

Sharapan v A&I Broadway Realty, Inc.

2018 NY Slip Op 32329(U)

September 18, 2018

Supreme Court, New York County

Docket Number: 655261/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 43**

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Valentina Sharapan

Plaintiff,

-against-

Index No. 655261/2017

DECISION and ORDER

A&I Broadway Realty, Inc. and Elliot Bogod
Defendants.

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Robert R. Reed, J.:

Plaintiff Valentina Sharapan (“Sharapan”), a real estate broker, sues A&I Broadway Realty, Inc. (“A&I”) and Elliot Bogod (“Bogod”), asserting 19 separate causes of action to recover \$187,763 in unpaid wages and commission fees, a minimum of \$500,000 in other damages, plus attorneys’ fees. Defendants, for their part, also seek at least \$500,000 in damages in five counterclaims against Sharapan, alleging that she wrongfully diverted real estate listings to another real estate competitor.

According to Sharapan, at the start of discovery, defendants served interrogatories and document requests seeking the identity and contact information of Sharapan’s clients as well as communications between she and her clients. Sharapan objected, asserting that the information sought is confidential and proprietary and that revealing such would put her at a business disadvantage. Sharapan now moves, pursuant to CPLR 3101(a), for a protective order to permit her to designate certain documents as “Attorney’s Eyes’ Only” (“AEO”). Sharapan argues that, because the parties are competitors within the same industry, an AEO designation is needed to protect the identity, contact information, and communications between she and her own clients.

Defendants oppose the issuance of a protective order, arguing that an AEO designation will irreparably prejudice their ability to defend the action and meaningfully litigate their counterclaims. They argue that Sharapan has not identified the specific documents for

designation and her broad allegations of unspecified harm are insufficient to satisfy her burden under CPLR 3101(a). Even if she had, defendants argue that real estate listings, addresses and transactions are not private and are readily available on public sites such as Streteasy.com, Trulia.com, the New York City Department of Finance ACRIS system, and other real estate service providers. Additionally, defendants argue that an AEO designation deviates from this court's part rules and from the New York City Bar Association's Model Proposed Stipulation and Order for the Production and Exchange of Confidential Information, which intentionally excludes AEO designations (*see* <https://www.nycbar.org/pdf/report/ModelConfidentiality.pdf>). In her reply to the opposition, Sharapan argues that she seeks an AEO designation on broad categories of information, including the identity and contact information of her clients, and any communications between she and her clients.

CPLR § 3101(a) requires full disclosure of all evidence material and necessary to the prosecution or defense of an action (*see* CPLR 3101(a); *see also* *MSCI Inc. v. Jacob*, 120 AD3d 1072). "Material and necessary" has been interpreted to mean any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay (*see Friel v. Papa*, 87 AD3d 1108). As a matter of policy, New York strongly encourages open and full disclosure (*see Andon v. 302-304 Mott St. Assoc.*, 94 NY2d 740). While the scope of disclosure provided by the statute is generous, broad, and is to be construed liberally, unlimited disclosure is not permitted (*see McKinney's CPLR 3101; see also Spohn-Konen v Town of Brookhaven*, 74 AD3d 1049). CPLR 3103(a) provides that a court may issue a protective order denying, limiting, conditioning, or regulating the use of any disclosure device in order to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to the other party (*see* CPLR 3013(a)). A trial court is vested with broad discretion regarding discovery, and

its determination will not be disturbed absent a demonstrated abuse of that discretion (*see 148 Magnolia, LLC v. Merrimack Mut. Fire Ins. Co.*, 62 AD3d 486).

Business information is entitled to trade secret protection if it consists of any formula, pattern, device or compilation of information that is used in one's business, and gives its owner/ possessor an opportunity to obtain an advantage over competitors who do not know or use it (*see Ashland Mgmt. Inc. v. Janien*, 82 NY2d 395). In deciding whether information constitutes a trade secret, the court considers several factors including:

“(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others”

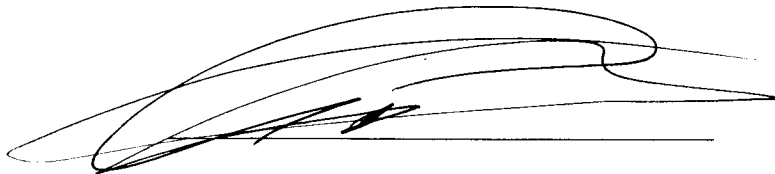
(*see id.* at 407; *see also* Restatement of Torts § 757, comment b). The Court of Appeals has stressed that “a trade secret must first of all be secret,” and this determination is usually a question of fact (*id.*). In *Mann v. Cooper Tire Co.*, the Appellate Division, First Department adopted a two-step analysis, concluding that “when trade secrets are sought by an adverse party in litigation, the burden of establishing that the information sought is a trade secret lies with the disclosure objectant” (*see Mann v. Cooper Tire Co.*, 33 AD3d 24). Here, Sharapan has not met this burden. Without a sufficient showing of whether Sharapan’s client list fairly constitutes in fact a trade secret, her motion for an AEO designation must be denied.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to designate certain documents as “Attorney’s Eyes’ Only” is denied; and it is further

ORDERED that all parties shall appear by their counsel for a preliminary conference in Part 43 of this court at 111 Centre Street, Room 581, New York, New York at 11:00 a.m. on Thursday, October 18, 2018.

Dated: September 18, 2018

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a cursive-like shape. The signature is positioned above the printed name 'J.S.C.'.

J.S.C.