

**National Union Fire Ins. Co. of Pittsburgh, PA v
Razzouk**

2019 NY Slip Op 32374(U)

August 1, 2019

Supreme Court, New York County

Docket Number: 653191/2012

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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INDEX NO. 653191/2012

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA, AS SUBROGEE OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,

MOTION DATE 06/07/2019, 06/14/2019, 07/08/2019

MOTION SEQ. NO. 12, 13, 14

Plaintiffs,

- v -

SASSINE RAZZOUK, GRACE RAZZOUK, DANIELLE RAZZOUK, MONIQUE RAZZOUK, RUDELL & ASSOCIATES, INC., MDM CAPITAL, INC., RUDICON POWER CORPORATION, RODOLFO QUIAMBAO,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 012) 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 013) 242, 243, 244, 245

were read on this motion to/for PRO HAC VICE

The following e-filed documents, listed by NYSCEF document number (Motion 014) 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 321, 322, 323

were read on this motion to/for DISCOVERY

This is an action to recover damages for an alleged bribery scheme. This decision addresses three motion sequences (MS). MS 12 and MS 14 are discovery motions, and MS 13 is an unopposed pro hac vice motion.

BACKGROUND

Defendant Sassine Razzouk is a former Con Ed employee. Defendant Rodolfo Quiambao is the owner of two engineering firms, Rudell and Associates, Inc. (Rudell) and Rudicon Power Corporation (Rudicon), which are also named defendants (collectively, the Rudell defendants). Con Ed alleges that Sassine Razzouk and Rodolfo Quiambao engaged in a scheme wherein Quiambao and his

companies paid bribes to Razzouk in exchange for receiving favorable treatment by Con Ed (NYSCEF # 248, Second Amended Compl., ¶¶1-2).

The complaint originally alleged that the bribery scheme lasted from January 2008 through December 2010. Con Ed served discovery demands on the Rudell defendants, and in response to those demands, the Rudell defendants produced cancelled checks purportedly showing that the Rudell defendants made payments to Razzouk from at least 2002 through 2010. Based on this new discovery, Con Ed moved to amend the complaint seeking to recover the alleged bribe payments made between April 2002 through December 2010, which the court granted.

Con Ed asserts eight causes of action against the Rudell defendants for breach of contract, rescission of contract, fraud, money had and received, unjust enrichment, aiding and abetting fraud, aiding and abetting breach of fiduciary duty, and piercing the corporate veil (*id.* ¶¶ 135-202). Con Ed seeks, among other relief, in excess of \$25 million in compensatory damages, plus statutory interest from 2002, and punitive damages (*id.* pp. 29-30).

Discovery

In MS 12, plaintiff Consolidated Edison Company of New York, Inc. (Con Ed) moves pursuant to CPLR 3103(a) for a protective order under striking the defendants Rudell and Associates, Rudicon Power Corporation, and Rodolfo Quiambao's (Rudell defendants) Second and Third Requests for the Production of Documents and their Second and Third Set of Interrogatories and for attorneys' fees.

In MS 14, the Rudell defendants' move to compel Con Ed to respond to the aforesaid Requests for the Production of Documents and Interrogatories and for attorneys' fees. Con Ed cross-moves to compel the Rudell defendants to produce documents pursuant to Request No. 12 in Con Ed's First Notice of Discovery and Inspection. MS 12 and 14, and Con Ed's cross-motion are opposed.

At the outset, Con Ed correctly states that the March 13, 2019 Order (March Order) limits supplemental demands in this action to the years of 2002 through 2006, that is, the years added as part of the Second Amended Complaint (NYSCEF # 249). The court notes that the March Order only limits the time scope as to the third set of demands, since the second set of demands were made prior to the March Order.

In support of its motion for a protective order, Con Ed argues that the Rudell defendants' requests for the discovery at issue seek information irrelevant to its claims for damages. Con Ed is seeking the following damages: (1) compensation that Razzouk allegedly received in 2002 and 2010; (2) the alleged bribe payments made by the Rudell defendants between 2002 and 2010 to Razzouk; (3) Con Ed's alleged

losses caused by the alleged scheme between 2006 through 2010; (4) pre-judgment interest; and (5) punitive damages. According to the Second Amended Complaint, aside from the losses attributed to the bribery scheme, Con Ed is also seeking damages for its breach of contract and fraud claims from 2002 through 2010. Accordingly, since Con Ed is seeking damages exclusive to its alleged losses for the time of 2002 through 2006, the Rudell defendants are entitled to discovery related those claims for the newly added years.

Con Ed also argues that the Rudell defendants' discovery requests are overly broad and burdensome, especially since Con Ed claims to have already provided over 70,000 pages of documents in response to Rudell Defendants' First Set of Interrogatories and First Request for the Production of Documents. To the extent that the requested discovery is duplicative, Con Ed is only required to furnish documents not already provided. Further, since the ordered discovery seeks specific documents relevant to defenses raised against Con Ed's claims, the ordered discovery is not burdensome (*see e.g. Abrams v. Pecile*, 83 AD3d 527, 528 [1st Dept 2011]).

Next, Con Ed's cross-motion to compel is granted. The Rudell defendants argue, as part of their defense, that Razzouk forced them to pay the alleged bribes to avoid being disqualified from the bidding process, including that the Rudell defendants would not receive other work from Con Ed or other favorable treatment from Con Ed employees. Thus, Con Ed's demand seeking documents concerning favorable treatment shown or given by any current, former, or retired employee of Con Ed to the Rudell defendants are relevant to the Rudell defendants' defenses.

Sanctions

Both Con Ed and the Rudell defendants' motions for sanctions are denied. Court Rule 130-1 permits courts to award reimbursements for expenses and reasonable attorney's fees to a party that has been forced to defend a frivolous motion. 22 NYCRR 130-1.1(a). Here, while Con Ed's motion does not entitle it to a protective order, there is no indication that the arguments were made in bad faith or with an intention to harass. And, as addressed in the previous section, the Rudell defendants' motion to compel is not frivolous.

Pro Hac Vice

In MS 13, plaintiff National Union Fire Insurance Company of Pittsburgh as subrogee of Con Ed (National Union) moves pursuant to 22 NYCRR 520.11(a)(1) to admit Ashley Gray, Esq. *pro hac vice*. MS 13 is unopposed.

The attorneys for National Union, the law firm of Gordon Rees Scully Mansukhani, LLP, with offices at One Battery Park Plaza, 28th Floor, New York, New York 10004, move for the admission *pro hac vice* of Ashley Gray, Esq., an attorney with their Illinois firm located at One North Franklin, Suite 800, Chicago, Illinois, to participate and assist in the investigation, discovery, arguments on motions and the trial of the above-captioned matter, in whole or in part as counsel of record for National Union. Ashley Gray, Esq. is a member in good standing admitted to the Bar in the State of Illinois. The application to admit Ashley Gray, Esq., *pro hac vice*, is granted, without opposition.

July 24, 2019 In-Court Conference

At the court's July 24, 2019, the parties agreed to the following: Counsel for the Rudell defendants shall provide search terms, time scope and administrators with regard to the alleged ethics and discrimination complaints made to Con Ed, by August 9, 2019; Con Ed to respond, if any, by August 13, 2019; and that the documents discovered pursuant to the search shall be furnished by August 30, 2019, to the extent there are no objections.

Next, the parties agreed that the "150,000" documents, subject to privilege, shall be furnished by August 30, 2019. Finally, the parties agreed that Con Ed shall produce all e-mails where Razzouk is "to," "from," or "CC," by August 30, 2019.

Accordingly, it is hereby

ORDERED that the branch of Con Ed's motion pursuant to CPLR 3103(a) for a Protective Order striking the Rudell defendants' Second and Third Requests for the Production of Documents and their Second and Third Set of Interrogatories is denied; it is further

ORDERED that the branch of Rudell defendants' motion pursuant to CPLR 3124 to compel Con Ed to respond to the Rudell Defendants' Second and Third Requests for the Production of Documents and their Second and Third Set of Interrogatories is granted, and Con Ed Shall furnish its responses within forty-five (45) days, to the extent not already provided; it is further

ORDERED that the Rudell defendants shall furnish all documents responsive to Request No. 12 in Con Ed's First Notice of Documents and Inspection; it is further

ORDERED that the branches of Con Ed and the Rudell defendants' motions for sanctions are denied; it is further

ORDERED that National Union's motion to admit Ashley Gray, Esq., *pro hac vice* is granted; it is further

ORDERED that the parties shall appear for a status conference on October 3, 2019 at 10:00am; and it is further

ORDERED that counsel for Con Ed shall serve of a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

8/1/2019

DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE