

Legacy Org., Inc. v Santamarina & Assoc.
2022 NY Slip Op 30754(U)
April 1, 2022
Supreme Court, New York County
Docket Number: Index No. 159569/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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LEGACY ORGANIZATION, INC., MARC SMET,
KRISTIAEN VAN GASTEL

INDEX NO. 159569/2020

Plaintiff,

MOTION DATE 12/15/2020

- v -

MOTION SEQ. NO. 001

SANTAMARINA & ASSOCIATES, GIL SANTAMARINA,

**DECISION + ORDER ON
MOTION**

Defendant.

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

were read on this motion to/for SPECIAL PREFERENCE.

Upon the foregoing documents and as set forth on the record (3.31.22), Petitioners’ motion pursuant to CPLR 403(b) and Professional Responsibility DR 9-102(c)(4) seeking the turnover of Legacy Organization, Inc.’s (**Legacy**) files that are in Respondents’ possession must be granted and the Respondents shall turn over all such files no later than 5 pm on Monday, April 4, 2022 except that Respondents may withhold any documents or communications in connection with only the initial issuance of shares to Marc Smet and Kristiaen Van Gastel. Any such withheld documents or communications shall be recorded on a log which the respondents shall also produce at such time.

Reference is made to the related action (the **Related Action**) captioned *Legacy Organization Inc. v Alessandro Nomellini*, Index No. 650785/2021. In the Related Action, this Court held that Mssrs. Smet and Van Gastel are the rightful majority owners of Legacy notwithstanding Mr.

Nomellini fraudulent attempt to increase the capitalization of Legacy from 1,000 shares to 1,000,000 without authorization after he had already transferred over 90% of Legacy (*see, e.g.*, Index No. 650785/2021, NYSCEF Doc. No. 193). It does not matter that Mr. Nomellini registered himself as the contact person on Legacy Business School's license with the New York State Department of Education (the **NYS DOE**) which indicates that Legacy is the owner of such license or that he had previously fraudulently filed documents with the Secretary of State as discussed in the Related Action. He is not the sole owner, a controlling person, an officer, or a majority owner of, Legacy and he has no authority to act on behalf of Legacy.

The Respondents' arguments that Messrs. Smet and Van Gastel are not the rightful owners of Legacy, that the Petitioners' lack standing, or that Mr. Nomellini is the owner of the license filed with NYS DOE such that there is a question as to who owns Legacy, are just wrong either because they have failed to do adequate diligence or they are simply unaware of the extent of Mr. Nomellini's fraudulent activity, his attempts to interfere and frustrate the legitimate attempts of Messrs. Smet and Van Gastel to access the books and records of Legacy and its computers, and Mr. Nomellini's sabotage of the same. The Respondents' reliance on *Tekni-Plex, Inc. v Meyner & Landis*, 89 NY2d 123, 132 [1996], *rearg denied* 89 NY2d 917) for their wrongfully wholesale withholding of Legacy's files from Legacy's true owners is equally unavailing.

Tekni-Plex involved the sale of a company, *i.e.*, Old Tekni-Plex, by Mr. Tang, its principal shareholder and CEO, to a newly formed acquisition company, *i.e.*, New Tekni-Plex, pursuant to which Old Tekni-Plex merged into New Tekni-Plex. The merger agreement contained representations from Mr. Tang including that Old Tekni-Plex was in full compliance with all

applicable environmental laws. The merger agreement also provided for indemnification by Mr. Tang for any losses New Tekni-Plex incurred as a result of a breach of representation set forth in the merger agreement. Following the acquisition, New Tekni-Plex claimed that Mr. Tang breached his representations that a laminator machine did not emit organic compounds when in fact it did and that the permit obtained was based on the false premise that it did not produce these harmful emissions which were not authorized. Meyer and Landis (**M&L**) had been retained for approximately 23 years to represent Old Tekni-Plex before the transaction. The parties went to arbitration and Mr. Tang hired M&L to represent him in the arbitration. New Tekni-Plex brought (i) an order to show cause seeking to disqualify M&L and (ii) a separate order to show cause seeking to (1) enjoin the law firm from representing Mr. Tang in an action against New Tekni-Plex, (2) enjoin M&L from disclosing any information obtained from old Tekni-Plex and (3) order M&L to return to New Tekni-Plex all of the files in the law firm's possession concerning its prior representation of Old Tekni-Plex.

The Court held that (i) M&L should be disqualified from representing Mr. Tang in the arbitration, (ii) authority to assert the attorney-client privilege passed to the corporation's successor management with respect to confidential communications between Old Tekni-Plex and M&L generated during the law firm's prior representation of the corporation on environmental matters, and because the record failed to establish that M&L had represented Mr. Tang individually on those matters the exception for co-clients who subsequently become adversaries in litigation did not apply, and (iii) New Tekni-Plex could not prevent M&L from disclosing the contents of communications during the time of the acquisition to Mr. Tang as at that time Old

Tekni-Plex and New Tekni-Plex were in an adversarial relationship and (iv) that New Tekni-Plex was not entitled to M&L’s confidential communications concerning its representation of Old Tekni-Plex with respect to the acquisition. Among other things, the Court expressed its concern that during the dispute stemming from the merger, New Tekni-Plex can not both pursue its rights as the buyer and simultaneously assume the attorney-client rights of the buyer’s adversary (Old Tekni-Plex) retained regarding the transaction.

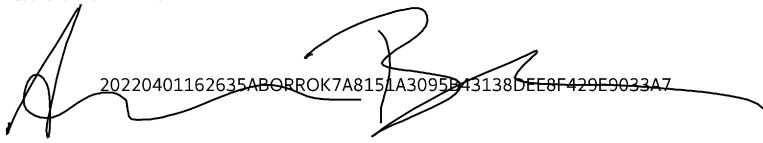
The Respondents do not represent Mr. Nomellini, and the petitioners do not seek to preclude Mr. Nomellini from having information about Legacy, and Tekni-Plex is simply not otherwise implicated here except potentially to the *de minimis* extent of any documents or communications with respect to the initial issuance of the shares. Thus, except to this *de minimis* extent, the Respondents must turn over all of Legacy files no later than 5 pm on Monday April 4, 2022, together with a log accounting for any such withheld documents.

Accordingly, it is hereby

ORDERED that Petitioners’ motion is granted; and it is further

ORDERED that Respondents are directed to turn over petitioners’ files in respondents’ possession, as set forth herein, by April 4, 2022 at 5:00 PM.

4/1/2022
DATE



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ANDREW BORROK, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER