SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **IAS MOTION 7EFM**

Justice

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MAHER JRIDI,

Plaintiff,

- v -

NICKI MINAJ and BOULEVARD MANAGEMENT, INC.,

Defendants.

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INDEX NO. 654969/2018

MOTION DATE 10/30/2019

MOTION SEQ. NO. 002

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number 26, 27, 28, 29, 30, 31, 32, 34 (Motion 002)

were read on this motion to PROTECTIVE ORDER.

Steiner & Fish, P.C., Garden City, New York (David M. Fish of counsel), for plaintiff.
Browne George Ross, LLP, New York, NY (Jeffrey A. Mitchell and Brett D. Katz), for defendant.

Gerald Lebovits, J.:

Plaintiff, Maher Jridi, is a fashion stylist who performed services for defendant, recording artist and entertainer Nicki Minaj.[1] Plaintiff alleges that defendant has not paid him for services rendered and invoiced. Plaintiff also alleges that in the course of performing these services, he was obliged to rent various pieces of clothing and accessories from third parties for defendant to wear, that defendant did not return this apparel, and that defendant's conduct has caused plaintiff to be liable for damages to third parties. Plaintiff therefore brought this action for conversion, breach of contract, and unjust enrichment. Defendant counterclaimed, alleging that plaintiff had acknowledged that defendant had overpaid him but that he refused to return the overpayment.

This motion does not concern the merits either of plaintiff's claim or defendant's counterclaim, but rather whether this court should compel the plaintiff to treat as confidential certain discovery he obtained from defendant.

In August 2019, before document production or depositions, defendant's counsel requested that plaintiff sign a confidentiality agreement to prevent dissemination of any documents or testimony outside this action. (*See* NYSCEF No. 29.) Plaintiff declined to sign.

[1] Nicki Minaj is defendant's stage name; her legal name is Onika Maraj. (*See* Ans., NYSCEF No. 5, at 1.) The complaint names defendant as Minaj; defendant's papers refer to her throughout as Maraj. For simplicity, this court refers to her simply as defendant.

Nonetheless, in September 2019, defendant produced documents and appeared for a transcribed and videotaped deposition.

Defendant now moves for a protective order under CPLR 3103 (a). Defendant asks this court to order the parties to enter into the confidentiality agreement that defendant had previously proposed. The agreement would (among other things) restrict use of the deposition transcript and video to purposes related to this litigation. Defendant's motion is denied.

Discussion

CPLR article 31 requires "full disclosure of all matter material and necessary in the prosecution or defense of an action." (CPLR 3101 [a].) The courts have interpreted "material and necessary . . . liberally 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." (*Kooper v. Kooper* 74 AD3d 6, 10 [2d Dept 2010].)

That said, under CPLR 3103 courts may impose orders of protection to limit the scope of a discovery device or prevent its abuse. A court may, for example, "condition the production of specified documents on execution of a confidentiality agreement" (*see Yatter v William Morris Agency, Inc.*, 273 AD2d 83, 83 [1st Dept 2000]), or restrict the dissemination of a deposition transcript or video (*see Liebman & Charme v Lanzoni*, 164 Misc 2d 302, 303-304 [Civ Ct, NY County 1995]). A court also may require the parties to sign a confidentiality agreement that sets forth more general procedures to restrict access or dissemination of information designated confidential. (*See Mann v Cooper*, 56 AD3d 363, 364 [1st Dept 2008].)

Defendant, as the party seeking the protective order, bears the burden to show entitlement to the order. (*See Vivitorian Corp. v First Cent. Ins. Co.*, 203 AD2d 452, 452-453 [2d Dept 1994].) She has not met her burden here.

As an initial matter, the confidentiality agreement defendant asks this court to impose is overbroad under the circumstances presented here. As framed, the interests defendant seeks to vindicate on this motion pertain only to the confidentiality of certain answers given at her deposition. (*See e.g.* Aff. of Eric C. Lauritsen in Supp. of Mot. for Protective Order, NYSCEF No. 27, at 2.) Yet the proposed protective order would establish a comprehensive set of procedures governing designation of "Documents produced, or Testimony given, in connection with this action" more generally. (*See* "[Proposed] Stipulation & Order," NYSCEF No. 29, at ¶ 2.) Further, it is undisputed that defendant has already provided meaningful written discovery (and appeared for deposition) in the absence of such a confidentiality agreement. Directing entry of defendant's proposed confidentiality agreement would permit defendant effectively to seek partial clawback of knowingly produced, non-privileged information. And it would do so in areas extending far beyond the discrete confidentiality concerns on which defendant is relying here.

Regardless, defendant has failed on this record to establish that the deposition information she seeks to protect should be subject to *any* court-imposed confidentiality agreement. Defendant asserts two grounds for imposing such an agreement: (i) the deposition

dealt with "competitively sensitive" matters, with the result that publicly disseminating the deposition would allegedly harm defendant's business interests; and (ii) disseminating the deposition could in theory be used to embarrass or harm non-party individuals who were discussed during the deposition. (*See* Mem. of Law in Supp. of Mot. for Protective Order, NYSCEF No. 30, at 6.)

Defendant does not, however, provide an affidavit on personal knowledge (whether from herself, a business associate, or some other individual) to support these assertions. Rather, she relies on the affidavit of one of her attorneys. That attorney undisputedly has personal knowledge of the information given at the deposition, because he attended the deposition. (*See* NYSCEF No. 27, at ¶ 2.) He does not, however, indicate the basis of his knowledge about the *harms from disclosure* of that information. (*See id.* at ¶¶ 4-5.)

In any event, this attorney affidavit is unsatisfactorily conclusory. (*See Sheldon v Kimberly-Clark Corp.*, 111 Ad2d 912, 913 [2d Dept 1985] [affirming denial of motion for an order of confidentiality, where movant's "showing of confidentiality consist[ed] of a brief, conclusory statement in an attorney's affirmation"].) The affidavit indicates merely that the deposition contains information about "Defendant's methods for selecting a stylist, the identities of Defendant's 'team' at different times, the protocols that plaintiff was expected to follow, and the substance of meetings between Defendant, plaintiff and other third-parties." (NYSCEF No. 27, at ¶ 4.)

The affidavit does not provide any further detail about these subjects as they were discussed at defendant's deposition. Nor does it articulate a connection between these subjects and the asserted harms to defendant or third parties from further disclosure or dissemination of the deposition transcript or video. Although defendant is not required to show the precise harms that might result from broader disclosure of the deposition materials, she may not simply assume, in effect, that those harms are self-evident and therefore need not be described or established.[2]

Furthermore, defendant has not established that there is an actual risk that deposition materials will be widely disseminated to the public, as required for relief. (*See Liebman*, 164 Misc 2d at 305.) Defendant argues that plaintiff's refusal to sign the confidentiality agreement itself raises concerns that plaintiff intends to use these materials for purposes unrelated to the litigation. (NYSCEF No. 30, at 7.) Yet this argument proves too much: it would imply that the mere existence of motion practice over a party's refusal to sign a confidentiality agreement would alone establish that the refusing party was acting out of improper motives. Defendant has not identified any more specific reason beyond her own (undisputed) celebrity to believe that plaintiff is at risk of disseminating the deposition materials at issue here. (*See Liebman*, 164 Misc 2d at 305 [rejecting a version of this argument].) Nor does defendant address that plaintiff's offer

[2] This court notes that defendant has not submitted the deposition transcript or videotape for this court's in camera review. Indeed, defendant filed this motion before the transcript was even available. (*See* NYSCEF No. 30, at 5 n4.) Defendant's counsel indicated in his memorandum of law (filed on September 25, 2019) that he would like to have this court review the transcript in camera once available, yet counsel has not since contacted the court to offer up the transcript for review. Nor has counsel ever offered to provide this court with the *videotape* of the deposition.

at a status conference to enter into a more limited confidentiality agreement would seem on its face to undermine defendant's suggestion that plaintiff would disseminate the deposition materials out of an improper motive.

This court does not mean to suggest that defendant will *necessarily* be unable to establish either that there is a real risk of broader dissemination of the transcript or videotape of her deposition or that any dissemination would cause cognizable harms to her or third parties. But defendant has failed to make the necessary showing on this motion.

Accordingly, it is

ORDERED that defendant's motion for a protective order is denied.

12/9/2019
DATE

GERALD LEBOVITS, J.S.C.

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