

Kal Tire v Vitale
2021 NY Slip Op 32428(U)
October 14, 2021
Supreme Court, New York County
Docket Number: 657644/2019
Judge: Andrew Borrok
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ANDREW BORROK PART 53

Justice

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<p>KAL TIRE,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>ALESSANDRO VITALE, MATTEO DENINNO,</p> <p style="text-align: center;">Defendant.</p>	<p>INDEX NO. <u>657644/2019</u></p> <p>MOTION DATE <u>10/05/2021</u></p> <p>MOTION SEQ. NO. <u>006 008 010</u> <u>011 012 013</u></p>
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**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 197, 198, 199, 200, 204, 211, 212, 213

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 218, 219, 220, 221, 222, 223, 224, 225, 229, 230, 231, 232, 233, 234, 235, 246, 247

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 236, 237, 238, 239, 240, 241, 242, 243, 244, 245

were read on this motion to/for EXTEND - TIME.

The following e-filed documents, listed by NYSCEF document number (Motion 012) 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285

were read on this motion to/for STRIKE PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 013) 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309

were read on this motion to/for DISCOVERY.

Motion seq. nos. 006, 008, 010 – 013 are decided as set forth on the record (10-13-2021) and below.

In motion seq. no. 006, Matteo Deninno moves to dismiss pursuant to §§ 202 and 3211(a)(5), statute of limitations. The motion is denied. As an initial matter, Mr. Denino has previously moved to dismiss (*see* Mtn. Seq. No. 001) and pursuant to CPLR § 3211(e) “no more than one such motion shall be permitted.” Inasmuch as Mr. Denino claims that he had asked his former lawyer to raise statute of limitations arguments and counsel would not, this may be a basis for a malpractice claim against his former counsel, but it is not a basis for this (second) motion. In any event, the court considered and rejected substantially identical statute of limitations arguments on Alessandro Vitale’s motion to dismiss (Mtn. Seq. No. 002, NYSCEF Doc. No. 75). The same result is compelled now.

In motion seq. no. 008, Mr. Deninno moves pursuant to CPLR § 2304 to preclude Kal Tire from any further efforts to enforce certain *subpoena duces tecum* (the **Subpoenas**) issued to Linares Associates, LLP (NYSCEF Doc. No. 199) and Giuseppe Brusa, CPA (NYSCEF Doc. No. 200). Kal Tire and Mr. Deninno have recently resolved most of this motion: Mr. Deninno has withdrawn his opposition to first five requests in the Subpoenas and Kal Tire has agreed to withdraw its sixth and seventh requests. The only remaining issue is about the eighth request, which seeks, “[a] detailed general or nominal ledger of the accounting software for each of the Deninno Entities” (NYSCEF Doc. Nos. 199-200). The information sought is relevant to the claims asserted in this action and the Subpoenas meet the notice requirements of CPLR § 3104(a)(4). The motion to quash is denied.

In motion seq. no. 010, Kal Tire moves for sanctions against Alessandro Vitale in the form of ordering Mr. Vitale to pay Kal Tire attorneys' fees and costs incurred in connection with the August 2 and 5, 2021 depositions and this application, and an order compelling Mr. Vitale to appear for deposition. The motion is denied. As discussed on the record (10-13-2021), Mr. Vitale shall appear at a deposition on November 9th, 2021. For the avoidance of doubt, Mr. Vitale must appear at a quiet location where Kal Tire can hear him and without excessive background noise. Should he fail to appear at that time at an appropriate venue for a deposition, Kal Tire may move to have his answer struck and judgment entered in favor of Kal Tire. Given the connection issues and Mr. Vitale's decision to attempt to attend his previous deposition from a boat and otherwise not from a secure land line on multiple occasions, the deposition will last 7 hours and Mr. Vitale is ordered to pay the reasonable attorney's fees and the actual costs associated with the prior failed attempts to hold a deposition based on Mr. Denino's decision. Kal Tire shall submit a bill and should Mr. Denino object to the attorneys' fees portion of the bill, the matter shall be referred to a Special Referee to hear and determine the amount of such reasonable attorneys' fees.

In motion seq. no. 011, Kal Tire moves to extend the date by which note of issue must be filed from August 20, 2021. The motion is unopposed. Note of issue shall be extended until November 23, 2021.

In motion seq. no. 012, Kal Tire moves to strike Mr. Deninno's answer based on his noncompliance with discovery orders, or, in the alternative, an order precluding Mr. Deninno

from introducing any evidence at trial, and for legal fees and costs in connection with this motion. Inasmuch as Mr. Deninno claims he has complied with his discovery obligations, Mr. Deninno must indicate which documents are responsive to which request. All documents must also be clearly identified by bates stamp number. The foregoing must be provided on or before November 11, 2021.

Finally, in motion seq. no. 013, Kal Tire moves to compel Mr. Vitale to produce documents in response to Kal Tire's First Notice for Discovery and Inspection of Documents, and for an order of preclusion in the event Mr. Vitale fails to do so. Mr. Vitale has agreed to provide his consent for Kal Tire to access his accountant's records within two weeks. This is sufficient and less burdensome than requiring Mr. Vitale to produce his tax returns. Inasmuch as there are also outstanding documents requests for emails and documents, Mr. Vitale is directed to produce any responsive documents and emails on or before November 5, 2021. Such documents shall be bates stamped and will indicate which requests they are responsive to.

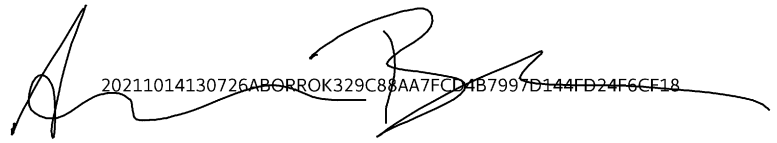
Accordingly, it is

ORDERED that Mr. Deninno's motion to dismiss (Seq. No. 006) is denied; and it is further

ORDERED that the discovery motions (Seq. Nos. 008, 010, 011, 012, and 013) are decided as set forth above, and it is further

ORDERED that **note of issue is extended to November 23, 2021**; and it is further

ORDERED that the parties shall appear for a remote conference on **November 22, 2021 at 11:30 AM.**


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10/14/2021
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