

<b>ALP, Inc. v Park W. Galleries, Inc.</b>
2022 NY Slip Op 33686(U)
October 25, 2022
Supreme Court, New York County
Docket Number: Index No. 153949/2019
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NANCY M. BANNON PART 42**

*Justice*

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ALP, INC.,  
Plaintiff,

- v -

PARK WEST GALLERIES, INC., GENE LUNTZ, and GENE  
LUNTZ MANAGEMENT, INC.,

Defendants.

-----X

ALP, INC., and LIBRA MAX,  
Plaintiffs,

- v -

LAWRENCE MOSKOWITZ, BENDER CICCOTTO &  
COMPANY CPA'S, LLP, ROBERT FRANK, ROBERT J.  
FRANK, GENE LUNTZ, and LAUREN MOSKOWITZ,

Defendants.

-----X

ADAM MAX, on behalf of himself and derivatively on behalf of  
ALP, INC., a New York corporation,  
Plaintiff,

- v -

ALP, INC., LIBRA MAX, and MICHAEL ANDERSON,  
Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 015) 491, 492, 493, 494,  
495, 496, 497, 498, 499, 500, 501, 502, 541, 542, 543, 553, 554, 555

were read on this motion to/for DISCOVERY.

In these consolidated actions arising from a dispute over control of ALP. Inc. (ALP),  
plaintiff (in the actions filed under Index Nos. 153949/2019 [the Park West action] and  
652326/2019 [the Moskowitz action]) / defendant and counterclaim plaintiff (in the action filed

under Index No. 650618/2019 [the Adam Max action]) ALP moves pursuant to CPLR 3124 to compel defendant Park West Galleries, Inc. (Park West), to produce certain documents sought in discovery. Park West opposes the motion.

The facts underlying the claims in these consolidated matters have been recited in numerous prior orders. As relevant here, the gravamen of ALP's claims against Park West is that Park West, acting in concert with defendants Gene Luntz and Gene Luntz Management, Inc. (together, Luntz), Robert M. Frank (Frank Sr.), Robert J. Frank (Frank Jr.), and Bender Ciccotto & Co. CPAs, LLP (Bender Ciccotto), and Lawrence Moskowitz (Moskowitz), and with the permission of plaintiff / counterclaim defendant Adam Max (Adam), looted ALP of hundreds of millions of dollars of cash and artwork while Adam served as ALP's President. Central to ALP's claims is that Park West wrongfully purchased 20,000 of ALP's most valuable artworks (the Peter's Keepers) at fire sale prices Park West knew were extraordinary (the Park West transaction). ALP further alleges that the Park West transaction was not authorized. Park West asserts counterclaims sounding in breach of warranty of good title, breach of contract, and breach of the covenant of good faith and fair dealing, and further seeks a declaration that its purchase of the Peter's Keepers was valid.

Discovery in the consolidated actions commenced in or about 2019. ALP served initial document demands on Park West on June 12, 2019, a second set of demands on September 6, 2019, and a third set of demands on January 8, 2021. Park West served responses and objections to the first set of demands on July 12, 2019, to the second set of demands on September 20, 2019, and to the third set of demands on October 28, 2021. The parties met and conferred on the disputed demands and appeared for a pre-motion conference on the issues raised in ALP's motion on February 17, 2022. In connection with the disputed demands, Park West has produced one document relating to its knowledge of the health conditions of Adam and Adam and Libra's father, the artist Peter Max (Peter), using the search terms proposed by ALP.

ALP nonetheless seeks further production from Park West, namely (1) documents pertaining to the 54 Peter's Keepers that Park West sold to third parties in early 2019 before the court enjoined the sale of the Peter's Keepers in these matters, including information about the pricing of such works, the identity of third-party purchasers, the representations made to the purchasers, and the date of the sales; (2) documents related to the value of all other Peter Max artworks sold by Park West since 2010, including the sales prices paid to Park West by collectors; (3) documents sufficient to show any payment of more than \$500 by Park West to Luntz, Moskowitz, Frank Sr., or Bender Ciccotto; (4) communications between Park West and Luntz that do not pertain to ALP or Peter; and (5) documents relating to Park West's knowledge of Adam's and Peter's health issues.

CPLR 3101(a) provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action." This language is "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." Oowski v

AMEC Constr. Mgt., Inc., 69 AD3d 99, 106 (1<sup>st</sup> Dept. 2009) (quoting Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406-407 [1968]). Nonetheless, demands for disclosure must be “relevant, describe documents with ‘reasonable particularity,’ not impose an undue burden and not represent a ‘fishing expedition.’” Konrad v 136 E 64<sup>th</sup> St. Corp., 209 AD2d 228, 228 (1<sup>st</sup> Dept. 1994) (citations omitted); see, e.g., Abony v TLC Laser Eye Center, Inc., 44 AD3d 553 (1<sup>st</sup> Dept. 2007); Thomas v Holzberg, 227 AD2d 175 (1<sup>st</sup> Dept. 1996). Accordingly, speculation that the materials sought may include relevant information does not meet the threshold for relevance. See, e.g., Dani v 551 W. 21<sup>st</sup> St. Owner LLC, 181 AD3d 420, 420-21 (1<sup>st</sup> Dept. 2020); McAlwee v Westchester Medical Associates, PLLC, 163 AD3d 547, 549 (2<sup>nd</sup> Dept. 2018); Vyas v Campbell, 4 AD3d 417, 418 (2<sup>nd</sup> Dept. 2004). Moreover, a party does not establish entitlement to disclosure where the party could not establish his or her claims or defenses even with such disclosure. See Horn v Nestor, 172 AD3d 659, 659 (1<sup>st</sup> Dept. 2019).

ALP is entitled to the disclosure of pricing information relating to the 54 Peter’s Keepers sold at retail by Park West. Contrary to Park West’s assertions, the value of the Peter’s Keepers is relevant to ALP’s claims against Park West inasmuch as it is alleged to be a primary indicator that Park West was not a *bona fide* purchaser acquiring the Peter’s Keepers in the ordinary course of business. ALP avers in the amended complaint that Park West “knew[] it was receiving the pieces at an absurdly low price.” That price, ALP contends, would have been a “red flag[] for Park West, a gallery that had done extensive business with ALP and was highly knowledgeable about ALP and what was occurring with its management.” While Park West states that the price it paid for the Peter’s Keepers should be assessed in the context of the wholesale market the parties operated in, the retail prices set by Park West for artworks it purchased by ALP are also relevant to whether or not the Peter’s Keepers price was the red flag ALP claims it to be. To be sure, the price Park West expected to pay in the wholesale market would have been directly influenced by its estimate of what it would earn when it sold the Peter’s Keepers at retail. If the price Park West paid to ALP was discounted so far below the retail value of the works as to be unreasonable, which ALP bears the burden of proving, such fact would be probative of ALP’s claims that the transaction was extraordinary and that Park West knew it was unauthorized. Additionally, the sales price of the Peter’s Keepers is directly relevant to Park West’s counterclaims, wherein Park West seeks “lost profits of resale” of the Peter’s Keepers.

ALP is further entitled to the disclosure of pricing information relating to Park West’s sales of other Peter Max artworks. Such information is relevant to the value of the Peter’s Keepers because the market value of the Peter’s Keepers is alleged to be a premium over other of Peter’s artworks that were not designated as Keepers. The price Park West paid for the Peter’s Keepers would be expected to reflect this premium. However, ALP’s expansive demand for the disclosure of pricing information relating to all other Peter Max artworks sold by Park West for the past twelve years is overbroad. Park West shall be required to produce pricing information only beginning in 2016, two years before the challenged Park West transaction was consummated.

ALP is not entitled to the remaining disclosure it seeks to compel.

First, ALP’s demand for information regarding the sale of the 54 Peter’s Keepers beyond pricing, including the identity of and representations made to the buyers, and the dates of the sales, is an admitted bid for pre-action disclosure to ascertain whether ALP might have any claims against the buyers. That is not a proper ground for relief under CPLR 3124 and 3101. Second, ALP’s demands for documents showing any large payments made by Park West to other defendants and for all communications between Park West and the other defendants, unrelated to ALP and its business, are patently overbroad. They are also speculative inasmuch as they are based on the bare hope that such discovery will reveal some unspecified further relationship among the defendants that has not been alleged in the pleadings. Disclosure is not warranted on these facts. Third, Park West has produced what it contends is the only document responsive to ALP’s demand for documents relating to Park West’s knowledge of Adam’s and Peter’s health issues. Thus, ALP’s application for compliance with that demand is moot. That ALP finds Park West’s claim that only one document exists “not believable” does not revive ALP’s application, which contains no branch seeking either sanctions for noncompliance or to compel production of a Jackson affidavit.

Accordingly, it is

ORDERED that the motion to compel discovery pursuant to CPLR 3124 filed by ALP, Inc., is granted to the extent that, within 30 days of the date of this order, (1) Park West Galleries, Inc., is directed to produce all documents relating to the pricing of the 54 Peter’s Keepers that were purchased by third parties after the 2018 Purchase Order between ALP, Inc., and Park West Galleries, Inc., was signed, and (2) Park West Galleries, Inc., is directed to produce all documents relating to the pricing of all other Peter Max artworks sold by Park West Galleries, Inc., to third parties, beginning in 2016, and the motion is otherwise denied without prejudice.

This constitutes the Decision and Order of the Court.

  
NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

10/25/2022  
DATE

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