

Hinduja Global Solutions, Inc. v HBI Group, Inc.

2022 NY Slip Op 33951(U)

November 22, 2022

Supreme Court, New York County

Docket Number: Index No. 452059/2022

Judge: Margaret A. Chan

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 49M

-----X
 HINDUJA GLOBAL SOLUTIONS, INC., HGS
 HEALTHCARE, LLC

INDEX NO. 452059/2022

Petitioners,

MOTION DATE N/A

- v -

MOTION SEQ. NO. 001

HBI GROUP, INC.,

**DECISION + ORDER ON
 MOTION**

Respondent.

-----X

HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for

SUBPOENA

On May 31, 2022, petitioners Hinduja Global Solutions, Inc. and HGS Healthcare, LLC (HGS or petitioners) commenced this special proceeding in Albany County, seeking an order pursuant to CPLR 2308 compelling respondent HBI Group, Inc. (HBI Group or respondent) to comply with the subpoena served on February 23, 2022, in connection with a pending out-of-state litigation in the 191st District Court of Dallas County, Texas (Texas Action)¹ (NYSCEF # 1-petition). As the proceeding was transferred to New York County and then subsequently assigned to the Commercial Division, petitioners filed a renewed application for an order to show cause (OSC) regarding the February 23, 2022 subpoena. This court signed the OSC on October 11, 2022 (NYSCEF # 33).

Background

According to petitioners, the Texas Action was brought by Synergy Global Outsourcing, LLC (Synergy) – an affiliate of HBI Group – against HGS, who, in the Texas Action, are defendants, for HGS's alleged breach of a broker agreement (NYSCEF # 27-aff in support, ¶ 6). In response, HGS raised affirmative defenses including undue influence and alleged a number of counterclaims against Synergy and claims against counter-defendant Ali Ganjaei (Ganjaei), the CEO of HBI Group, for, *inter alia*, breach of fiduciary duties (*id.*, ¶¶ 6-7; NYSCEF # 28-Exh A-E). In

¹ The Texas Action is captioned *Synergy Global Outsourcing, LLC v Hinduja Global Solutions, Inc.* (No. DC-19-20539).

particular, HGS allege that their own fiduciary along with the fiduciary of Synergy stood on both sides of the transaction and arranged the broker agreement to profit themselves and other beneficiaries (*id.*).

Petitioners now subpoenaed HBI Group to produce documents and appear for a deposition. The subpoena was issued primarily to identify the recipients of the benefits from payments to HBI Group by Synergy and to trace the flow of payments and other benefits from the broker agreement to the ultimate beneficiaries (NYSCEF # 27, ¶ 8). Petitioners contend that the information sought by the subpoena is material and necessary to their defenses and counterclaims in the Texas Action as it pertains to whether some or all the beneficiaries of the payments owed fiduciary obligations to petitioners (*id.*, ¶ 9). In opposition, respondent argues that first, petitioners fail to satisfy their burden to compel; second, the subpoena contains improper requests; and lastly, the subpoena constitutes a pattern of harassment and is a fishing expedition.

Of relevance here, petitioners had sought substantially similar information from Ganjaei in Texas and then moved to compel. The Honorable Gena Slaughter, the judge presiding over the Texas Action, granted the motion to compel and overruled Ganjaei's objections regarding the scope, breadth and burden, time period, and confidentiality of the production (NSYCEF # 31-May 6, 2022, Texas Court order). In the hearing, Judge Slaughter clarified that Ganjaei is not compelled to produce the documents in his laptop that are held in his capacity as the employee of HBI Group and other HBI Group-affiliated entities (NYSCEF # 30-tr 31:12-32:2).² To the extent the documents belong to those entities, Judge Slaughter directed the petitioners to seek those documents from those entities separately (*id.*).

Petitioners also sought information on similar topics in Delaware (Delaware Action) from HBI Group's parent company, Hinduja Group International, LLC (HGIL) (NYSCEF # 27, ¶ 12). By order dated August 22, 2022, the Honorable Martin B. O'Connor, Commissioner of the Superior Court of Delaware, granted petitioners' motion to compel HGIL in part, limiting the relevant time period to a window from January 1, 2009, through December 31, 2011 (NYSCEF # 41-Delaware order).

Discussion

There shall be "full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR 3101[a]). "The words 'material and necessary' as used in section 3101 must 'be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist

² As this transcript contains no page number, any page number for NYSCEF # 30 cited in this order refers to the PDF's page number.

preparation for trial by sharpening the issues and reducing delay and prolixity” (*Kapon v Koch*, 23 NY3d 32, 38 [2014]; *Forman v Henkin*, 30 NY3d 656, 661 [2018]). However, disclosure is not limitless and courts are empowered to oversee discovery and set reasonable terms for its exchange (*see generally Diako v Youga*, 148 AD3d 438 [1st Dept 2017]; *Elmore v 2720 Concourse Assocs., L.P.*, 50 AD3d 493 [1st Dept 2008]).

Under the liberal standard, the court finds that the information sought by the subpoena is “material and necessary—i.e., relevant” to petitioners’ claims and defenses in the Texas Action (*Forman*, 30 NY3d at 661). At the center of petitioners’ affirmative defenses and counterclaims is the existence and violation of fiduciary duties. Since the subpoena seeks to identify who ultimately benefitted from the payments made by Synergy to HBI Group and to whom the payments flowed, the information is reasonably relevant to determine whether some or all the beneficiaries of the payments owed fiduciary obligations to petitioners. Finding the items sought relevant to the Texas Action, Judge Slaughter granted the motion to compel but carved out an exception for those corporate documents of HBI Group and its affiliates held by Ganjaei in his capacity as an employee of those entities (NYSCEF # 30-tr 31:12-32:13).³

Moreover, respondent’s argument that the motion should be denied because the information sought was or could be obtained from other parties such as Synergy is insufficient. Under New York law, a subpoenaing party is not required to show that it cannot obtain the requested disclosure from any other source before it can seek the same from the subpoenaed non-party (*Kapon*, 23 NY3d at 38; *Lyons v N.Y. City Economic Dev. Corp.*, 2021 NY Slip Op 31670[U], 10 [Sup Ct, NY County 2021]). Further, petitioners’ counsel represents that “Synergy, Mr. Ganjaei, and HGIL have all pointed to [HBI Group] as the party that has possession of the relevant documents” that “are unavailable from any source other than [HBI Group]” (NYSCEF # 27, ¶¶ 9, 17; *see also id.*, ¶¶ 11-12). Based on these representations, the court does not find the disclosure sought from respondent HBI Group to be overly duplicative.

The subpoena, however, is overbroad and onerous in terms of the time period as it seeks documents from January 1, 2004, through the production date -- a nearly 18-year timespan (NYSCEF # 28-Exh A, subpoena). Petitioners allege that their fiduciaries breached their duties primarily by causing petitioner Hinduja Global Solutions, Inc. to enter into the broker agreement with Synergy, which was

³ The relevant part states, “THE COURT: ... So to the extent [Ganjaei] has personal possession of documents he has to turn those over, I agree. To the extent that these are documents that he would have had access to as an employee or Board member or President, I’m not going to compel that, you’ve got to get it from that person directly. ... I am going to overrule the scope and time objections [by Ganjaei], I do think that there’s so much at play here, I think it just needs to come out.” (NYSCEF # 30-tr 31:12-32:13).

executed in 2011, and by acquiring a controlling interest in Synergy through HBI Group and/or its affiliates in 2010 (*see* NYSCEF # 28-sixth amended counterclaims; NYSCEF # 30-tr 17:20-18:12). Also, as this precise issue was argued in the Delaware Action, this court finds Commissioner O'Connor's order compelling that any relevant timeframe would be between January 1, 2009, to December 31, 2011 (NYSCEF # 32-tr 38:1-19; NYSCEF # 41-Delaware order). Therefore, with the broad discretion to set reasonable terms for the discovery (*see Forman*, 30 NY3d at 661-667), the subpoena is modified as to the time period. Thus, the relevant time period under instruction number 3 in "Exhibit B – Request for Production of Documents to HBI Group" of the subpoena is from January 1, 2009 through December 31, 2011 (NYSCEF # 28-Exh B, Request for Production of Documents to HBI Group).

To the extent not specifically addressed here, the court finds respondent's remaining arguments to be without merit.

Conclusion

Accordingly, it is hereby

ORDERED that petitioners' motion to compel is granted in part, with the subpoena's instructions regarding the relevant time period covered by the subpoena modified to be from January 1, 2009 through December 31, 2011 unless otherwise stated; and it is further

ORDERED that respondent HBI Group, Inc. shall comply with the subpoena as modified by this order and complete the production requested and make a designation to appear for deposition on or before December 13, 2022.

11/22/2022
DATE


MARGARET A. CHAN, J.S.C.

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