

Li v Satsuma USA LLC
2022 NY Slip Op 34288(U)
December 19, 2022
Supreme Court, New York County
Docket Number: Index No. 454084/2021
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY:COMMERCIAL DIVISION

PRESENT: HON. JENNIFER G. SCHECTER PART 54

Justice

INDEX NO 454084/2021
MOT SEQ NOS 013 014

JEANETTE LI, SATSUMA USA LLC,
Plaintiffs,

- v -

SATSUMA USA LLC, TATSUYA YAMAMOTO, JWD
INC., MASAHIKO TOKOROKI,

Defendants.

DECISION + ORDER ON
MOTIONS & CROSS-MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 013) 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 426, 427, 428, 429, 430, 431, 432, 433, 436, 437

were read on this motion to/for DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 014) 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 434, 440

were read on this motion to/for SANCTIONS

Plaintiff Jeanette Li moves to compel defendants Satsuma USA LLC (Satsuma) and Tatsuya Yamamoto (the Yamamoto Defendants) to produce documents responsive to her October 19, 2022 supplemental demands (Dkt. 393) and to compel defendant Jforward, Inc. (Jforward) to produce documents and interrogatory answers responsive to her September 29, 2022 demands (Dkt. 395). The court authorized this motion because plaintiff, in a recent discovery conference, was unable to clearly and persuasively explain a valid basis for these requests and due to conflicting--seemingly false--representations about the discovery that has been provided. Defendants oppose the motions, the Yamamoto Defendants cross-move for sanctions based on, among other things, plaintiff's false representations, and Jforward cross-moves to compel plaintiff to answer an interrogatory about her calculation of damages (see Dkt. 430 at 6).

Plaintiff's Motion to Compel

Plaintiff's motion is denied. With respect to the Yamamoto Defendants, in her moving brief, plaintiff merely asks the court to review the supplemental demands for itself and confidently asserts that "the Court upon review will agree that the information, documents and categories of information sought are patently proper" (Dkt. 391 at 4; see also Dkt. 436 at 8). That is not how it works. The whole reason why the court authorized this motion was to provide plaintiff the opportunity to explain the basis for each of her demands that counsel failed to provide in the conference and to address concerns raised by the court and

defense counsel about their relevance, timeliness, and proportionality. Asserting that the production is insufficient and complaining about deficiencies in the accounting are not substitutes for actually addressing these issues. Thus, plaintiff has not demonstrated that she is entitled to further document discovery from the Yamamoto Defendants that is material and necessary and proportional to the needs of this case.

To be sure, the denial of this motion should not be taken as an indication that the court finds the accounting to be sufficient. Plaintiff, moreover, is correct that the Yamamoto Defendants will not be permitted to introduce documents at trial or in support of the accounting that were not produced during discovery.

By contrast, it seems possible that plaintiff might need additional discovery from Jforward to clarify certain questions raised in her brief (*see* Dkt. 391 at 9). The problem, yet again, is that plaintiff's explanations do not address the issues raised in the conference and certainly do not justify production of all of Jforward's financial records. While some of the requested documents may be relevant, the court is constrained by plaintiff's failure to explain the basis for each request and why the proffered objections (such as to plaintiff's request for tax returns) are invalid (*see* Dkt. 396 at 4).

Yet, even accepting plaintiff's invitation to conduct its own review of her demands, the court finds that plaintiff's requests are significantly overbroad. Plaintiff is not entitled to go on a fishing expedition to audit all of Jforward's financial records to see what she may find. Rather, plaintiff has the burden of tailoring her requests to a scope commensurate with the claims in this action. As in the conference, the scope of the claims on which plaintiff relies is inconsistent with the claims that are actually pending in this action (*compare* Dkt. 391 at 9 [seeking discovery of "whether JFORWARD is really just an alter ego of YAMAMOTO"], *with* Dkt. 301 at 1 ["JForward's liability is not predicated on veil piercing (and, to be sure, leave to assert that theory of liability was denied) but rather on the allegation that it aided and abetted Yamamoto's alleged breaches by, for example, allegedly diverting Satsuma's business and corporate opportunities to JForward"]).

The excessive rhetoric and inaccuracies about the scope of the pending claims make it extremely difficult to parse the validity of plaintiff's arguments. For example, plaintiff avers that its "brief summary should be sufficient for an initial production" and that "JFORWARD should want to show that it is not merely an alter ego for YAMAMOTO, that it has other businesses and accounts other than SATSUMA and that it is a legitimate business and not a sham created by YAMAMOTO to avoid taxes and double dip" (Dkt. 391 at 9). While plaintiff provides a list of questions that she hopes an "initial production" would answer, positing questions does not justify overbroad requests for financial disclosure. As discussed during the conference, absent a veil-piercing claim or an evidentiary proffer that Jforward does not actually have business beyond Satsuma, there is no valid justification to demand that Jforward disclose all of its financial and tax records. Use of inflammatory remarks such as "legitimate business" and "sham" provides no clarity and gives the impression that plaintiff is seeking discovery based on legal

theories that, like veil piercing, are beyond the scope of the case and which are not supported, at least on this record, by anything other than rhetoric.

In opposition, Jforward explains that "at issue is the question of whether Satsuma's assets – that is, primarily, its funds – were improperly transferred to Jforward" and "whether Jforward usurped corporate opportunities of Satsuma by somehow diverting 'Satsuma's' accounts in Goldbelly and Ramen King" and that "neither set of issues requires wide-ranging discovery into any and all aspects of Jforward's event management and restaurant management business" (Dkt. 433 at 3). Jforward, thus, objects to plaintiff's overbroad demands (*see id.* at 4) and to plaintiff's interrogatories, which go beyond the scope permitted by Comm. Div. Rule 11-a (*see id.* at 7-8).

In reply, the only relevant response plaintiff provided concerns specific transfers made from Satsuma to Jforward (*see* Dkt. 437 at 4). This demonstrates that, contrary to what plaintiff represented in the conference, plaintiff does indeed have financial records and could draft targeted requests based on specific challenged transactions rather than ask for all of Jforward's records (*cf.* Dkt. 395 at 5 [demanding all of Jforward's financial records from 2017-2022]; *see also* Dkt. 401).

While plaintiff may well have a valid need for additional discovery, this is not the way to get it. The court will not, on its own, parse the portions of the discovery requests that might be justified when plaintiff could not be bothered to do so. As discussed during the conference, if plaintiff wanted the court to compel additional discovery from Jforward, she needed to provide a careful, cogent explanation of the nexus between each request and the nature of the claim supported by record evidence or legal justification. She did not do so on this motion.

Given the status of this case, the court will only consider ordering additional discovery if plaintiff can lay a clear foundation at defendants' depositions that there are financial records reflecting the business of Satsuma within their possession, custody or control that have yet to be produced, and if plaintiff can do so she may make a post-deposition demand for their production.

Of course, if it is aware that it has such documents, it would behoove Jforward to produce them to avoid the expense of further motion practice and potential additional depositions. As noted, it appears that Jforward may have additional relevant discovery notwithstanding plaintiff's failure to paint a clear picture of what she needs. Jforward should know the scope of its involvement with Satsuma and if it comes to light that it has been withholding relevant financial information, it will only have itself to blame if discovery is further protracted. Jforward's counsel, to their credit, have taken a far more measured approach on this motion and perhaps they can put these issues to rest by ensuring that their client has no other records relating to Satsuma's business that have yet to be produced.

Cross-Motion for Sanctions

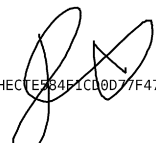
"Frivolous conduct' proscribed by 22 NYCRR 130-1.1 includes assertions of 'material factual statements that are false' (*Sherman v Eisenberg*, 267 AD2d 29, 32 [1st Dept 1999]; *see Iacovacci v Brevet Holdings, LLC*, 198 AD3d 565, 566 [1st Dept 2021]). In the exercise of discretion, the court declines to sanction plaintiff (*see Board of Windsor Owners Corp. v Platt*, 188 AD3d 406 [1st Dept 2020]). The court is dismayed by the record on this motion, which sadly is characteristic of the parties' course. The unprofessional rhetoric in their briefs, in addition to reflecting a lack of civility, distracts from the relevant issues and does not help the court make an informed decision. This motion was necessitated due to opposing counsel proffering diametrically opposed facts regarding what was produced. The court understands that plaintiff contends that the discovery provided by defendants is inadequate, but when the court asks counsel to identify the financial discovery that was provided and the answer is "nothing" when, in fact, indisputably financial records (including Quickbooks access that counsel also falsely represented was not provided) had been provided, that is unacceptable (*see Part Rule 36* ["Attorneys appearing for conferences must be fully familiar with the case in accordance with Commercial Division Rule 1(a). They must have **thorough knowledge of all facts and claims in the pleadings**, all relevant contracts, all prior court orders and **all discovery proceedings**. Counsel should be prepared to **discuss the merits** of their case at all conferences"] [emphasis added]).

Cross-Motion to Compel

Plaintiff must provide a damages calculation (Comm. Div. Rule 11-a[b]). Plaintiff will be required to do so along with her objections to the accounting and, if necessary, with the benefit of expert discovery. A deadline will be set during the conference in January (*see* Dkt. 387).

Accordingly, it is ORDERED that the cross-motions are DENIED except to the extent that a deadline will be set during the January conference for plaintiff to provide a response to Jforward's Interrogatory No. 6; and it is further

ORDERED that Motion Seq. 14 is resolved by the December 12, 2022 order (Dkt. 435).

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JENNIFER G. SCHECTER, J.S.C.

12/19/2022
DATE

CHECK ONE:

CASE DISPOSED DENIED NON-FINAL DISPOSITION
 GRANTED GRANTED IN PART OTHER