

Narain v Society Pass Inc.

2022 NY Slip Op 31659(U)

May 20, 2022

Supreme Court, New York County

Docket Number: Index No. 656956/2019

Judge: Andrew Borrok

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

RAHUL NARAIN Plaintiff, - v - SOCIETY PASS INCORPORATED, Defendant.	<table border="0"> <tr> <td style="width: 150px;">INDEX NO.</td> <td><u>656956/2019</u></td> </tr> <tr> <td>MOTION DATE</td> <td><u>04/22/2022, 04/22/2022</u></td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td><u>004 005</u></td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	<u>656956/2019</u>	MOTION DATE	<u>04/22/2022, 04/22/2022</u>	MOTION SEQ. NO.	<u>004 005</u>
INDEX NO.	<u>656956/2019</u>						
MOTION DATE	<u>04/22/2022, 04/22/2022</u>						
MOTION SEQ. NO.	<u>004 005</u>						

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 152, 153, 165, 166, 167, 168, 169, 170
 were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164
 were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the motion seeking a determination of attorney-client privilege of the November Email (hereinafter defined) (Mtn. Seq. No. 004) must be denied because the inadvertent production of confidential protected information by the attorney-client privilege does not waive the attorney-client privilege. It does not matter that it happened on two separate occasions (*N.Y. Times Newspaper Div. v Lehrer McGovern Bovis, Inc.*, 300 AD2d 169, 172 [1st Dept 2002]; NYSCEF Doc. No. 144). Nor is Rahul Narain entitled to the production of the November 27, 2019 email (the **November Email**; NYSCEF Doc. No. 122) based on the crime fraud exception (*Art Capital Group LLC v Rose*, 54 AD3d 276, 277 [1st Dept 2008]). No crime existed and Mr. Narain’s argument about the backdated employment letter is simply wrong. Mr. Narain was sent a letter on October 4, 2019 (the **October Letter**; NYSCEF Doc. No. 128) which

indicated that Mr. Narain was in breach of the employment agreement. The October Letter does not purport to terminate Mr. Narain's employment. As such it is not the thirty days' notice of termination of his employment. The November 28, 2019 correspondence¹ which both Mr. Narain and his lawyer Ethan Brecher received indicating that his employment had been terminated on October 4, 2019 and that he was given thirty days' notice is not true. But Mr. Narain and Mr. Brecher knew this having received both the October Letter and the November Email and the alleged backdating that Mr. Narain complains of was thus not a secret. The crime fraud exception does not apply because the November Email is not necessary to demonstrate a fraudulent scheme (*Art Capital Group LLC v Rose*, 54 AD3d at 277; see also *N.Y. Times Newspaper Div.*, 300 AD2d at 172 [considering the four-factor test of waiver of attorney-client privilege including whether the party which received the communication will be prejudiced by the issuance of a protective order]).

For the avoidance of doubt, Mr. Narain is not entitled to a deposition of Claudio Simpkins, the defendant's lawyer or an additional deposition of Dennis Nguyen because none of the facts were unknown and the lawyer's strategy of backdating the employment by referring to the October Letter as thirty days' notice could have easily been asked about at the prior deposition based on the documents themselves.

The privilege of the November Email was not destroyed based on the disclosure to Peter DiChiara because he was Mr. Simpkin's supervisor at the firm. This is confirmed by the fact that the October Letter is executed by him on the firm's letter head.

¹ Attached to NYSCEF Doc. No. 122.

Finally granting sanctions is within the Court's discretion (22 NYCRR § 130-1.1[a]) and the Court declines to assess sanctions at this time.

Accordingly, it is

ORDERED that the motion seeking a determination of the attorney-client privilege of the November 27, 2019 (NYSCEF Doc. No. 122) (Mtn. Seq. No. 004) is denied; and it is further

ORDERED that the November 27, 2019 email (NYSCEF Doc. No. 122) is subject to clawback and Rahul Narain is ordered to delete all copies of the email; and it is further

ORDERED that the branch of the Mtn. Seq. No. 005 seeking sanctions is denied; and it is further

ORDERED that the Clerk of the Court is directed to remove NYSCEF Doc. No. 122 upon service on him (60 Centre Street, Room 141B) of a copy of this order with notice of entry; and it is further

ORDERED that such service upon the Clerk of the Court 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 at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that the parties shall appear for a status conference on **June 9, 2022 at 12:00 PM** to provide an expert discovery schedule; and it is further

ORDERED that the parties shall complete expert discovery on or before September 13, 2022; and it is further

ORDERED that **NOI shall be filed by September 27, 2022** and dispositive motions shall be filed within 30 days.



20220520155850ABORROKDA1F5D91B0904397B333816A9A10D9CC

5/20/2022

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