

Catalina Mktg.Corp. v Quotient Tech., Inc.

2020 NY Slip Op 30022(U)

January 3, 2020

Supreme Court, New York County

Docket Number: 152824/2019

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

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CATALINA MARKETING CORPORATION

Plaintiff,

- v -

QUOTIENT TECHNOLOGY, INC.,

Defendant.

INDEX NO. 152824/2019

MOTION DATE 11/01/2019

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

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HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, it is

ORDERED that petitioner Catalina Marketing Corporation's motion to renew is granted; upon renewal, the Court adheres to its prior determination.

1/3/2020

DATE



**HON. CAROL R. EDMEAD
J.S.C.**

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

APPLICATION:

GRANTED

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

SETTLE ORDER

SUBMIT ORDER

REFERENCE

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

In this special proceeding to enforce an out-of-state subpoena, petitioner Catalina Marketing Corporation (Petitioner or Catalina) moves, pursuant to CPLR 2221 (e), to renew its Petition to compel respondent Quotient Technology, Inc. (Respondent or Quotient) to produce documents pursuant to a subpoena *duces tecum* served on December 19, 2018.

BACKGROUND

This special proceeding arises from an action in the Superior Court of New Jersey, Chancery Division – General Equity, Morris County, entitled *Catalina Marketing Corporation v Louis Hudyman* (Dkt. No. MRS-C-129-18) (the New Jersey action). The gravamen of the allegations in the New Jersey action is that Catalina laid off defendant Louis Hudyman (Hudyman), and thereafter he went to work at Quotient, Catalina's competitor, and violated a non-compete agreement.

In opposition to the petition, respondent submitted an affirmation from Steven Schecter (Schecter), counsel for Hudyman in the New Jersey action. The affirmation contained averments regarding the execution of a protective order in the New Jersey action (New Jersey protective order). In a hearing held on September 27, 2019, Judge Maritza Berdote Byrne, who is presiding over the New Jersey action, found that certain statements in the affirmation were false, such as Schecter's statement that Catalina's counsel represented to him and to Judge Berdote Byrne that Quotient's counsel found the terms of the New Jersey protective order acceptable (NYSCEF doc No. 79 at 16, 32-33).

The parties appeared before this court on April 16, 2019. The Court directed the parties to enter into a protective order containing terms protecting confidential documents,¹ and held the petition, as well as Respondent's cross motion for reasonable fees in abeyance (see NYSCEF doc

¹ The Court also directed counsel to execute a substantially similar protective order in the New Jersey action, and to confer with Schecter.

No. 66). By an order dated May 1, 2019, the Court directed the parties to appear for a teleconference on May 8, 2019, unless the confidentiality agreement was executed by May 6, 2019. On May 10, 2019, this proceeding was dismissed without prejudice on the consent of the parties.

DISCUSSION

A motion for leave to renew is sparingly granted and is not a second opportunity given freely to a party who has not acted diligently in making the initial motion (*Henry v Peguero*, 72 AD3d 600, 602 [1st Dept 2010]). Under CPLR 2221 (e) (2) a motion to renew must “be based upon new facts not offered on the prior motion *that would change the prior determination* or shall demonstrate that there has been a change in the law that would change the prior determination” (emphasis added) (*see Garcia v La Fortuna Restaurant, Inc.*, 118 AD3d 482 [1st Dept 2014] [denying a motion to renew, as the proffered material was not new, but noting that “even if considered,” the material “would not have changed the prior determination”]).

Here, renewal is appropriate to the extent that Petitioner puts forward new facts that were not readily available to them at the time that the petition was argued; namely, that Schecter’s affirmation contained misstatements. In opposition, Respondent gives short shrift to Petitioner Schecter’s misrepresentations, stating:

“Whatever the circumstances are under which the New Jersey Protective Order was entered, it is undisputed that the New Jersey Protective Order omits important and necessary provisions included in the New York Stipulation that were specifically intended to protect Quotient’s highly confidential and proprietary business information, including a provision restricting access to documents and information designated ‘Attorney’s Eyes Only Information’ from internal counsel and personnel of Catalina”

(NYSCEF doc No. 91 at 2-3).

Petitioner argues that Schecter's affirmation "contributed to this Court not entering the New Jersey Protective Order," (NYSCEF doc No. 72 at 9). However, Petitioner provides no evidence that the misstatements were germane to the court's determination. Catalina further argues, as it did while initially arguing the petition, that the New Jersey protective order "would have adequately protected Respondent's confidential information and facilitated the exchange of documents sought" by the subpoena (*id.*).

Here, Petitioner fails to sufficiently establish that that the misrepresentations materially colored the court's determination. Thus, it does not show, as it must under CPLR 2221 (e) (2), that the new material "would change the prior determination." Thus, the motion to renew must be denied.

Given that this petition was dismissed without prejudice, Respondent suggests that starting a new proceeding would be the proper vehicle for judicial intervention if the parties are not able to come to an agreement regarding the protective order. In reply, Petitioner states that it did consider this possibility, but chose to move under CPLR 2221 (e) instead, as this court is in the best position to expedite resolution of this matter, and address inaccuracies of Schecter's affirmation, as well as inaccuracies in Respondents papers based on Schecter's affirmation.

This court rejects the faulty premise that it should use CPLR 2221 (e) as a vehicle to retain a case.

CONCLUSION

Accordingly, it is

ORDERED that petitioner Catalina Marketing Corporation's motion to renew is granted;
upon renewal, the Court adheres to its prior determination.

Dated: January 3, 2019

ENTER:



Hon. CAROL R. EDMEAD, JSC

HON. CAROL R. EDMEAD
J.S.C.