Iacovacci v Brevet Holdings, LLC
2019 NY Slip Op 31284(U)
May 6, 2019
Supreme Court, New York County
Docket Number: 158735/2016
Judge: Alexander M. Tisch
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ALEXANDER M. TISCH** **PART** **IAS MOTION 18EFM**

Justice

---X

INDEX NO. 158735/2016

PAUL IACOVACCI,

MOTION DATE 02/20/2019

Plaintiff,

MOTION SEQ. NO. 014

- v -

BREVET HOLDINGS, LLC,BREVET SHORT DURATION PARTNERS, LLC,BREVET SHORT DURATION HOLDINGS, LLC

DECISION AND ORDER

Defendant.

---X

The following e-filed documents, listed by NYSCEF document number (Motion 014) 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 485

were read on this motion to/for STAY.

Upon the foregoing papers, plaintiff moves this Court for an order staying the proceeding commenced by defendants and other related parties in the Superior Court of Connecticut, Stamford-Norwalk, Docket No. FSTV196039571S, *Brevet Capital Management, LLC v Jennifer Iacovacci* (the Connecticut Action), enjoining defendants from proceeding with the Connecticut Action, and sanctions.[1]

The application in the Connecticut Action, akin to a New York pre-action discovery petition, seeks, in relevant part, "all computers, hard drives, backups (including any cloud-based storage services) or devices that had access to the Paul Iacovacci email accounts or the Brevet emails, Trade Secrets, personnel files and personal information" (NYSCEF Doc. No. 439 at ¶ 60). The petition also seeks information from plaintiff's email account servicers (see id.).

[1] The Court limits this decision and order to the Connecticut Action insofar as asserted against Jennifer Iacovacci, as plaintiff did not establish the bad faith nature of the proceeding insofar as asserted against Connecticut Action Defendants Oath (Americas) Inc. and Charter Communications Inc. Defendants opposition papers also failed to address these same entities.

"The rule of comity forbids the granting of an injunction to stay proceedings which have been commenced in a foreign court of competent jurisdiction unless it is clearly shown that the suit sought to be restrained was brought in bad faith, or motivated by fraud or an intent to harass the party seeking the injunction, or if its purpose was to evade the law of the domicile of the parties" (Sarepa, S.A. v Pepsico, Inc., 225 AD2d 604, 604 [2d Dept 1996]; see Matter of Shapiro v Hayes, 133 AD3d 468 [1st Dept 2015]). Here, the Court finds that the Connecticut Action was not brought in good faith and was commenced as a blatant end-run around discovery in this Court.

The Connecticut Action is premised upon the speculative suggestion that, because Jennifer Iacovacci (plaintiff's wife) shared a home computer with plaintiff, she could have possibly gained access to plaintiff's email accounts, which were allegedly used to take and/or forward Brevet emails and confidential information. Defendants failed to adequate support this assertion. They claim that, based upon plaintiff's Brevet emails, "it is evident that that [sic] Mrs. Iacovacci utilized at least two of these email accounts" (NYSCEF Doc. No. 462 at ¶ 13). The emails submitted make no such showing (see NYSCEF Doc. No. 465).

The petition in the Connecticut Action also claims that defendants have "no other adequate means of enforcing discovery of the desired material because the [Connecticut Action] Defendants are in exclusive possession, custody and control of the information" (NYSCEF Doc. No. 439 at ¶ 58).

Defendants submit that there are "no other means," yet failed to inform the court in the Connecticut Action that this action exists (let alone two other federal actions) that are related to the same devices. Notably, defendants claim that the desired material is in Jennifer Iacovacci's possession and custody — however, the parties had already agreed that the exact same material

would be evaluated by a neutral third-party expert, CDS, to exclude plaintiff's person information. In fact, at the time of the filing of the Connecticut Action, the desired materials (computer, devices, etc.) were already in CDS's possession (see NYSCEF Doc. Nos. 434-436). Thus, it is apparent that defendants commenced the Connecticut Action knowing full-well that the computer and related devices *were not in Jennifer Iacovacci's possession.* In any event, the devices would almost certainly be subject to the current protocol and/or procedures being implemented now in this Court.

Defendants argue that the parties' agreed-upon protocol for CDS is specifically designed to exclude reference to plaintiff's wife and children (id. at ¶ 22-23). Accordingly, they claim that the Connecticut Action was proper to gain evidence to determine whether Mrs. Iacovacci was an independent tortfeasor. However, it is this Court's understanding that implementation of the protocol would limit plaintiff's wife's and children's *personal information* — and that it would not exclude information relevant to Brevet and the issues raised in this litigation. Thus, the protocol in place should necessarily qualm any serious suggestion that plaintiff's wife was an independent tortfeasor and evidence showing that, if any, would be revealed in due course.

While staying proceedings in a foreign jurisdiction is permitted only in "extreme and extraordinary cases," the Court finds it appropriate here as the Connecticut Action was clearly brought without any merit and sought to circumvent the discovery orders and proceedings overseen by this Court (see E.B. Latham & Co. v Mayflower Indus., 278 AD 90, 94 [1st Dept 1951] [enjoining foreign proceedings permissible "in cases where the necessity of equitable interference to prevent a failure of justice is clearly established"]; see also Shapiro, 133 AD3d 468).

As for that branch of the motion seeking sanctions, the Court finds that sanctions are appropriate in this instance. Pursuant to 22 NYCRR Rule 130-1.1 (c), "conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false." Here, as noted above, the Court finds that there was no legitimate basis for instituting the Connecticut Action, and the petition in that action contained false statements.

The determination of the exact amount of the costs shall be set forth upon further order as indicated below.

Accordingly, it is hereby ORDERED that the motion is granted to the extent that the parties in the Connecticut Action are hereby enjoined from litigating the proceeding insofar as asserted against Jennifer Iacovacci; and it is further

ORDERED that that branch of the motion seeking sanctions is held in abeyance for forty-five (45) days during which time counsel for plaintiff shall submit to the Court an attorneys' affirmation and provide supporting proof of "actual expenses reasonably incurred and reasonable attorney's fees" (22 NYCRR 130-1.1 [a]) pertaining to this motion only.

This constitutes the decision and order of the Court.

HON. ALEXANDER M. TISCH

5/6/2019
DATE

ALEXANDER M. TISCH, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION		
APPLICATION:	[ ] GRANTED	[ ] DENIED	[X] GRANTED IN PART	[ ] OTHER	
	[ ] SETTLE ORDER		[ ] SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT	[ ] REFERENCE	