

Karsah Intl., Inc. v Jong Soo Kim

2022 NY Slip Op 30056(U)

January 10, 2022

Supreme Court, New York County

Docket Number: 154340/2018

Judge: Sabrina B. Kraus

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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 57

KARSAH INTERNATIONAL, INC. and
KAREN WANG

Plaintiffs,

-against-

JONG SOO KIM

Defendant.

JONG SOO KIM,

Counterclaim-Plaintiff,

-against-

A.O. TEXTILE, INC.

Additional and Nominal
Counterclaim-Defendant

DECISION & ORDER

Index No.: 154340/2018

Motion Seq No. 2

HON. SABRINA KRAUS

The following e-filed documents, listed by NYSCEF document number were read on this motion to compel (Motion Seq No 2): 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178 and 179.

BACKGROUND

Plaintiffs commenced this action in Supreme Court New York County seeking a declaratory judgment related to the parties rights and obligations in connection with the sale of a company from defendant to plaintiff. Defendant has appeared and asserted counterclaims related to the same transaction.

THE PENDING MOTION

In September 2021, plaintiffs moved for an order compelling discovery of documents pertaining to a New Jersey litigation regarding the sale of a company by defendant and his wife to an unrelated third party. On January 10, 2022, the court heard oral argument and reserved decision. For the reasons stated below the motion is denied.

DISCUSSION

Plaintiffs argue that documents from the sale of the other company and which are the subject of litigation in New Jersey are related to their defense to defendant's fraud claim and specifically to the claim that defendant relied on representations made by plaintiff concerning his post closing employment with the company as a consultant. The terms of said employment are governed by a written contract, the consulting agreement. It is undisputed that there was no such consulting agreement in the transaction which is the subject of the New Jersey litigation.

In their reply papers, plaintiffs argue for the first time that such discovery is relevant to determinations regarding defendant's credibility, and whether he sought to mitigate damages by gaining other employment after his termination by plaintiffs.

CPLR § 3101 provides for full disclosure of all matter material and necessary in the prosecution or defense of an action (*Palmatier v. Mr. Heater Corp.*, 156 A.D.3d 1167, 1168, 68 N.Y.S.3d 530 [2017]). "The words, 'material and necessary,' are to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial" (*Galasso v. Cobleskill Stone Prods., Inc.*, 169 A.D.3d 1344, 1345 [2019]). On this motion, plaintiffs bear the burden of proving that the discovery request is reasonably

calculated to yield material and necessary information (*see Catlyn & Derzee, Inc. v. Amedore Land Devs., LLC*, 166 A.D.3d 1137, 1141[2018]). “Supreme Court is vested with broad discretion in controlling discovery and disclosure, and generally its determinations will not be disturbed in the absence of a clear abuse of discretion” (*Gold v. Mountain Lake Pub. Telecom.*, 124 A.D.3d 1050, 1051).

Plaintiffs have largely failed to meet their burden in this regard. The determination of the parties rights in this action will largely be predicated on the contracts governing the transactions at issue herein. Discovery of documents pertaining to a different sale with different contracts and applicable provisions is not likely to yield material relevant and necessary to the determinations in the case at bar. Additionally, the parties are at a point where discovery should be coming to a close and the order to compel that plaintiffs now seek is unreasonably broad encompassing 16 categories of documents covering everything from communications between employees of the parties in the New Jersey litigation to copies of all discovery produced in that action, all deposition transcripts etc.. Such a broad based request smells like a fishing expedition.

Notwithstanding the foregoing, the court is inclined to grant the motion only with respect to directing defendant to provide a copy of the Stock Purchase Agreement entered into on January 31, 2018 for the sale of A.O. Fashion and the deposition transcript of Kim Jong Soo from the New Jersey Action. The court finds the additional requests to be too broad and not material and relevant to the issues in this action.

Defendant claims that plaintiff has not complied with all its discovery obligations but waives any further compliance stating in his motion papers that he is prepared to move forward with trial or dispositive motions (Affirmation in Opposition of Alex Corey, par. 4).

Accordingly it is hereby:

ORDERED that plaintiffs motion to compel discovery is granted only to the extent of directing defendants to provide within 30 days of receipt of this order a copy of the Stock Purchase Agreement entered into on January 31, 2018 for the sale of A.O. Fashion and the deposition transcript of Kim Jong Soo from the New Jersey Action; and it is further

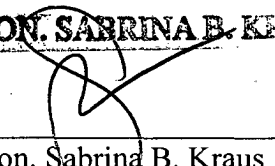
ORDERED that service of this order upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website), and it is further

ORDERED that any relief sought not expressly addressed herein has nonetheless been considered and is denied.

This constitutes the decision and order of the court.

Dated: January 10, 2022

HON. SABRINA B. KRAUS



Hon. Sabrina B. Kraus
Acting Supreme Court Justice