counsel for Vasisht in which Vasisht agreed to appear *pro se* in this action, and that the court so-ordered the stipulation on November 18, 2016.

In the meantime, on October 31, 2017, the court signed plaintiffs’ proposed order to show cause to strike the Vasisht defendants’ answer, provided for the service of opposition papers by November 7, 2016, and set the matter down for a hearing date on November 17, 2016.

By interim order dated November 17, 2017, the court granted plaintiffs’ motion to the extent of striking the answers of defendants Pardes, IKK Onkar, and South Asia Media Inc., which did not oppose the motion. Vasisht, appearing *pro se*, opposed the motion, and the court gave plaintiffs an opportunity to reply to Vasisht’s opposition, and for Vasisht to submit a sur-reply.

In opposition, Vasisht submits an unsworn affirmation in which he states his failure and that of his attorney to timely respond to plaintiffs’ discovery requests, was the result of his “undergoing treatment for a severe stomach disorder, coupled with vertigo and a condition called BLVV [and that] I have been under restricted movement due to the treatment and have not been able to travel or work properly” (Vasisht Aff, at 1). Vasisht submits no medical evidence to support his assertion with respect to his condition but states that he will “share all the Doctor’s

reports and certificates and treatment details, if directed by the honorable court” (Id). Vasisht asserts that due to his poor health, his doctor has advised him “to avoid long travels,” but that he should be able to travel again “as early as December 2016” (Id at 14). He also attributes his failure to respond to plaintiffs’ discovery requests to Karnik’s alleged destruction of evidence and specifically computer data from his personal computer.² Vasisht further asserts that Iris never owned Get Punjabi and that, instead, it was owned by a company, incorporated in India, called GEE Info Media (GEE); in which he owns a 24 percent share and Karnik owns a 25 percent share, and annexes documents purporting to support this position. He also asserts that as a director of GEE, he (and Karnak) had access to Get Punjabi’s emails.

In reply, plaintiffs assert that after the instant motion was filed, they obtained “compelling evidence,” that Vasisht stole thousands of privileged and confidential emails, and that the information marshaled from such stolen emails demonstrates that Vasisht’s failure to respond is wilful and contumacious. Plaintiffs further assert that such evidence was produced when the Singh defendants supplemented their discovery responses to plaintiffs’ document requests and revealed that they possessed some of plaintiffs’ privileged and confidential documents which were sent to them by Vasisht.

As for Vasisht’s statements regarding Karnik and his alleged wrongdoing, plaintiffs argue that such statements confirm the materiality of the evidence sought in plaintiffs’ document demands and interrogatories.

Vasisht did not submit a sur-reply.

²Vasisht also alleges that Karnik engaged in various wrongdoing, including accessing his personal computer, taking control of his email ID, changing the computer password, and taking his personal belongings

Discussion

CPLR 3126(3) provides that if a party “refuses to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to this article, the court may make such orders with regard to the failure or refusal as are just,” including “an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.”

“The drastic sanction of striking pleadings is justified only when the moving party shows conclusively that the failure to disclose was wilful, contumacious or in bad faith” Roman v. City of New York, 38 AD3d 442 (1st Dept 2007)(citation omitted); see also, Marks v. Vigo, 303 AD2d 306 (1st Dept 2003)(noting that “[i]n view of the strong preference in our law that actions be decided on their merits... a court should not resort to the drastic remedy of striking a pleading for failure to comply with discovery directives unless the noncompliance is established to be both deliberate and contumacious”); cf. Couri v. Siebert, 48 AD3d 370 (1st Dept 2008)(holding that plaintiff’s “dilatory, evasive, obstructive, and ultimately contumacious conduct” warranted striking his complaint)(internal citations omitted).

In this case, plaintiff has not shown that the “drastic remedy” of striking Vasisht’s answer is warranted here.³ In particular, the record shows that approximately two months before the issuance of the order to show cause, Vasisht stipulated to relieve his counsel and to appear *pro*

³Plaintiffs subsequently moved again to strike Vasisht’s answer (motion seq no. 009). Vasisht opposed the motion and submitted an affidavit and other materials, including medical information, not included in opposition to this motion. The subsequent motion is currently pending before Judge Margaret A. Chan, who now presides over this action.

se. While Vasisht is a *pro se* litigant residing in India, his claims of illness are unsubstantiated.

At the same time, however, while not having any greater rights than other litigants, *pro se* defendants may be afforded “some latitude.” See Mirzoeff v. Nagar, 52 AD3d 789, 789 (2d Dept 2008).

Finally, plaintiffs’ assertion in reply that the documents produced by the Singh defendants demonstrate that Vasisht’s failure to produce such documents is willful and contumacious, is insufficient as plaintiffs provide proof that Vasisht was the source of such documents.⁴

In view of the above, it is

ORDERED that plaintiffs’ motion to strike defendants’ answer is denied

Dated: April 28, 2017


HON. JOAN A. MADDEN
J.S.C.

⁴While this motion was pending, plaintiffs submitted a proposed order to show cause (motion sequence 008) seeking to strike Vasisht’s answer based on allegations that he stole privileged and confidential emails. Consistent with the finding herein, by order dated January 11, 2017, the court “decline[d] to sign the order to show cause without prejudice to renewal upon legally sufficient papers, [including] an affidavit from a person with expertise in computer science explaining information in headers and emails and specifically identifying sources of information and how it was forwarded and to whom.”