

Tsapoyski v Porat

2018 NY Slip Op 30420(U)

March 13, 2018

Supreme Court, Kings County

Docket Number: 516130/16

Judge: Lawrence S. Knipel

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Commercial Part 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 13th day of March, 2018.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

-----X
 ADA TSAPOVSKI, Individually and Derivatively
 as a Shareholder of LMT CONSULTING, INC.,

Plaintiff,

- against -

RACHEL PORAT, MARK PORAT, and
 LMT CONSULTING, INC.,

Defendants.
 -----X

DECISION AND ORDER

Index No. 516130/16

Mot. Seq. No. 6-8

The following e-filed papers read herein:

NYSCEF Docket No.:

Notice of Motion/Cross Motion, Affirmation (Affidavit),

Memorandum of Law, and Exhibits Annexed _____

114-126; 142-159; 172-179

Affirmations in Opposition, Memorandum of Law,

and Exhibits Annexed _____

161-171; 180-188

Reply Affirmations, Memorandum of Law, and Exhibits Annexed _____

190-193

Ada Tsapovski (the plaintiff), individually and derivatively as a 50% shareholder in a since-dissolved corporation, known as LMT Consulting, Inc. (LMT),¹ brought this action against Rachel Porat, the remaining 50% shareholder in LMT (Rachel), Rachel's husband Mark Porat (Mark and, collectively with Rachel, the defendants), and LMT. Issue was joined, but no depositions have been conducted to date, as the parties are still in the

¹ This action was commenced on September 13, 2016. Ten days later on September 23, 2016, the Court, ruling from the bench, dissolved LMT in a prior action captioned *Matter of Porat v Tsapovski*, Index No. 505938/16 (Sup Ct, Kings County).

document-discovery stage. The following motions and cross motion have been consolidated for disposition and, upon consolidation and after oral argument, are determined as more fully set forth below.

Subpoena Duces Tecum to Santander Bank, N.A.

In Seq. No. 6, the defendants' motion for an order, pursuant to CPLR 2304, quashing the subpoena duces tecum, dated July 19, 2017 (the subpoena), issued by the plaintiff to nonparty Santander Bank, N.A. (Santander), and for a protective order, pursuant to CPLR 3103 (a), limiting the scope of the subpoena, is determined, as follows:

(a) Paragraph 10 of the Instructions in Schedule A to the subpoena is amended to read in its entirety as follows (additions are indicated by a double underline; deletions are indicated by a strike-out):

Unless otherwise noted, the time period for all of the below document requests is July 1, 2015,^[2] ~~January 1, 2012~~ through September 23, 2016 ~~the present date~~.^[3]

(b) The section captioned "Requests for Production" in Schedule A to the subpoena is stricken in its entirety and replaced with the following (additions are indicated by a double underline; deletions are indicated by a strike-out):

1. All documents and information supplied by or on behalf of Coney Island Realty or any of its members in connection with any application for a loan to Coney Island Realty, excluding personal

² Explanation: By order, dated February 17, 2017 (the Feb. 17, 2017 order), the Court established July 1, 2015, as the start date for document discovery (footnote by the Court).

³ Explanation: September 23, 2016, is the date on which the Court, ruling from the bench, dissolved LMT in *Matter of Porat v Tsapovski*, Index No. 505938/16 (Sup Ct, Kings County). To the extent that the Feb. 17, 2017 order provided for December 31, 2016, as the end date for document discovery, this decision and order so supersedes that order (footnote by the Court).

financial statements, personal information, and/or income tax returns supplied by or on behalf of Rachel Porat and/or Mark Porat.^[4]

2. All documents and information supplied by or on behalf of Neptune Realty or any of its members in connection with any application for a loan to Coney Island Realty, excluding personal records, personal financial statements, and/or income tax returns supplied by or on behalf of Rachel Porat and/or Mark Porat.

3. All documents referring, relating to or concerning LMT Consulting, Inc., excluding personal records, personal financial statements, and/or income tax returns supplied by or on behalf of Rachel Porat and/or Mark Porat.

4. All leases, access agreements and/or assignments thereof concerning the Coney Island Realty Property.

5. All leases, access agreements and/or assignments thereof concerning the Neptune Realty Property.

6. All communications between Santander and Coney Island Realty, excluding personal records, personal financial statements, and/or income tax returns supplied by or on behalf of Rachel Porat and/or Mark Porat.

7. All communications between Santander and Neptune Realty, excluding personal records, personal financial statements, and/or income tax returns supplied by or on behalf of Rachel Porat and/or Mark Porat.

8. All closing statements concerning loans made by Santander to Coney Island Realty on or before September 23, 2016.

9. All closing statements concerning loans made by Santander to Neptune Realty on or before September 23, 2016.

⁴ Explanation: “tax returns are generally not discoverable in the absence of a strong showing that the information is indispensable to the claim and cannot be obtained from other sources” (*Latture v Smith*, 304 AD2d 534, 536 [2d Dept 2003]). At this early stage of litigation, the plaintiff has failed to make the requisite showing (footnote by the Court).

- (c) The plaintiff may re-serve the subpoena on Santander with a copy of this order, together with a cover letter calling Santander's attention to the foregoing changes made by the Court to Exhibit A to the subpoena.

Plaintiff's First Request for Production and First Set of Interrogatories

Defendants' Request for a Temporal Limit

In Seq. No. 8, the defendants' cross motion for a protective order limiting the temporal scope of disclosure in this action to the period from December 1, 2015, through September 23, 2016, is granted to the extent that the temporal scope of disclosure pursuant to, *and solely in response to*, the plaintiff's First Request for Production, dated December 2, 2016 (the request for production), and the plaintiff's First Set of Interrogatories, dated December 2, 2016 (the interrogatories), is hereby limited to the period from July 1, 2015 (rather than from December 1, 2015), through September 23, 2016; and the defendants' cross motion is otherwise denied.

To reflect the foregoing:

Paragraph 10 of the Instructions to the request for production is amended to read in its entirety as follows (additions are indicated by a double underline; deletions are indicated by a strike-out):

Unless otherwise noted, the time period for all of the below document requests is July 1, 2015, ~~January 1, 1998~~ through September 23, 2016 ~~the present date~~.

Paragraph 10 of the Instructions to the interrogatories is amended to read in its entirety as follows (additions are indicated by a double underline; deletions are indicated by a strike-out):

The relevant time period for the Interrogatories shall be, unless stated otherwise in the Interrogatory, from July 1, 2015, ~~January 1, 1998~~ through September 23, 2016 ~~to the present~~.

Plaintiff's Request for Production of Documents and for Answers to Interrogatories

In Seq. No. 7, the plaintiff's motion to compel the defendants to produce certain documents identified in her request for production, to answer certain items in her interrogatories, and for other relief, is determined, as follows:

Within thirty days of electronic service of this decision and order with notice of entry on the defendants' counsel, the defendants shall respond to:

(a) Requests numbered 1 through 6, 8, 9, 16, 17, 20, 29, 33 through 38, 48 through 50, 53, 57 through 62, 75, 76, 92, and 93, as more fully set forth in the plaintiff's request for production, and

(b) Interrogatories numbered 3, 6, 7, and 13, as more fully set forth in the plaintiff's interrogatories;

provided, however, that each response to a document request or to an interrogatory, as the case may be, shall be subject to all of the following limitations:

- (1) The applicable clarifications and limitations as set forth in the plaintiff's counsel's letter, dated September 5, 2017, from Jonathan E. Temchin, Esq., to Pedram A. Tabibi, Esq.;
- (2) The temporal period from July 1, 2015, through September 23, 2016; and
- (3) Non-disclosure and/or redaction of the defendants' personal records, personal financial statements, and/or income tax returns.

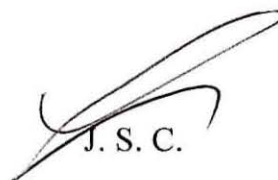
The remainder of the plaintiff's motion to compel is denied as either moot⁵ or devoid of merit.

The plaintiff's counsel shall electronically serve a copy of this decision and order with notice of entry on the defendants' counsel and shall electronically file an affidavit of said service with the Kings County Clerk.

The parties are reminded of their next scheduled appearance for a compliance conference in Commercial Part 4 on March 23, 2018. At that conference, a firm date for the plaintiff's pretrial deposition will be set.

This constitutes the decision and order of the Court.

ENTER FORTHWITH,



J. S. C.

HON. LAWRENCE KNIPEL

⁵ The plaintiff withdrew a branch of her motion which was for an order compelling the defendants to produce any documents they allegedly had obtained from a Mercedes-Benz dealer.