

**Brummer v Wey**

2019 NY Slip Op 32587(U)

August 23, 2019

Supreme Court, New York County

Docket Number: 153583/2015

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 46

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CHRISTOPHER BRUMMER,

Index No. 153583/2015

Plaintiff

- against -

DECISION AND ORDER

BENJAMIN WEY, FNL MEDIA LLC, and NYG  
CAPITAL LLC d/b/a NEW YORK GLOBAL  
GROUP,

Defendants

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APPEARANCES:

For Plaintiff

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For Defendants Wey and NYG Capital LLC

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LUCY BILLINGS, J.S.C.:

I. COMPUTER DEVICES

In an order dated June 6, 2017, the court (Mendez, J.) ordered a forensic examination by an independent forensic computer expert agreed upon by the parties of all computer devices used for business purposes by defendants. Implicit in this order was a requirement that defendants produce those devices to the expert, which the parties agreed was to be Kivo Consulting.

In an order dated January 8, 2018, the court (Mendez, J.) explicitly ordered defendants to produce all their computer

devices used for business purposes "in connection with production of TheBlot, unitedpressnews.com, investigativepress.com or any other websites created by defendants in connection with defendant Benjamin Wey's activities as an investigative journalist or publisher in connection with TheBlot, unitedpressnews.com, investigative press.com or any other websites created by defendants" for a forensic examination by Kivo Consulting. At his deposition, defendant Wey admitted that, while this action has been pending, he has sent to China the computer devices he has used for business purposes and specifically for work related to TheBlot, including writing articles for TheBlot, and for work related to defendant NYG Capital LLC, so that NYG Capital's records and electronic communications are now in China. Wey did not indicate that he sent these devices to China before Justice Mendez's orders, but, even if he did so before June 6, 2017, he demonstrated that he retained control over these devices of which he had retained possession and custody such that he is capable of regaining possession and custody.

Consequently, within 45 days after entry of this order, defendant Wey shall retrieve and produce to Kivo Consulting the computer devices that he has used for business purposes in connection with TheBlot, unitedpressnews.com, investigativepress.com, or any other websites created by defendants and that, while this action has been pending, he has sent to China. C.P.L.R. § 3120(1)(i) and (2); Commonwealth of the N. Mariana Is. v. Canadian Imperial Bank of Commerce, 21

N.Y.3d 55, 62-63 (2013). If he fails to comply with this order, then, consistent with the January 2018 order, he shall be precluded from contesting (1) his ownership of and relationship to TheBlot, defendants NYG Capital LLC and FNL Media LLC, and any websites related to TheBlot or to defendants and (2) his responsibility for and state of mind in authoring and publishing information about plaintiff online. C.P.L.R. § 3126(1); Crooke v. Bonofacio, 147 A.D.3d 510, 510-11 (1st Dep't 2017); Baldwin v. Gerard Ave., LLC, 58 A.D.3d 484, 484-85 (1st Dep't 2009); Horizon Inc. v. Wolkowicki, 55 A.D.3d 337, 338 1st Dep't. 2008); Longo v. Armor El. Co, 307 A.D.2d 848, 849 (1st Dep't 2003). See Weissman v. 20 E. 9th St. Corp., 48 A.D.3d 242, 243 (1st Dep't 2008); Schilling v. Quiros, 23 A.D.3d 243, 244 (1st Dep't 2005). If plaintiff shows that Wey also sent to China computer devices that either co-defendant has used for business purposes in connection with TheBlot, unitedpressnews.com, investigativepress.com, or any other websites created by defendants, that defendant likewise shall be precluded from contesting (1) its ownership of and relationship to TheBlot, co-defendants, and any websites related to TheBlot or to defendants and (2) its responsibility for and state of mind in authoring and publishing information about plaintiff online.

## II. INTERROGATORIES

Defendants also have not fully and directly responded to plaintiff's interrogatories relevant to the relationships among defendants and TheBlot, which published the defamatory statements

about which plaintiff complains, and relevant to the media through which those statements were authored, edited, and published. Therefore, within 20 days after entry of this order, defendants shall supplement their answers to plaintiff's interrogatories ## 1-24, 27-65, 81, 83, 84, and 96-99 with responsive information relative to September 2014, leading up to the alleged defamation in December 2014, through January 2017, when plaintiff filed his currently operative amended complaint. C.P.L.R. §§ 3101(h), 3133. Since plaintiff had the opportunity to pose these interrogatories again at defendants' depositions, defendants may supplement their answers to the interrogatories by referring to pages and lines of their deposition testimony.

### III. DOCUMENTS

Insofar as defendants maintain possession, custody, or control of documents responsive to the interrogatories listed above, sought by plaintiff's document requests ## 3-16, 21-34, 64, and 65, defendants also shall supplement their production of documents to plaintiff within 20 days after entry of this order. C.P.L.R. §§ 3101(h), 3120(1)(i) and (2). In Wey's responses April 9, 2019, to plaintiff's document requests and again on the record August 2, 2019, Wey agreed to search for and produce to plaintiff four discrete categories of documents, but as of August 2, 2019, still had not done so. Therefore, within 20 days after entry of this order Wey also shall search for and produce to plaintiffs all documents related to Wey's (1) theory about the Financial Industry Regulatory Authority's conspiracy, (2) belief

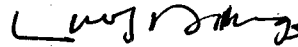
that plaintiff lied to the government, (3) performance of computer virus removal services, and (4) communications with Tracy Chen via a website's dialogue page.

Regarding plaintiff's further document requests, in many instances plaintiff complains about what information defendants have failed to provide, but does not specify what documents he previously requested and still seeks. Plaintiff also fails to show the materiality or necessity of documents related to Wey's communications with a Chinese technician who set up Wey's Twitter account, sought in plaintiff's request # 82, or of all documents related to identified email addresses, sought in requests ## 83-88. The later category of requests, encompassing all emails sent and received by those email addresses, is overbroad. Blau v. Blau, 3 A.D.3d 167, 171 (1st Dep't 2004); New York Cent. Mut. Fire Ins. Co. v. Librizzi, 106 A.D.3d 921, 921-22 (2d Dep't 2013); Chang v. SDI Intl. Inc., 15 A.D.3d 520, 521 (2d Dep't 2005). Requests ## 89-96 seek financial documents about Wey's assets and information after the January 2017 amended complaint, documents that plaintiff admits are to assist in collecting an anticipated judgment against Wey and that therefore are immaterial and unnecessary unless and until plaintiff obtains a judgment against defendants. Request #97, seeking all documents that concern or relate to TheBlot, likewise seeks information after January 2017 and is otherwise overbroad, as no party contends that the defamation alleged in this action is TheBlot's only activity.

IV. CONCLUSION

For the reasons explained, the court grants plaintiff's motion to compel defendants' disclosure and imposes the conditional penalties previously ordered to the extent set forth above and denies his motion insofar as it seeks further disclosure or penalties. C.P.L.R. §§ 3124, 3126.

DATED: August 23, 2019



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C.