

**Louis Monteleone Fibres, Ltd. v Kejriwal Newsprint
Mills LLC**

2022 NY Slip Op 30071(U)

January 6, 2022

Supreme Court, New York County

Docket Number: Index No. 652202/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE BLUTH PART 14

Justice

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LOUIS MONTELEONE FIBRES, LTD.,
Plaintiff,

INDEX NO. 652202/2020

MOTION DATE 12/21/2021

MOTION SEQ. NO. 003 004

- v -

KEJRIWAL NEWSPRINT MILLS LLC N/K/A RESOURCE
REUTILIZATION LLC,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 76, 77, 78, 79, 80,
81, 82, 83, 84, 89, 90, 91, 92

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 004) 85, 86, 87, 88, 93,
94, 95, 96

were read on this motion to/for DISCOVERY

Motion Sequence Numbers 003 and 004 are consolidated for disposition. The motion by
plaintiff (MS003) to compel defendant to respond to various discovery demands is denied. The
motion (MS004) by defendant for various relief relating to discovery is granted in part and
denied in part.

This action concerns a series of agreements in which plaintiff purportedly agreed to sell
paper to defendant. Plaintiff says it provided the paper that defendant ordered and that defendant
did not pay the full amount owed. Defendant claims the quality of the shipments was substandard
and that plaintiff tried to raise prices, knowing that defendant had already made commitments to
its customers.

MS003

In this motion, plaintiff complains that defendant's response to plaintiff's first discovery demand was improper because defendant claimed in various instances that any responsive documents were attached, which according to plaintiff means that it is an open question whether relevant items were produced or even exist. It also complains about defendant's failure to identify which documents are responsive to a particular demand. Plaintiff also questions defendant's objection to demand seeking information relating to defendant's counterclaim.

In opposition, defendant claims that plaintiff never complained about defendant's response for more than six months after the response. Defendant contends that the CPLR does not require it to identify which particular documents correspond to which discovery demand. Defendant insists that plaintiff did the same thing—produced a bunch of documents without explaining to which demands they responded.

Defendant argues that it has responded to every demand and points the Court to its response. It also explains that it has now produced whatever documents it possesses. Defendant insists that plaintiff has not provided enough detail for this Court to compel defendant to produce anything more.

In reply, plaintiff complains that defendant is improperly refusing to give documents about its counterclaim.

The Court denies the motion. The fact is that defendant responded to plaintiff's demands and plaintiff waited more than six months to finally raise complaints about it. Moreover, the Court cannot order defendant to produce something it does not possess. If plaintiff is correct that defendant has not produced anything in support of its counterclaim, then, presumably, defendant will have a hard time proving its counterclaim.

The Court rules, however, that anything not produced before January 11, 2022 cannot be used at any time in this case unless good cause is shown.

MS004

The motion by defendant for various discovery relief concerns alleged deficiencies by plaintiff in its responses to defendant's demands. Defendant contends that plaintiff ignored defendant's communications and never responded. After a conference on September 24, 2021, the Court ordered plaintiff to produce various items, including correspondences, bills, payments made, orders and cancellation notices between the parties relating to the goods at issue here.

Defendant admits that plaintiff provided some documents on November 23, 2021 but did not provide a Jackson affidavit as required by the Court nor did it provide a privilege log (which the Court also required for documents subject to relevant privileges).

In opposition, plaintiff points to its November 23, 2021 response and contends that it complied with the Court's order. It claims it was not required to produce a Jackson affidavit because plaintiff produced all documents responsive to the subject categories. Plaintiff also insists it need not produce a privilege log because the documents potentially subject to this privilege were not communications between the parties and thus not part of the Court's order.

The Court denies the branch of the motion that seeks sanctions or to strike plaintiff's pleading. The fact is that plaintiff, although belatedly, has finally provided responses and documents. A Jackson affidavit is not appropriate because plaintiff swears it has produced documents and, therefore, it need not draft an affidavit explaining why it couldn't produce documents. The Court finds, however, that plaintiff should produce a privilege log for the four documents plaintiff believes might be subject to the privilege (NYSCEF Doc. No. 93, ¶ 11).

Whether or not these documents fall squarely in the Court’s previous order, a privilege log is appropriate for the four documents plaintiff decided not to produce because they are allegedly privileged. This privilege log must be submitted on or before January 11, 2022.

The Court also finds that plaintiff may not use any documents not produced before January 11, 2022 at any time in this case unless good cause is shown.

The time for games is over. This case is now more than a year old; the parties should know by now what documents they plan to use in this case and these documents must be turned over before January 11, 2022. Discovery, including depositions, must proceed. The fact is that this is a straightforward breach of contract case and does not require years of discovery.

Accordingly, it is hereby

ORDERED that the motion (MS003) by plaintiff to compel is denied; and it is further

ORDERED that the motion (MS004) by defendant for various relief is granted only to the extent that plaintiff is required to submit a privilege log for the four documents it identifies on or before January 11, 2022; and it is further

ORDERED that any documents not produced by either side by January 11, 2022 cannot be used in this case (such as at trial or in dispositive motions).

Next Conference: January 12, 2022 (NYSCEF Doc. No. 75).

1/6/2022
DATE


ARLENE BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE