Trump Vil. Section 4, Inc. v Shvadron
2021 NY Slip Op 30363(U)
February 5, 2021
Supreme Court, Kings County
Docket Number: 502589/17
Judge: Karen B. Rothenberg

At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 5th day of February, 2021.

P R E S E N T:

HON. KAREN B. ROTHENBERG,
Justice.

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TRUMP VILLAGE SECTION 4, INC. AND IGOR OBERMAN,

Plaintiffs,

- against -

Index No. 502589/17

JERRY SHVADRON A/K/A JERRY SHVADRONOV,

Defendant.

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The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	103-113
Opposing Affidavits (Affirmations)	126-131
Reply Affidavits (Affirmations)	132
Affidavit (Affirmation)	
Other Papers	

Upon the foregoing e-filed papers, plaintiffs Trump Village Section 4 (Trump Village) and Igor Oberman (Oberman) (collectively, plaintiffs) move, pursuant to CPLR 2304, in motion sequence eight, for an order quashing the trial subpoenas duces tecum served upon

them and two non-parties by defendant Jerry Shvadron a/k/a Jerry Shvadronov (defendant) and, pursuant to 22 NYCRR § 130-1.1, for sanctions against defendant in the amount of $10,000, costs and attorney's fees.

Facts

Plaintiff Trump Village is the owner of a residential apartment complex in Brooklyn and plaintiff Oberman is the cooperative's general manager. Defendant was the beneficiary of the shares of his late mother's cooperative apartment in Trump Village and the trustee of her revocable trust (the Trust) which held those shares, subject to the approval of the transfer by Trump Village. On June 29, 2016, defendant's application to transfer the shares of the Apartment from the Trust to himself was denied by Trump Village's board of directors based, in part, upon defendant and his wife's low credit scores and an unexplained misrepresentation by defendant about a tax lien.

On July 9, 2016, defendant entered the management office of Trump Village, demanded a photocopy of his file from Trump employee Joseph Gaba, and engaged in an exchange with Gaba in the presence of Trump Village employees and residents, which was recorded on videotape. During the exchange, defendant accused Trump Village of denying his transfer application because he did not pay a $5,000 bribe and stated that Oberman thought of himself as a "Russian . . . gangster . . . [and]/or mobster" and a "'connected mobster." On or about December 9, 2016, defendant created a petition on the website Moveon.org (the online petition) in which he stated that Trump Village had harassed and

intimidated its shareholders and residents, and that Trump Village and its board of directors were corrupt, had started a "campaign of harassment and intimidation" by barring his entrance into his mother's apartment, and had engaged in "unlawful and unethical practices."

On or about February 15, 2017, plaintiffs commenced this action to recover damages for injuries they had allegedly sustained as a result of the defamatory statements defendant made about them. By notice of motion dated February 11, 2019, plaintiffs moved, in mot. seq. five, for an order granting them partial summary judgment on the issue of liability in their defamation action, and to dismiss defendant's affirmative defenses.

By decision and order dated January 2, 2020, this court granted plaintiffs' motion for summary judgment against defendant on their causes of action for defamation per se, libel per se and slander per se based upon the statements defendant made in his online petition and during the conversation he had in the Trump management office (*supra*). An inquest on damages was scheduled for March 3, 2020.

A few days later, defendant served the instant subpoenas upon each plaintiff (containing 19 identical requests for information with some 50 subdivisions in total) and two non-parties. Thereafter, plaintiffs made the instant motion to quash the subpoenas and for sanctions.[1]

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[1] In the interim, Mr. Shvadron, in July of 2016, filed a summons and moved by order to show cause for a preliminary injunction, in his capacity as the trustee of the Trust, to enjoin Trump Village from preventing him from exercising any of his shareholder rights (*Shvadron, as Trustee of Faina Shvadronov Revocable Trust v Trump Village Section 4 Inc.*[Sup Court, Kings County 2016, index No. 512291/16]) and subsequently filed a complaint alleging various causes of action, including a cause of action seeking a declaration that he was the lessee of the

Discussion

"[T]he purpose of a subpoena duces tecum is 'to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding'" (*Capacity Group of NY, LLC v Duni*, 186 AD3d 1482, 1484 [2d Dept 2020]). More specifically, the purpose of a subpoena duce tecum is "to direct an individual, or entity, to produce books, documents, papers, or other items in his or her possession as a basis for testimony relevant to the matter under inquiry" (*Matter of Javier V.*, 249 AD2d 314, 314 [2d Dept 1998]).

Accordingly, "[a] subpoena duces tecum may not be used for the purpose of general discovery or to ascertain the existence of evidence" (*Capacity Group of NY, LLC,* 186 AD3d at 1484; *see also Matter of Terry D.*, 81 NY2d at 1044; *Wahab,* 106 AD3d at 995; *Matter of Board of Educ. of City of N.Y.,* 294 AD2d at 360). In addition, a subpoena duces tecum may

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Apartment under the proprietary lease and that the shares appurtenant to the Apartment were his property. In October, 2016, Trump Village moved, pursuant to CPLR 3211 (a) (1) and (a) (7), to dismiss six causes of action asserted in Mr. Shvadron's complaint, which motion was granted. In this regard, by order dated April 6, 2017, the court (Velasquez, J.), dismissed six of Mr. Shvadron's causes of action against Trump Village and denied Mr. Shvadron's order to show cause for a preliminary injunction, stating, among other things, that Mr. Shvadron had failed to establish a likelihood of success on the merits on his two remaining claims that he was the lessee under the proprietary lease and that he was entitled to exercise those rights. In particular, the court held that Mr. Shvadron had failed to "cite any authority supporting his claim that he possesses shareholder rights, least of all rights enabling him to have undefined 'unfettered access' to the Apartment." Further, the court held that Trump Village had "acted within its authority to deny [Mr. Shvadron's] transfer application."

not be used to obtain "production of certain materials that the defendants had failed to seek during the discovery process, or that had previously been the subject of an unsuccessful motion to compel disclosure" (*Wahab,* 106 AD3d at 995; *see also* see *Mestel & Co. v Smythe Masterson & Judd*, 215 AD2d 329, 329-330 [1st Dept 1995]). Nor may a subpoena duces tecum be used "as a discovery device and a fishing expedition to secure from [a party] . . . discovery that [] counsel had neglected to obtain in pretrial disclosure" (*Mestel & Co.,* 215 AD2d at 330).

As to non-party subpoenas, "[p]ursuant to CPLR 3101 (a)(4), a party may obtain discovery from a nonparty of 'matter material and necessary in the prosecution or defense of an action' in possession of the nonparty, as long as the nonparty is apprised of the reasons such disclosure is sought" (*Islip Theaters, LLC v Landmark Plaza Props. Corp*., 183 AD3d 875, 876 [2d Dept 2020], quoting CPLR 3101 [a]; *see also Reda v Port Auth. of N.Y. & N.J.*, 188 AD3d 1278 [2d Dept 2020].

"""A party or nonparty moving to quash a subpoena has the initial burden of establishing either that the requested disclosure is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious""" (*Islip Theaters, LLC,* 183 AD3d at 876, quoting *Hudson City Sav. Bank v 59 Sands Point, LLC*, 153 AD3d 611, 612-613 [2d Dept 2017]). "'Should the [movant] meet this burden, the subpoenaing party must then establish that the discovery sought is material and necessary to

the prosecution or defense of [the] action'" (*Islip Theaters, LLC,* 183 AD3d at 876, quoting *Matter of Kapon,* 23 NY3d at 34 [internal quotation marks omitted]).

As a preliminary matter, inasmuch as the parties reserved their rights to conduct post-note of issue discovery, as indicated in two of the court's orders (October 5, 2018 and December 11, 2018), defendant was not required to demonstrate "unusual or unanticipated circumstances *and* substantial prejudice" absent additional discovery before serving the subject subpoenas (*Buist v Bromley Co., LLC*, 47 Misc 3d 1227[A], 2015 NY Slip Op 50868 [U], *3 [Sup Ct, Kings County 2015]).

The Non-Party Subpoenas

The non-party subpoenas are directed to the law firms of Weil, Gotshal & Manges LLP (The Weil subpoena) and David Wright Tremaine LLP (the DWT subpoena), which defended their clients against defamation claims asserted by plaintiffs. Plaintiffs state, and it is undisputed, that each of the settlement agreements requested in the non-party subpoenas contain confidentiality provisions.

Plaintiffs correctly argue that the non-party subpoenas are defective since defendant "failed to provide the nonpart[ies] with the required explanation of the circumstances or reasons requiring disclosure either on the face of the subpoenas or in any accompanying material" (*Gandham v Gandham*, 170 AD3d 964, 966 [2d Dept 2019], citing CPLR 3101 [a] [4]. While these subpoenas state that "your testimony is sought in connection with the defense of [p]laintiffs' claims," they fail to provide any information, such as the relationship

between this action and the other actions, or any accompanying material, and thus are insufficient to satisfy the notice requirement (*compare Matter of Kapon*, 23 NY3d at 39).

In opposition, defendant essentially concedes this defect because he merely states that "[t]he subpoena regarding Ms. Bezvoleva [the Weil subpoena] identifies the action against her, and contains the same requests as in the subpoena to Crain's [the DWT subpoena]." Defendant also asserts that the Crain's action involves the same dispute that is the subject of this action, and that the settlement of the Crain's action is "inextricably related to the instant case." However, defendant does not identify specific facts to support his claim, and the court declines to "cull" them on his behalf (*cf. Grotallio v Soft Drink Leasing Corp*., 97 AD2d 383 [1st Dept 1983]; *see generally Lomeli v Falkirk Mgt. Corp.,* 179 AD3d 660, 663 [2d Dept 2020]].

In any event, "[t]he fact that [the recipients of the non-party subpoenas] are alleged to know the 'circumstances' of this action, does not excuse the failure to comply with CPLR 3101 (a) (4)" (*Pavia v 810 Broadway Assocs*., 130 Misc 2d 1054, 1054 [Sup Ct, NY County 1988], quoting CPLR 3101 [a] [4]). Thus, that branch of plaintiffs' motion to quash the two non-party subpoenas is granted.

The Subpoenas Served on Plaintiffs

Item Nos. 1, 2, and 3

Items Nos.1 and 2 seek documents relating to the November, 2014 decisions/determinations of the Unemployment Insurance Appeal Board and the New York

City Conflicts of Interest Board concerning Oberman; the Appellate Division decisions affirming these decisions; any notices of those decisions or the affirmances that plaintiffs received or are in possession or control of; any transcript of testimony in connection with any hearings related to those proceedings; and "[a]ny and all newspaper articles, news releases, public notices, social media postings and other publications reporting on the foregoing."

Plaintiffs argue that defendant has not stated that he made his defamatory statements in this action based on these administrative determinations so therefore they are irrelevant to this action; that there is little connection between defendant's defamatory statements in this action and the determinations of these proceedings (this argument must exclude the civil rights action [*see infra*] since defendant does not indicate whether it culminated in a decision and order or settlement); that even assuming defendant's defamatory statements in this action are relevant to the two administrative determinations, his defamatory statements in this action are not relevant *to the damages these statements caused;* and that since these items are a matter of public record, they should not be compelled to provide them (*Blagrove v Cox*, 294 AD2d 526 [2d Dept 2002] ["production of documents in a prior action should not be compelled to the extent that they are available as a matter of public record"]).

With respect to Item No. 3, the 2015 civil rights action brought against Trump Village and/or Oberman - the subpoena seeks the complaint; any preceding administrative complaints and/or warnings; the settlement of that action; and "[a]ny and all newspaper articles, news releases, public notices, social media postings and other publications reporting

on the foregoing." Plaintiffs argue that this demand is overbroad; that defendant is unable to show how the information relates to the damages inflicted by his false and defamatory statements, and that everything requested by defendant under this item number is readily available to him (*see Blagrove,* 294 AD2d at 526).

Except for the settlement agreement sought in Item No. 3, even assuming these items are relevant to the compensatory and reputational damages suffered by plaintiffs, defendant does not dispute in his opposition that to the extent these documents are available as a matter of public record, plaintiffs are not required to produce them (*id.*; *cf. Cabellero v City of New York,* 48 AD3d 727 [2d Dept 2008]). Moreover, these demands are overbroad, in particular the subdivision seeking "any and all" newspaper, articles, etc. (*Grotallio,* 97 AD2d at 383). Thus, with respect to these items requested under Item Nos. 1, 2 and 3, plaintiffs have sustained their burden and defendant has failed to rebut it.

With respect to the additional request in Item No. 3 (i.e. any settlement agreement in the civil rights action), as noted above, plaintiffs argue that this document is also publicly available to defendant, but without any support for this assertion. However, in Point V of their memorandum of law, plaintiffs assert that the subpoenas seeking prior settlement agreements should be quashed. While plaintiffs only address the actions referenced in the non-party subpoenas, they discuss the need for settlement agreements to remain confidential and the balancing test courts use in making this determination. Specifically, plaintiffs note that with respect "to the question of whether case law proscribes secret agreements,

specifically, settlement agreements, "[i]t is well settled that strong policy considerations favor settlements" (*Hulse v A.B. Dick Company,* 162 Misc 2d 263, 267 [1994], *affd* 222 AD2d 381 [1st Dept 1995], citing *Hallock v State of New York*, 64 NY2d 224, 230 [1984]; *Randall Elec. v State of New York*, 150 AD2d 875, 876 [3d Dept 1989]; *Allegretti-Freeman v Baltis*, 205 AD2d 859 [3d Dept 1994]). In this regard, plaintiffs quote *Hulse*, as follows:

> "A negotiated compromise of a dispute avoids potentially costly, time-consuming litigation and preserves scarce judicial resources; courts could not function if every dispute required a trial. In addition, there is a societal benefit in recognizing the autonomy of parties to shape their own solution to a controversy rather than having one judicially imposed. Most importantly, a settlement produces finality and repose upon which people can order their affairs.
>
> "In connection with these principles it is recognized that confidentiality is, in certain circumstances, necessary in order to protect the litigants or encourage a fair resolution of the matter in controversy. The court must weigh the goals of encouraging the settlement of disputes and stemming the burgeoning tide of litigation against the rights of those not privy to the settlement agreement. Courts must have discretion to balance the competing interests of the parties, the public, and the justice systems. When this balance favors confidentiality, confidentiality should be provided" (*Hulse,* 162 Misc 2d 267-268) (internal citations and quotation marks omitted).

Further, plaintiffs argue that terms of the settlement agreement must be material and necessary, which are not the case in the present action (*Hulse*, 222 AD2d at 382; *Altonen v Kmart of NY Holdings, Inc.,* 94 AD3d 920, 920 [2d Dept 2012]).

In addition, referring to the Crain's and Bezvoleva actions, plaintiffs contend that defendant is seeking settlement agreements from two unrelated defamation actions. In

particular, plaintiffs contend that the depositions sought and other discovery demands address an entirely different set of defamatory allegations in a different forum and with a different audience, and thus would have little bearing on the damages sustained by plaintiffs as a result of defendant's defamatory statements.

Plaintiffs' arguments relating to the Crain's and Bezvoleva settlement agreements are equally applicable to any potential settlement agreement in the civil rights action, as even assuming the civil rights action involved defamation claims, such claims would address an entirely different set of defamatory statements than those involved here. Further, based upon the present record, in particular the lack of information about the existence of any settlement agreement (or decision/order) in the civil rights action, and the likelihood that such action does not involve defamation claims, plaintiffs have demonstrated that the need for privacy outweighs the need for disclosure of any potential settlement agreement. In summary, "there is no reason for this court to conclude that the substantive terms of [any potential] []settlement agreement[] sought [in this item number] would produce any relevant information or that such settlement agreement [itself is] material and necessary to the instant action" (*Breest v Haggis*, 2019 NY Slip Op 31935 [U], *2-3 [Sup Ct, NY County 2019]; *see also Matter of New York County Data Entry Worker Prod. Liability Litig.Hulse*, 222 AD2d 381, 382 [1st Dept 1995]; *Altonen,* 94 AD3d at 920).

In opposition, defendant does not address the policy considerations favoring confidentiality of settlement agreements with respect to the civil rights action, or any other

actions commenced by plaintiffs. Defendant argues that with respect to the subpoenas relating to the civil rights action, these demands are relevant to the inquest simply because they seek information where plaintiffs were "prosecuted by the United States [g]overnment for civil rights violations," and do not make them relevant. Accordingly, those branches of plaintiffs' motion to quash Item Nos. 1, 2, and 3 are granted.

Item No. 4

This item requests "[f]indings of the New York City (CFB) concerning alleged violations by or on behalf of Igor Oberman," including complaints, findings, transcripts of testimony, and any and all newspaper articles, public notices, social media postings, etc. Plaintiffs do not specifically respond to this request. However, these documents are publicly available. In opposition, defendants do not state that these documents are sealed or unavailable. Thus, to the extent the documents requested under this item are available as a matter of public record, plaintiffs are not required to produce them (*Blagrove,* 294 AD2d 526). Therefore, this branch of plaintiffs' motion to quash Item No. 4 is granted.

Item Nos. 5, 6, and 7

These items request documents "[r]egarding [p]laintiffs' defamation...actions against" Crain's and Bezvoleva, and "other complaints of defamation . . . by [p]laintiffs"; any decisions entered; the allegedly defamatory statements made; any settlements of these actions; any newspaper articles or social media reporting on the foregoing; and for Item No. 5 only, any retraction or apology. Plaintiffs correctly argue that aside from requests for any

settlement agreements, all information sought is easily obtained by accessing the respective docket for each action. Moreover, with respect to publications such as newspaper articles and public notices, those items are publicly available as well (*Blagrove,* 294 AD2d 526). Further, these demands are overly broad requests (seeking "any other complaints of defamation . . . by [p]laintiff[s]") akin to a "fishing expedition" to obtain discovery. In opposition, defendant fails to address these arguments, in effect conceding that plaintiffs are not required to provide these documents.

With respect to obtaining any settlement documents, plaintiffs make the same argument as detailed above, and that the depositions sought and other discovery demands address an entirely different set of defamatory allegations on a different forum and with a different audience, and thus would have little bearing on the damages sustained by plaintiffs as a results of defendant's statements that are the subject of this action.

In opposition, defendant states, without further analysis, that these agreements contain "highly relevant information" which would "also relate to other cases and damages sought," which would allow plaintiffs to obtain a double recovery. Defendant also asserts that, at least with respect to the non-party subpoena, the Crain's action involves the same dispute that is the subject of this action, and that the settlement of the Crain's action is "inextricably related to the instant case," but without further support. Based upon the foregoing, defendant has failed to rebut plaintiffs' showing that these settlement agreements are not material and

necessary. Therefore, those branches of plaintiffs' motion to quash Item Nos. 5, 6, and 7 are granted.

Item No. 8

This item requests information relating to Oberman's employment, other sources of earned income and reimbursement or payment of business/employment related expenses, from January 2015 to the date of the inquest. The demands seek, employment and other related agreements; other documents listing the terms of Oberman's employment; agreements and other documents listing the terms of other sources of Oberman's earned income; Oberman's W-2s and 1099's, and federal and state tax returns; and "documents listing all of Igor Oberman's earned income," and for each payment, the source and the reason, the gross amount and each deduction, date of payment and time period covered by the payment.

In support of this branch of their motion to quash, plaintiffs merely repeat the demands of this item number, and do not respond to this demand. Thus, plaintiffs motion to quash Item No. 8 is denied.

Item No. 9

This item requests "[a]ll Board resolutions, minutes, memorandum and other documents relating to" Oberman's "appointment, duties, responsibilities, or scope of authority in connection with his employment and any other position (e.g. Board Member, Officer, Assistant Secretary, etc.) at Trump Village." In support of this branch of plaintiffs' motion, plaintiffs assert that defendant "does not and cannot explain how such information

has any bearing on the reputational damage suffered by Mr. Oberman as a result of his statements." Plaintiffs also argue generally that a subpoena may not be used to obtain "production of certain materials that the defendants had failed to seek during the discovery process, or that had previously been the subject of an unsuccessful motion to compel disclosure" (*Wahab,* 106 AD3d at 995; *see also Mestel & Co.,* 215 AD2d at 329-330). In this regard, plaintiffs assert, that "many of the items requested in [d]efendant's trial subpoenas ... were already denied in the [June 18, 2018] [d]ecision granting [them] a protective order."

In opposition, defendant states that the subpoenas served on plaintiffs seek "documents *that bear upon the monetary and career damages allegedly* suffered by Oberman... his employment and compensation with Trump Village, including proof of income, his negotiations with Trump Village over his compensation and authority, employment reviews and assessments, and the like" (emphasis added).

In his January 31, 2018 discovery demand, item number 26 sought "all documentation concerning the hiring of Igor Oberman *as the manager"* (emphasis added). The court granted plaintiffs' May 22, 2018 motion for a protective order (mot. seq. two) with respect to this January 31, 2018 demand by only providing defendant with two items of discovery, which did not include item number 26. Since Item No. 9 encompasses item 26 of defendant's January 31, 2018 discovery demand, plaintiffs have satisfied their burden that they are not required to provide the documents requested with respect to the hiring of Mr. Oberman *as manager* which were denied pursuant to the June 18, 2018 court order.

However, plaintiffs have failed to demonstrate that the remainder of the information sought in this item (i.e. documents relating to Mr. Oberman's appointment and duties *as a board member*) was sought by defendant in his January 31, 2018 discovery demand and denied by the June 18, 2018 protective order.

In opposition, defendant has established that these documents are material and relevant to damages because they "*bear upon the monetary and career damages allegedly* suffered by Oberman." In this regard, "[t]he law in New York regarding claims of 'defamation per se' is as follows: [p]laintiffs in a defamation action must prove special damages, meaning economic or financial loss, unless they fit within an exception in which damages are presumed, i.e., defamation per se, one of the four classifications of which is charging plaintiff [] with a serious crime" (*Gottwald v Geragos*, 61 Misc 3d 1214 [A], 2018 NY Slip Op 51506 [U], *15 [Sup Ct, NY County 2018] [internal citations and quotation marks omitted]).

Here, plaintiffs alleged in the complaint that "each and every allegation falls under one of the four per se exceptions for defamation" (NYSCEF Doc No. 2 at ¶ 30), and in its January 2, 2020 decision and order, the court found that defendant's comments about plaintiffs constituted defamation per se in part because defendant's statements accused plaintiffs of committing a serious crime. Therefore, plaintiffs do not need to prove special damages. However, "even though 'the existence of compensatory damages is presumed, *the quantum of such damages is not*, and the party who made the defamatory statement . . . must

be permitted to rebut that presumption and *disprove the amount of damages sought to be recovered*'" (*id.*, quoting *Gatz v Otis Ford*, 274 AD2d 449, 450 [2d Dept 2000]). Thus, where, as here, a "complaint merely recites that '[p]laintiff has been damaged in an amount to be determined at trial . . . and is further entitled to punitive damages in an amount also to be determined at trial'" such a "very open-ended allegation regarding compensatory damages" also entitles the defendant "to make a proportionately open-ended inquiry into the nature and amount of damages for which plaintiff is seeking compensation" (*id.*).[2] The same reasoning applies to the second category of defamation per se arising from statements "'that tend to injure another in his or her trade, business or profession'" (*Gottwald,* 2018 NY Slip Op 51506 [U], *16, quoting *Liberman v Gelstein*, 80 NY2d 429, 435 [1992]). Here, plaintiffs also alleged this same category of defamation per se in their complaint (trade libel per se) and the court found in its January 2, 2020 decision and order that defendant was liable for making statements that constituted trade libel per se. Thus, defendant is entitled to inquire into the nature and/or the amount of such lost income which resulted from these statements (*Gottwald,* 2018 NY Slip Op 51506 [U], *16). Therefore, that branch of plaintiffs' motion to quash Item No. 9 is denied.[3]

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[2]The complaint recites "[p]laintiffs . . . seek, including, among other things, monetary losses and the emotional harm inflicted upon them in the amount greater than the jurisdictional limit of all lower courts to be determined by the trier of fact, and punitive damages . . ." (NYSCEF Doc No. 2 at ¶ 60).

[3]While the court, in its October 19, 2020 order, directed plaintiffs to provide defendant with statements particularizing the damages they sustained as a result of defendant's defamatory statements, and other such similar statements (i.e. regarding nature and amount of lost

Item Nos. 10, 11, and 12

Plaintiffs merely repeat the text of Item No. 10 (seeking "[a]ll of Mr. Oberman's 1099s and other tax documents reporting proceeds of awards, settlements or other recoveries received in any defamation actions from January 1, 2015 to the date of trial") without any accompanying analysis, and do not respond to Item Nos. 11 and 12 (documents regarding negotiations, increases, decreases, requests for increases or discussions of Mr. Oberman's compensation, position, title, authority, etc. [Item No. 11] and any investigations concerning either of the plaintiff's reputation or the impact of any alleged defamatory or negative statements [Item No. 12], from January 1, 2015 to date of trial). Thus, those branches of plaintiffs' motion to quash Item Nos. 10, 11, and 12 are denied (*Islip Theaters, LLC,* 183 AD3d at 876).

Item No. 13

This item requests "[a]ny analytics/metrics regarding the petition/website that is the subject of the libel claim," i.e. the online petition. This request is vague, and "the use of a subpoena is improper when it is unclear whether documents exist and what they might be" (*Gandler v City of New York*, 2008 NY Slip Op 31271 [U], *8 [Sup Ct, NY County 2008]). Further, plaintiffs have demonstrated that they are not required to provide this information

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commission, income and/or revenue), Item No. 9 seeks documents relating to damages which are more specific than those awarded to defendant via the October order and which had not been requested in any other document demand by defendant. Moreover, defendant cannot be faulted for failing to request documents relating to damages earlier in this action since at that point in time, the court had not yet granted plaintiffs' motion for summary judgment.

inasmuch it calls for them to provide defendant with the analytics of a site defendant created, controls and possesses (*cf. Matter of Buholtz v Board of Directors of Rochester Philharmonic Orch. Inc.,* 39 Misc 3d 491, 492-493 [2013]). Inasmuch as plaintiffs have shown that they are not required to provide this information, and defendant has failed to address this argument in his opposition, that branch of plaintiffs' motion to quash Item No. 13 is granted.

Item No. 14

This item requests "[a]ny online searches of either [p]laintiff's reputation from January 1, 2015 to the date of trial." Plaintiffs argue that this item appears to ask for Google searches run by plaintiffs about themselves and saved. As plaintiffs assert, such searches are public information, and therefore they are not required to provide them. Further, as plaintiffs note, this request is vague (*Gandler,* 2008 NY Slip Op 31271 [U], *8). Inasmuch as plaintiffs have shown that they are not required to provide this information, and defendant has failed to address this argument in his opposition, that branch of plaintiffs' motion to quash Item No. 14 is granted.

Item No. 15

This item requests "[a]ny reviews and assessments of Igor Oberman's professional performance from January 1, 2015 to the date of trial." Plaintiffs argue that defendant does not claim that his statements were based on these reviews. Plaintiffs also assert that defendant "cannot demonstrate how [these documents] are relevant to the damages his statements caused." In opposition, as noted above, defendant states that the subpoenas

served on plaintiffs seek "documents *that bear upon the monetary and career damages allegedly* suffered by Oberman - his employment and compensation with Trump Village, including proof of income, his negotiations with Trump Village over his compensation and authority, employment reviews and assessments, and the like" (emphasis added).

Plaintiffs have failed to sustain their burden with respect to this request. That defendant's defamatory statements were not based *on these reviews* does not mean that they are not relevant to the damages Oberman allegedly sustained. Further, it is plaintiffs' burden to demonstrate that the documents sought are not relevant. Finally, the court has already determined that the documents defendant seeks in this item number are relevant to damages (*see* Item No. 9). Thus, this branch of plaintiffs' motion to quash Item 15 is denied.

Item Nos. 16, 17, and 18

The court's October 19, 2020 found that defendant had acknowledged that he possessed a copy of the July 9, 2016 videotape and that he made a transcription of same. Also, plaintiffs state that they have provided the recording and transcript to defendant's new counsel. As to Item No. 18, the October 19, 2020 order directed plaintiffs to provide defendant with copies of all exhibits marked during his deposition.

Item No. 19

This item requests the exhibits referred to in the complaint. This information is publicly available on the court's NYSCEF website, and thus plaintiffs are not required to provide these documents.

Sanctions

That branch of plaintiffs' motion to impose sanctions against defendant, pursuant to 22 NYCRR § 130-1.1, is denied since the service of the subpoenas did not constitute frivolous conduct.

In summary, plaintiffs' motion to quash is granted as to Item Nos. 1, 2, 3, 4, 5, 6, 7, 13, 14, 16, 17, 18, 19; that branch of plaintiffs' motion to quash the two non-party subpoenas is granted; the remainder of the motion to quash is denied; and the motion for sanctions to be imposed against defendant is denied.

This constitutes the decision and order of the court.

E N T E R

J. S. C.