

Kuliarchar Sea Foods (Cox's Bazar) Ltd. v Soleil Chartered Bank

2019 NY Slip Op 33036(U)

October 7, 2019

Supreme Court, New York County

Docket Number: 654930/2017

Judge: Gerald Lebovits

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

KULIARCHAR SEA FOODS (COX'S BAZAR)
LTD.,

Plaintiff,

-vs -

SOLEIL CHARTERED BANK, SOLEIL CAPITALE
CORPORATION, AND GOVIND SRIVASTAVA,

Defendants.

Index No. 654930/2017

Hon. Gerald Lebovits

ORDER

WHEREAS, Plaintiff, Kuliarchar Sea Foods (Cox's Bazar), Ltd. ("Kuliarchar") has propounded discovery demands seeking documents and information ("D&I Demands") with respect to, among other things, the claims and defenses asserted in the captioned action (the "Action");

WHEREAS, Defendants, Soleil Chartered Bank ("SCB"), Soleil Capitale Corporation ("Soleil Capitale"), and Govind Srivastava ("Srivastava"), moved for a protective order in connection with the "D&I Demands";

WHEREAS, Plaintiff cross-moved for, *inter alia*, for an order granting the entry of a default judgment against Defendants in connection with, *inter alia*, Defendants' responses to the D&I Demands; and

WHEREAS, the parties have resolved their differences with respect the D&I Demands as set forth below;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between, Peyrot & Associates, PC, attorneys for Defendants, and Freiburger Haber LLP, attorneys for Plaintiff, as follows:

1. Plaintiff has satisfied its burden with regard to all personal jurisdictional issues in the Action.

2. In connection with the D&I Demands, Defendants shall, within 30 days of the entry of this Stipulation and Order, unless extended by agreement of the Parties:

a. Produce a copy of all minutes of the board of directors of SCB and Soleil Capitale, and related documents (*e.g.*, presentation materials), concerning the letter of credit at issue in this proceeding (the "Letter of Credit"). *See* D&I Demand No. 1.

b. Identify in interrogatory form, the name of the individual or individuals who were responsible for the Swift messaging related to the claims and defenses asserted in the Action. *See* D&I Demand Nos. 15.

c. Identify in interrogatory form, the name of the Person(s) who own the SWIFT Messaging. *See* D&I Demands Nos. 15 and 16.

d. Identify in interrogatory form, and produce documents showing, the person(s) having an ownership interest (whether equity, security, debt, or other legal interest) in SCB, Soleil Capitale and Gharwalla. The Parties understand and agree that with regard to SCB, such responses shall be made to the extent permitted under European and/or Lichtenstein law; *provided*, however, Defendant Srivastava shall confirm under oath that he does not own SCB, that he is neither a trustee nor a beneficiary of the trust which owns SCB, and that he owns 100% of Soleil Capitale. SCB shall produce documents showing that SCB is owned by a European trust, and that none of the Defendants are beneficiaries of such trust. *See* D&I Demand No. 17.

e. Identify in interrogatory form, the banking and financial institutions in which SCB and Soleil Capitale share accounts as account holders, including all accounts in which they are beneficiaries. *See* D&I Demand No. 29.

- f. Identify in interrogatory form, the owner of the Wall Street Office condominium, the tenants of the Wall Street Office, and the amount paid by each tenant. *See* D&I Demands Nos. 35, 36 and 37.
- g. Identify in interrogatory form, whether SCB and Soleil Capitale have separate audit, tax, and financial statements.
- h. Produce all documents concerning the Letter of Credit, including, but not limited to, the application form submitted by Echopack; drafts of the Letter of Credit (regardless of the draftsman), indemnification agreements and payments, posting of bonds, the delivery of the documents required under the Letter of Credit, etc. *See* D&I Demand Nos. 51-55 and 64.
- i. Produce all documents showing any payments made by Echopack, the receipt of such funds by SCB and/or Soleil Capitale, and whether the funds received by SCB and/or Soleil Capitale were transferred to Defendant Srivastava, members of the Group other than SCB and Soleil Capitale, or third parties. *See* D&I Demands Nos. 58, 59 and 60.
- j. Produce all SWIFT Messages concerning the Letter of Credit to the extent not already done so. If all SWIFT messages have been produced, Defendants shall so certify in a sworn statement. *See* D&I Demand No. 62.
- k. Identify in interrogatory form, the process by which the SWIFT Messages sent in the Action were uploaded to the system and sent to Mercantile Bank, including, but not limited to, identify the person(s) involved in the process and the content to be delivered.
- l. Produce all documents (whether internal or external) between Srivastava, SCB and/or Soleil Capitale and the Canadian Food Inspection Agency, including, but not limited to, Stephanie Lacroix, concerning the Letter of Credit. If all such documents have been

produced, or if none exist, Defendants shall so certify in a sworn statement. *See* D&I Demand No. 63.

m. Produce all documents (whether internal or external) concerning the conditions set forth in Items F46A and F47A of the Letter of Credit. *See* D&I Demand No. 65. If all such documents have been produced, or if none exist, Defendants shall so certify in a sworn statement.

n. Produce all documents and communications with Mercantile Bank other than by SWIFT Message. If all such documents have been produced, or if none exist, Defendants shall so certify in a sworn statement. *See* D&I Demand No. 67.

o. Produce all documents concerning meetings (whether in person, by telephone, or electronic means) between SCB and/or Soleil Capitale and Kuliarchar concerning the Letter of Credit, including, but not limited to, payment due under the LC. *See* D&I Demand No. 68.

p. Produce all documents concerning meetings (whether in person, by telephone, or electronic means) between Srivastava and/or employees and representatives of SCB and/or Soleil Capitale, on the one hand, and Kuliarchar, on the other, concerning the Letter of Credit, including, but not limited to, payment due under the LC. *See* D&I Demand No. 69.

q. Produce all documents between Defendants and any Insurance Company, concerning the facts, events and occurrences alleged in the Complaint. *See* D&I Demand No. 70.

r. Produce all notes, memoranda and emails, including, but not limited to, memoranda and emails exchanged internally or with Kuliarchar, representatives of Kuliarchar, and/or third parties, including without limitation the Echopack, Mercantile Bank, the CFIA and

Simon Assaref, concerning (1) the Letter of Credit, (2) the application for the Letter of Credit, and (3) payment due under the Letter of Credit. *See* D&I Demands Nos. 66, 68 and 69.

s. Produce all date books, calendars, diaries and any similar compilations maintained by Defendants concerning (1) the Letter of Credit, (2) the application for the Letter of Credit, (3) payment due under the Letter of Credit, and (4) communications and meetings concerning subcategories (1) through (4) of this demand. *See* D&I Demand No. 76.

t. Produce all letters of credit issued by Defendants with Echopack during the three (3) years preceding the issuance of the Letter of Credit in the Action. In connection with said production, Plaintiff shall produce, within 30 days of the entry of this Order, documents supporting an inference that Echopack was engaged in fraudulent and/or improper business practices designed to extract price concessions from seafood exporters, such as Kuliarchar. Defendants' production shall be made within 21 days of service of Plaintiff's production.

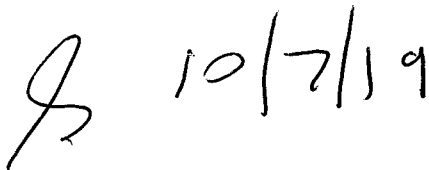
3. Defendants' motion for a protective order, and Plaintiff's cross-motion for, *inter alia*, a default judgment, are hereby withdrawn without prejudice.

4. The Parties reserve all rights with regard to the discovery in the Action.

5. Facsimile or electronic signatures shall be deemed originals for filing purposes.

Dated: September 26, 2019

Ordered:



Hon. Gerald Lebovits, J.S.C.
HON. GERALD LEBOVITS
J.S.C.