

DarkPulse, Inc. v Twitter, Inc.

2022 NY Slip Op 33799(U)

November 7, 2022

Supreme Court, New York County

Docket Number: Index No. 159015/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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DARKPULSE, INC., DENNIS O'LEARY

Petitioner,

- v -

TWITTER, INC.,

Respondent.

INDEX NO. 159015/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

For an Order, pursuant to Section 3102(c) of the Civil Practice Law and Rules, to Compel Disclosure of the Identity of the Owner(s) and Operator(s) of the Twitter Accounts 'Mike Wood' (@MIKEWOOD) and 'Bull Meechum' (@BullMeechum3), who are Prospective Defendants in an Action to be Commenced by Petitioner.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 13, 14, 15 were read on this motion to/for DISCOVERY - PRE-ACTION.

The petition for pre-action disclosure is granted.

Background

Petitioners seek the identities of certain Twitter users so that they can bring a defamation lawsuit against them. Petitioners observe that petitioner DarkPulse is a publicly traded company involved in the fiber optic sector and petitioner O'Leary is DarkPulse's CEO. They contend that both Twitter users published tweets that asserted various misdeeds allegedly committed by petitioner O'Leary and insist that these tweets were designed to get DarkPulse shareholders to sell off their stock. Petitioners argue that the subject tweets are demonstrably and provably false and want the identities of the two users so that they can bring a defamation action.

In response, respondent objects to the disclosure of requested information “in the absence of a determination by the Court that Petitioners have made the requisite showing” (NYSCEF Doc. No. 15 at 1). It adds that “[i]n the event that the users associated with the Accounts properly assert any objections to the petition, Twitter further objects to disclosure of the requested information until the Court rules on the merits of the users’ objections” (*id.* at 2).

Discussion

“Before an action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. Thus, while pre-action disclosure may be appropriate to preserve evidence or to identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing. A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong” (*Uddin v New York City Tr. Auth.*, 27 AD3d 265, 266, 810 NYS2d 198 [1st Dept 2006] [internal quotations and citations omitted]).

Here, petitioners met their burden to establish their right to seek the identities of the two Twitter users cited in the petition. They cited a meritorious cause of action for defamation and explained how they need the identity of each user in order to bring a viable lawsuit. They point out that the two users in question accused petitioners of issuing fake press releases, called petitioner O’Leary a criminal and insisted that petitioners engaged in securities fraud as well as money laundering. Such statements clearly have the potential to cause harm to petitioners’ reputations and are therefore a proper request for a petition brought under CPLR 3102.

The Court observes that respondent did not oppose the motion. Instead, respondent merely offered a response that instructed the Court to make certain findings. While respondent is

certainly correct that petitioners had to establish their prima facie burden (which they did), respondent's papers make clear that it has little interest in this proceeding. Respondent emphasizes that it emailed copies of the pleadings to the email addresses associated with the user accounts cited by petitioners. It also concludes that "Twitter is otherwise in no position to opine on the veracity of Petitioners' allegations, or to assess whether Petitioners have made the requisite showing pursuant to CPLR § 3102(c) and the First Amendment, and therefore awaits the Court's rulings on those issues subject to any objections properly asserted by the users associated with the Accounts" (NYSCEF Doc. No. 15, ¶ 13).

Of course, it is not this Court's role to *sua sponte* offer arguments that respondent or the two users in question might offer if they actually objected to the instant petition. Instead, this Court must consider an application that is, essentially, unopposed. The Court is not interested in speculating why respondent chose not to defend its users. Rather, the Court grants the petition because petitioners met their burden in the moving papers and respondent did not actually offer opposition other than a hypothetical promise to object if its users eventually object.

Accordingly, it is hereby


ORDERED that the petition for pre-action disclosure is granted; and it is further

ORDERED that pursuant to CPLR 3102, respondent is directed to disclose the basic subscriber information, including the Account Information, records, IP Addresses, meta data or similar information sufficient to identify the owner or operator of the "Mike Wood" (@MIKEWOOD) and "Bull Meechum" (@BullMeechum3) Twitter accounts on or before November 16, 2022; and it is further

ORDERED that respondent is directed to preserve all evidence relating to the subscriber information, log-in, IP Addresses, meta data, similar information, and tweets of the "Mike

Wood” (@MIKEWOOD) and “Bull Meechum” (@BullMeechum3) Twitter accounts described in this proceeding; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of petitioner and against respondent along with costs and disbursements upon presentation of proper papers therefor.

<u>11/7/2022</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE