

Platinum Supply Corp. v Turner Constr. Co.
2022 NY Slip Op 31335(U)
April 25, 2022
Supreme Court, New York County
Docket Number: Index No. 157835/2020
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

PLATINUM SUPPLY CORP.

Plaintiff,

- v -

TURNER CONSTRUCTION COMPANY,

Defendant.

-----X

INDEX NO. 157835/2020

MOTION DATE 04/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32, 33, 34

were read on this motion to/for DISCOVERY.

The motion to compel by defendant is granted in part.

Background

Plaintiff is a material supply company that supplies building materials in New York. It contends that defendant opened a credit account with plaintiff in 2011 which allowed defendant to buy materials and accessories on credit. Plaintiff alleges that from 2013 to December 2019, defendant purchased materials totaling over \$7 million and still owes about \$270,000. Plaintiff brings 67 causes of action relating to the alleged outstanding bills from various projects. It also seeks damages for tortious interference with plaintiff's business relationship with non-party Component Assembly, defamation relating to that non-party and tortious interference with plaintiff's prospective business relationships. For these three causes of action, plaintiff seeks \$20 million combined in damages.

Plaintiff contends that defendant told Component Assembly not to buy materials from plaintiff and insisted that plaintiff engages in unethical and deceptive business practices.

Plaintiff alleges that defendant falsely represented that plaintiff has stolen money from defendant.

Defendant contends that plaintiff (along with counter-claim defendants) engaged in systemic fraud against defendant by using insider knowledge about how defendant operates to fraudulently steer business to plaintiff. Defendant contends that plaintiff was established to appear as a “Women-Owned Business Enterprise” in order to take advantage of programs designed to aid such businesses when, in fact, it did not qualify for such benefits. It theorizes that plaintiff secured excessive orders for supplies from defendant and excessive payments from defendant. Defendant alleges that certain individuals were working for defendant while secretly controlling plaintiff and funneled contracts (despite the clear conflict of interest) for various construction supplies. In other words, defendant’s theory is that plaintiff hid who was really running the company in order to sell materials to defendant because plaintiff knew defendant would not have purchased these materials from a company run by its own employees.

Defendant moves to compel plaintiff to produce documents and information responsive to defendant’s first notice for discovery dated February 19, 2021. It also wants plaintiff to serve substantive responses to interrogatory demands.

In opposition, plaintiff contends it has turned over a flash drive to defendant and so the portion of the motion that seeks documents in the flash drive is now moot. With respect to the interrogatories, plaintiff points out that defendant initially served both a first set of interrogatories and a demand for a verified bill of particulars and so it only recently became clear that plaintiff wanted a response to the interrogatories. Plaintiff observes that defendant was not permitted to ask for both under CPLR 3130. Plaintiff now attaches its response to the interrogatories.

With respect to certain document demands (8-13) and (20-21), plaintiff contends that defendant has these documents in its possession or the documents are not related to the case at all.

In reply, defendant acknowledges that certain portions of its motion are now moot. It withdraws the branch of the motion regarding the interrogatories and the documents contained in the flash drive sent by plaintiff. However, document requests 8-13 and 20-21 remain issues. Defendant insists that these relate to its counterclaims—specifically that certain counter-claim defendants (while employed by defendant) secretly owned and controlled plaintiff to take advantage of the insider access in order to secure excessive orders from plaintiff.

Discussion

“Disclosure in civil actions is generally governed by CPLR 3101(a), which directs: there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof. We have emphasized that 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 by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Forman v Henkin*, 30 NY3d 656, 661, 70 NYS3d 157 [2018] [internal quotations and citations omitted]).

Requests 8-13 all concern records about plaintiff’s finances, including compensation paid to officers, board members, and employees as well as federal and state income tax filings by plaintiff (NYSCEF Doc. No. 21). The Court finds that these requests are material and necessary to discovery in this case. Defendant’s view is that plaintiff was not a Women-Owned Business Enterprise (“WBE”), as it was represented to defendant, and instead was secretly controlled by

individuals who worked for defendant. Information about who was paid might lead to evidence about who was actually controlling plaintiff.

Plaintiff's opposition to these requests is, essentially, that defendant's counterclaims are "farfetched" and plaintiff has already produced documents showing it was a legitimate WBE. But plaintiff's own assertions do not justify rejecting these discovery requests. Plaintiff did not attach any documents proving it is a WBE and the Court observes that plaintiff did not move to dismiss these counterclaims. If it really thinks it has documentary evidence disproving the counterclaims, then it should have made these arguments in a dispositive motion. Simply claiming in a discovery motion that it believes defendant's counterclaims are without merit is not a basis to deny a motion to compel. Plaintiff must respond to these requests on or before May 20, 2022.

Request 20 seeks documents relating to potential "defamatory statements made by Turner against Platinum" while request 21 seeks documents "originating from Turner that served to interfere with any of Platinum's business relationships or contracts" (*id.*). Clearly, plaintiff must respond to these document requests. They relate directly to plaintiff's causes of action about purported defamation and tortious interference defendant. Defendant is entitled to know what statements plaintiff thinks were defamatory and any documents that support that contention.

That defendant used the phrase "originating from Turner" for request 21 might mean that defendant also has these documents but does not compel the Court to deny this request. Documents supporting this cause of action are material and relevant. Plaintiff must respond to these requests on or before May 20, 2022.

Accordingly, it is hereby

ORDERED that the motion by defendant to compel is granted only to the extent that plaintiff must substantively respond with relevant non-privileged documents for requests 8-13 and 20-21 on or before May 20, 2022 and denied with respect to the remaining requests for relief.

Remote Conference: June 22, 2022 (NYSCEF Doc. No. 30 [directing the parties to e-file an update by June 15, 2022]).

4/25/2022
DATE


ARLENE BLUTH, 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