

Ittmann v Coral Reef Capital Group LLC
2020 NY Slip Op 33530(U)
October 26, 2020
Supreme Court, New York County
Docket Number: 655976/2018
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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DANIEL ITTMANN,

Plaintiff,

- v -

CORAL REEF CAPITAL GROUP LLC

Defendant.

-----X

INDEX NO. 655976/2018

MOTION DATE 12/30/2019

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and for the reasons set forth on the record (10/26/2020), Daniel McLeod Ittmann’s (the **Plaintiff**) motion to compel is granted to the extent set forth below.

The Relevant Facts and Circumstances

This action concerns the alleged breach of an oral agreement whereby the Plaintiff seeks to recover a 10% fee for alleged introductions which resulted in capital investments with Coral Reef Capital Group, LLC (the **Defendant**). Marceau Schlumberger allegedly exercised exclusive control over the Defendant and all related entities and moved monies to conceal any transactions that were funded with the Plaintiff’s help (NYSCEF Doc. No. 1, ¶¶ 23-30).

Altogether, the Plaintiff claims that he made initial introductions that led to the Defendant’s investments in the “Seacrest”, “Suntrust”, and “Shawnee” projects. The Plaintiff alleges that he introduced Mr. Schlumberger to Christophe Jungles-Winkler, who then formed the entity

Eisvogel with Robert Bassett Cross and led to a capital raise through the Defendant for the Seacrest deal (NYSCEF Doc. No. 1, ¶¶ 16-18). The Defendant, Mr. Jungles-Winkler, and Mr. Bassett Cross then made another investment in the Suntrust deal (*id.*, ¶¶ 19, 50).

The Plaintiff also asserts that he introduced the Defendant to Stu Lamb, and both individuals jointly introduced the Defendant to Mr. Sulaymonov, which resulted in an investment in the Shawnee project (*id.*, ¶ 35). Mr. Lamb, Mr. Sulaymonov, and other individuals also invested with the Defendant's assistance in the Shawnee project (*id.*, ¶ 34). Finally, the Plaintiff allegedly introduced the Defendant to Stefan Hatvany, which resulted in a subsequent investment in the Shawnee project and a gold mining deal (*id.*, ¶ 36).

Pursuant to a decision and order, dated July 22, 2019, the court granted the defendants' motion to dismiss solely to the extent that the complaint was dismissed against Mr. Schlumberger, Coral Reef Capital LP, and Coral Reef Capital Group LP without prejudice (NYSCEF Doc. No. 36). For the avoidance of doubt, Coral Reef Capital, LLC, is the sole defendant in the action.

On September 18, 2019, the Plaintiff served its First Demand for Discovery (the **Demands**; NYSCEF Doc. No. 52). On October 18, 2019, the Defendant served its Objections and Responses to the First Demand for Discovery (NYSCEF Doc. Nos. 53, 66). After the parties were unable to resolve outstanding discovery disputes, the Plaintiff was granted leave to file the instant motion to compel pursuant to an order dated December 11, 2019 (NYSCEF Doc. No. 46).

Discussion

CPLR § 3101 (a) requires the full disclosure of “all matter material and necessary in the prosecution or defense of an action,” and this provision is interpreted liberally to require disclosure of facts that assist a party’s good faith preparation for trial (*Johnson v Natl. R.R. Passenger Corp.*, 83 AD2d 916 [1st Dept 1981]).

The Plaintiff argues that the outstanding requests in their Demands are relevant to their claims for breach of contract and quantum meruit. In their opposition papers, the Defendants assert that the outstanding requests are irrelevant and overbroad because the Plaintiff’s recovery of a purported finder’s fee only concerns the Plaintiff’s alleged introductions of five individuals.

Requests 1.1 to 1.5.14 are for the names and addresses of the Defendant’s potential witnesses.

To the extent that the Defendant seeks to categorize these requests as interrogatories, the requests were made pursuant to the Plaintiff’s Demands such that they will be treated as document requests. Inasmuch as the Plaintiff is entitled to witness names and address, the Defendant must produce the names and addresses of individuals sought to the extent that these individuals have information related to the Plaintiff’s alleged introductions that are at issue in this lawsuit.

Requests 2.2.2 are for contracts and agreements the Defendant executed with fourteen various individuals or entities. The Defendant must produce these contracts, to the extent that they exist, because the Plaintiff is entitled to information as to whether or how his introductions led to the alleged investments in order to recover a finder’s fee in connection with the same.

Request 2.3.1 is for the minutes of board meetings concerning or discussing business flow, where capital gets invested, and what deals go into which entity during the period of 2008 - 2018. Request 2.3.2 is for the minutes of all board meetings concerning or discussing any capital that the plaintiff avers to have raised. The Defendant asserts that it does not possess board minutes and the Defendant is not required to produce the same (NYSCEF Doc. No. 66 at 2). The Defendant shall produce an affidavit indicating that no such board meeting minutes exist.

Request 2.3.3 is for names of all board members or members of the Defendant. The Defendant must disclose its board members or members that were involved with the Suntrust, Seacrest, or the Shawnee projects because these individuals may have information about the Plaintiff's involvement in facilitating these investments.

Request 2.3.4 is for report minutes of any investment committee concerning or discussing any capital the Plaintiff avers to have raised. The Defendant asserts that it has produced internal communications concerning capital raised by the Plaintiff and that no such minutes of any investment committee discussing capital that the Plaintiff may have raised (NYSCEF Doc. No. 66 at 2). The Defendant must produce an affidavit indicating that no such other documents exist.

Request 2.3.5 is for names of all members of any investment committee that had any dealings with the Suntrust, Seacrest, or the Shawnee projects. The Defendant must produce the names of any member that are part of an investment committee involved in the aforementioned projects because they may provide information to establish the Plaintiff's role in these projects.

Request 2.3.6 is for the defendant's documentation retention policy. The Defendant explains it has no documents as it does not have a formal retention policy (*id.* at 3). The Defendant must produce an affidavit indicating whether it has retained documents from the time that litigation was reasonably anticipated and identify the date that it reasonably anticipated litigation.

Request 2.3.7 is for any internal memorandums, notes, drafts, or reports of the Defendant concerning or including the Plaintiff, or SunTrust, Seacrest, or Shawnee. The Defendant argued that it has produced such communications and is not required to produce anything further (*id.*). The Defendant must produce an affidavit indicating that no such other internal memorandums, notes, drafts, or reports of the Defendant concerning or including the Plaintiff, SunTrust, Seacrest, or Shawnee exist.

Request 2.3.8 is for proof of payment to the Plaintiff. The Defendants shall produce proof of all payment to the Plaintiff as this is relevant to the reasonable value of services that the Plaintiff received or should have received pursuant to its quantum meruit claims.

Request 2.3.9 is for a list of banks, account numbers, and titles that have received investments from Messrs. Christoph Jungles Winkler, Robert Bassett Cross, Stefan Hatvany, Sulaymonov, Elliot Groman, or Eisvogel or Eisvogel Group, Azimuth Group Services DMCC (Dubai, UAE).

Request 2.3.10 is for a schedule of capital deployment, actual disbursements, and all transmittals from the aforementioned accounts to the recipients' name, title, and bank, and amount. The Plaintiff is entitled to this information to corroborate the investments that the Plaintiff allegedly facilitated and this information must be produced. However, the Defendant may withhold bank

account numbers and it shall produce an affidavit to the extent that information is not producible because certain individuals were not involved in the alleged investments.

Request 2.3.11 is for a list of all members and/or ownership interests of the Defendant.

Inasmuch as the court previously dismissed the complaint without prejudice as against Mr. Schlumberger and the other previously named defendants, the Plaintiff may seek discovery as to whether the Defendant was an alter ego for Mr. Schlumberger and the Defendant must disclose its members and/or ownership interests.

Request 2.4.1.1-2.4.1.6 is for correspondence between the Plaintiff, the Plaintiff's relatives, Defendant, Mr. Schlumberger, and third-parties concerning the Suntrust, Seacrest, and Shawnee projects, as well as any defenses to the Plaintiff's claims. The Defendant must produce the aforementioned correspondence from the time period beginning 1 year prior to the time that the investments occurred until 1 year after the investments were made. The Defendant shall also produce an affidavit indicating whether any gag or similar non-disclosure order or request that was made in connection with any of these investments.

Request 2.4.1.7 is in regards to any server or email server that is averred to have been damaged, destroyed, replaced or substituted. If this has occurred, the Plaintiff seeks paid invoices, proof of payment, or repair receipts for repair of substitute services, and the name and date(s) of any relevant vendor or supplier or provided services and any IT personnel who performed services in regard to the aforementioned, including paid invoices and proof of payment. This information is relevant to verify the Defendant's document production and the Defendant must produce such

documents and an affidavit describing the circumstances and when such destruction, replacement or substitution, if any, occurred.

Request 2.4.2.1 is for any phone logs by or between the Plaintiff and the Defendant. This request is granted as such alleged phone logs may correspond with any of the capital raises at issue in this case and Plaintiff's alleged introduction in connection with those capital raises.

Request 2.4.3.1 is for a list of all web sites owned or affiliated (under the definition of Rule 144 of the Securities Act) with the Defendant, inclusive of URLs and hosts. Request 2.4.3.2 is for all prior iterations of any Defendant web page, inclusive of drafts, copy, pictures, graphics, including but not limited to tombstones, and relevant dates of creation, modification, and publication. The Defendant shall produce this information and any information retrievable from the cloud because it is relevant to whether the Plaintiff's alleged introductions resulted in any investment that was later concealed.

Requests 2.5 and 2.5.1 is for business plans, prospectuses, inclusive of financial statements and pro forma financials, terms sheets, notes, and any written material concerning the same, as well as edits or revisions thereto concerning the Suntrust, Seacrest, and Shawnee deals. This material is relevant to establishing the extent of the Plaintiff's purported introductions and involvement in the projects and must be produced.

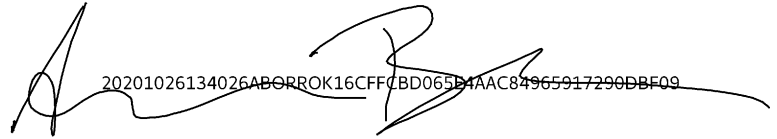
To the extent that the Plaintiff moves to strike the Defendant's answer based on their willful noncompliance with discovery and for costs, this portion of the motion is denied because the

record indicates that the Defendant's objections to the requests at issue were not wholly without merit.

Accordingly, it is

ORDERED that the Plaintiff's motion to compel is granted to the extent set forth above and the Defendant shall produce the aforementioned materials within 30 days of this decision and order; and it is further

ORDERED that the parties shall appear for a remote status conference on December 1, 2020 at 12:00 pm.



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10/26/2020
DATE

ANDREW BORROK, 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