

**Princeton Glass & Stone Tile Wholesale Inc. v  
Dandan Hu**

2018 NY Slip Op 33870(U)

July 20, 2018

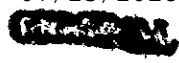
Supreme Court, Nassau County

Docket Number: 611202-17

Judge: Timothy S. Driscoll

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This opinion is uncorrected and not selected for official publication.



**SUPREME COURT-STATE OF NEW YORK  
SHORT FORM ORDER**

**Present:**

**HON. TIMOTHY S. DRISCOLL**  
**Justice Supreme Court**

-----X

**PRINCETON GLASS & STONE TILE  
WHOLESALE INC. AND  
PIAOYANG CHEN,**

**Plaintiffs,**

**-against-**

**DANDAN HU AND JASMINE STUDIO INC.,**

**Defendants.**

-----X

**TRIAL/IAS PART: 11  
NASSAU COUNTY**

**Index No: 611202-17  
Motion Seq. No. 3  
Submission Date: 7/10/18**

**Papers Read on this Motion:**

- Notice of Motion, Affirmation in Support and Exhibits.....X**
- Rappaport Affirmation Pursuant to 22 NYCRR 202.7 and Exhibits.....X**
- Affirmation in Opposition and Exhibit.....X**
- Reply Affirmation in Further Support and Exhibits.....X**

This matter is before the court on the motion by Plaintiffs Princeton Glass & Stone Tile Wholesale Inc. ("Princeton") and Piaoyang Chen ("Piao") ("Plaintiffs") filed May 11, 2018 and submitted July 10, 2018. For the reasons set forth below, the Court grants the motion to the extent that the Court directs Defendants, on or before August 16, 2018, to provide Plaintiffs with the full name, present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers of the following individuals: 1) the husband, mother, and friends identified in Defendants' Supplemental Responses to Interrogatory Numbers 1, 2, 7, 8, 9, and 10, 2) Sing Lok Chu, identified in Defendants' Supplemental Responses to Interrogatory Numbers 11 and 12, and 3) Jasmine's prior customers, identified in Defendants' Supplemental Response to Interrogatory Number 3.

## BACKGROUND

### A. Relief Sought

Plaintiffs move for an Order, pursuant to CPLR § 3124, compelling Defendants Dandan Hu (“Dandan”) and Jasmine Studio, Inc. (“Jasmine”) (“Defendants”) to comply with the discovery demands served by Plaintiffs (the “Discovery Demands”) which include Plaintiffs’ First Set of Interrogatories (the “Interrogatories”) and Plaintiffs’ Notice for Discovery and Inspection (the “Document Demands”).

Defendants oppose the motion.

### B. The Parties’ History

The parties’ history is outlined in detail in the prior decision (“Prior Decision”) of the Court dated January 8, 2018 and the Court incorporates the Prior Decision by reference as if set forth in full herein. As noted in the Prior Decision, the Verified Complaint (“Complaint”) (Ex. A to Rappaport Aff. in Supp.) alleges as follows:

On December 27, 2016, Foshan Saifei Glass Spar and Decoraterial Factory (“Foshan Saifei”), a company located in China, Dandan, Piao and Princeton entered into a Shareholders’ Agreement. Princeton was formed to import mosaic flooring and wallcovering materials manufactured by Foshan Saifei for the purposes of selling and distributing the materials to retailers located in the United States. The principal and owner of Foshan Saifei is Tingjun Chen (“Tingjun”), the father of Piao. Dandan is Piao’s wife’s cousin.

As set forth in the Shareholders’ Agreement, Foshan Saifei was issued 600 shares representing 60% of the issued and outstanding shares, Dandan was issued 300 shares representing 30% of the issued and outstanding shares, and Piao was issued 100 shares representing 10% of the issued and outstanding shares of Princeton. The initial capitalization was \$500,000, of which Foshan Saifei gave value in the amount of \$300,000, Dandan gave value in the amount of \$150,000 and Piao gave value in the amount of \$50,000. In light of the fact that Dandan did not have sufficient funds, Piao loaned Dandan \$30,000 of the \$150,000 that she provided.

The Complaint sets forth language from the restrictive covenants in the Shareholders’ Agreement, specifically paragraph 6.2 of the Shareholders’ Agreement, titled “Restrictions on Competitive Activities” and paragraph 6.4 of the Shareholders’ Agreement titled “Protection of Confidential Information.” Shortly after Princeton commenced business operations, Plaintiffs determined that Dandan had breached her contractual and fiduciary duties by conduct which

included 1) embezzling hundreds of thousands of dollars from Princeton, of which at least \$65,000 was transferred to Dandan's personal bank account; 2) misappropriating Princeton's vehicle which was worth over \$20,000; 3) changing the locks to Princeton's office and warehouse; 4) refusing Piao access to the business premises; and 5) misappropriating Princeton's inventory. Plaintiffs also recently determined that Dandan formed Jasmine for the purpose of competing with Princeton, has solicited and continues to solicit Princeton's customers, and has used and continues to use Princeton's assets and confidential information without Princeton's consent.

The Complaint contains eight (8) causes of action:

1) against Dandan for breach of paragraph 6.4 of the Shareholders' Agreement based on her use and/or disclosure of Princeton's Confidential Information;

2) against Dandan for breach of fiduciary duty based on the allegation that she was appointed a Director of Princeton and engaged in conduct, including embezzlement, that constituted a breach of her fiduciary duties;

3) against Dandan for conversion based on her misappropriation of Princeton's cash, inventory and motor vehicle;

4) against Dandan and Jasmine - a request for a permanent injunction restraining, prohibiting and enjoining Defendants from continuing to conduct business in competition with Princeton;

5) against Dandan and Jasmine for unfair competition based on the allegation that Dandan misappropriated Princeton's assets and formed Jasmine to unfairly compete with Princeton;

6) against Dandan and Jasmine for injurious falsehood based on the allegation that Dandan has made false and injurious statements to individuals, including Princeton's customers, impugning the reputation of Princeton and Piao, including the statement that Princeton is out of business and is unable to fulfill orders that might be placed by customers;

7) against Dandan for malicious prosecution based on the allegations that a) following Plaintiffs' demand in April and May of 2017 for an accounting, Dandan filed a criminal complaint in Kings County, New York alleging that on October 28, 2016, Piao had committed criminal acts against her, specifically forcible touching, sexual abuse in the third degree, and harassment in the second degree; b) these charges were baseless and undertaken maliciously; c) the criminal proceeding was terminated in favor of Piao; and d) as a result of Dandan's

malicious acts, Piao was incarcerated and was required to post bail; and

8) against Dandan for abuse of process based on the allegation that, in connection with the events described in the seventh cause of action, Dandan used the criminal process with the intent to do harm, without excuse or justification.

On November 3, 2017, the Court issued a temporary restraining order (“TRO”) which directed that, pending the hearing and determination of this motion, 1) Defendants, collectively or individually, are restrained, prohibited and enjoined from taking, removing, transferring, selling, using, and/or displaying any assets of Princeton, including any of its inventory, models, samples, customer lists, data, pricing structures, 2015 Ford Truck, and/or assets of any kind whatsoever; and 2) Defendants are restrained, prohibited and enjoined from competing with Princeton in any fashion and to any extent with respect to the importation and sale in the United States of mosaic stone, glass, marble and tile, and soliciting any business from and/or doing any business whatsoever with any current, former, and/or prospective customers of Princeton. In the Prior Decision, the Court directed that the TRO shall remain in effect, pending further court order, on the condition that Plaintiffs post a bond.

In their Verified Answer (“Answer”) Defendants deny many of the allegations in the Complaint. Defendants also interpose numerous affirmative defenses, including the affirmative defense that Defendant Dandan is relieved of her obligations under the Shareholders’ Agreement following Piao’s termination of Dandan’s employment without compensation and without following the procedural requirements set forth in the Shareholders’ Agreement (Third Affirmative Defense).

In support of the motion now before the Court, counsel for Plaintiffs (“Plaintiffs’ Counsel”) affirms that on or about February 23, 2018, Plaintiffs served their Discovery Demands on Defendants, specifically the Interrogatories and Document Demands (Exs. C and D to Rappaport Aff. in Supp.). Pursuant to the January 11, 2018 Preliminary Conference Order (Ex. E to Rappaport Aff. in Supp.), responses to the Discovery Demands were due by April 9, 2018. On April 19, 2018, Plaintiff’s Counsel received Defendants’ Responses and Objections to Plaintiff’s First Request for Production of Documents and First Interrogatory (the “Discovery Response”) dated April 18, 2018 (Ex. F to Rappaport Aff. in Supp.). Plaintiffs’ Counsel affirms that Defendants produced only three (3) documents responsive to the Document Demands and produced no responses to the Interrogatories.

Plaintiffs’ Counsel notes that the Discovery Response does not include any responses of

objections to the Interrogatories. Plaintiff contends that Defendants have also failed to provide any meaningful disclosure of documents in response to the Document Demands. In their Document Demands, Plaintiffs sought documents responsive to 37 requests for documents believed to be material and necessary to the prosecution of Plaintiffs' claims, and to establish the validity, or lack thereof, of Defendants' defenses. Plaintiffs' Counsel lists the documents sought by Plaintiffs, which Defendants have refused to produce (Rappaport Aff. in Supp. at ¶ 17). Those documents include, but are not limited to, tax returns, books and records, documents concerning Dandan's immigration status, documents concerning Defendants' compliance with and/or violation of the TRO and Prior Decision, and documents concerning Defendants' various affirmative defenses.

In opposition, counsel for Defendants ("Defendants' Counsel") provides copies of Defendants' Interrogatory Responses dated June 19, 2018 and Defendants' Discovery Responses dated June 19, 2018 (Ex. A to Cassell Aff. in Opp.) which were provided to Plaintiffs on June 19, 2018. Defendants' Counsel submits that Plaintiffs' motion is moot because Defendants have provided responses to Plaintiffs' Discovery Demands.

In reply, Plaintiffs' Counsel submits that the responses provided on June 19, 2018 are deficient. Plaintiffs' Counsel affirms that he spoke with Defendants' Counsel on June 29, 2018, and Defendants thereafter provided Supplemental Discovery Responses dated July 8, 2018 (Ex. A to Rappaport Reply Aff.), which included documents which are annexed as Exhibit B to the reply affirmation of Plaintiffs' Counsel. Plaintiffs' Counsel contends, however, that Defendants have failed to remedy significant deficiencies in their disclosure.

### C. The Parties' Positions

Plaintiffs submit that Defendants have failed to properly and fully answer the Interrogatories because 1) the responses were not answered under oath by Dandan but, rather, were signed only by Defendants' Counsel; 2) interrogatories numbers 1 through 10 request the identification of certain individuals who would have knowledge or information relevant to this action and Defendants have failed to provide the information provided, referring "ambiguously" (Rappaport Reply Aff. at ¶ 6) to potential fact witnesses without providing names, addresses, job titles or telephone numbers; and 3) with respect to interrogatories numbers 11 and 12, which sought the identification of documents and other evidence, Plaintiffs have failed to identify a single document or piece of physical evidence. Plaintiffs' Counsel also outlines in detail his objections to specific interrogatory responses (*see* Rappaport Reply Aff. at ¶¶ 7-16).

Defendants oppose the motion. Defendants submit that the motion is moot in light of the fact that Defendants have provided updated responses to Plaintiffs' Discovery Requests.

### RULING OF THE COURT

#### A. Relevant Discovery Principles

CPLR Section 3124 provides that if a person fails to respond to or to comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under CPLR §3123, the party seeking disclosure may move to compel compliance or a response. The supervision of discovery, setting of reasonable terms and conditions for disclosure, and determination of whether a particular discovery demand is appropriate are all matters within the discretion of the trial court, which must balance competing interests. *Kooper v. Kooper*, 74 A.D.3d at 17, citing, *inter alia*, *Wander v. St. John's Univ.*, 67 A.D.3d 904, 905 (2d Dept. 2009).

CPLR § 3101(a) is to be liberally construed to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. *Reid v. Soultz*, 114 A.D.3d 921, 922 (2d Dept. 2014), quoting *Allen v. Crowell-Collier Publ. Co.*, 21 N.Y.2d 403, 406 (1968). The party seeking discovery must first satisfy the threshold requirement that the disclosure sought is material and necessary, whether the request is directed to a party or a non party. *Reid v. Soultz*, 114 A.D.3d at 122, quoting *Kooper v. Kooper*, 74 A.D.3d 6, 10 (2d Dept. 2010), citing CPLR §§ 3101(a)(1) and (4).

While CPLR § 3101(a) provides that there shall be full disclosure of all matter material and necessary in the prosecution of an action, the principle of full disclosure does not give a party the right to uncontrolled and unfettered disclosure. *D'Adamo v. Saint Dominic's Home*, 87 A.D.3d 966, 969-970 (2d Dept. 2011), quoting CPLR § 3101(a) and *JFK Family Ltd. Partnership v. Millbrae Natural Gas Dev. Fund 2005, L.P.*, 83 A.D.3d 899, 900 (2d Dept. 2011).

#### B. Application of these Principles to the Instant Action

The Court grants the motion to the extent that the Court directs Defendants, on or before August 16, 2018, to provide Plaintiffs with the full name, present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers of the following individuals: 1) the husband, mother, and friends identified in Defendants' Supplemental Responses to Interrogatory Numbers 1, 2, 7, 8, 9, and 10, 2) Sing Lok Chu, identified in Defendants' Supplemental Responses to Interrogatory Numbers 11 and 12, and 3) Jasmine's prior customers, identified in Defendants' Supplemental Response

to Interrogatory Number 3. The Court concludes that Defendants have not provided Plaintiffs with specific details regarding the individuals identified in these responses, and that Plaintiffs are entitled to an identification of these individuals within the meaning of Definition Paragraph K(1) of Plaintiffs' Interrogatories, which states that identifying a natural person means to state his or her full name, present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers. The Court otherwise denies the motion based on its conclusion that Defendants' responses to Plaintiffs' Discovery Demands are otherwise sufficient, and in consideration of the fact that Plaintiffs will have the opportunity to probe those responses at depositions.

All matters not decided herein are hereby denied.

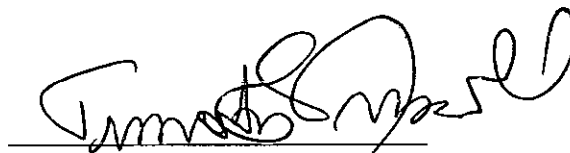
This constitutes the decision and order of the Court.

The Court reminds counsel for the parties of their required appearance before the Court for a conference on July 24, 2018 at 11:00 a.m.

ENTER

DATED: Mineola, NY

July 20, 2018



HON. TIMOTHY S. DRISCOLL

J.S.C.

**ENTERED**

JUL 23 2018

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**