

BDO USA, LLP v Morris
2023 NY Slip Op 30123(U)
January 9, 2023
Supreme Court, New York County
Docket Number: Index No. 652352/2020
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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<p>BDO USA, LLP,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>STEPHEN MORRIS, JAMES ANDREW STILES,</p> <p style="text-align: center;">Defendant.</p>	<table border="0"> <tr> <td style="width: 30%;">INDEX NO.</td> <td style="border-bottom: 1px solid black;">652352/2020</td> </tr> <tr> <td>MOTION DATE</td> <td style="border-bottom: 1px solid black;">N/A, N/A, N/A, N/A</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="border-bottom: 1px solid black;">026 027 030 031</td> </tr> </table> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>	INDEX NO.	652352/2020	MOTION DATE	N/A, N/A, N/A, N/A	MOTION SEQ. NO.	026 027 030 031
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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 026) 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542
were read on this motion to/for ORDER OF PROTECTION.

The following e-filed documents, listed by NYSCEF document number (Motion 027) 501, 502, 503, 515, 553, 554, 555
were read on this motion to/for STRIKE AFFIRMATIVE DEFENSE.

The following e-filed documents, listed by NYSCEF document number (Motion 030) 543, 545, 546, 547, 548, 549, 556
were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 031) 550, 551, 552
were read on this motion to/for SEAL.

1. Non-party EverGlade Global Inc.’s (**Everglade**) motion (Mtn. Seq. No. 026) for a protective order denying, limiting, conditioning, and/or regulating the use of the subpoena ad testificandum issued by BDO USA, LLP (**BDO**) must be denied. Everglade argues that the subpoena is overbroad and seeks confidential and proprietary information not at issue in this case. They are wrong. The requests are specific and targeted and go directly to the issues that are involved in this case. BDO’s claims in this case are that the Defendants have

misappropriated BDO's clients and business and marketing information while they worked for BDO and that they collaborated with Mr. Jia-Sobota and Everglade in doing so to build Everglade, a competing business. BDO is therefore entitled to Everglade's client lists and documents sufficient to demonstrate their efforts to market to new and potential clients. BDO is also entitled to documentation concerning Everglade's efforts to obtain financing for its business operations. BDO alleges that Everglade, as a new company, used BDO's confidential development strategies that were misappropriated by the Defendants in order to find funding for its business. What Mr. Jia-Sobota and Everglade told others about his potential venture and their compliance programs is also relevant to the Defendants position in this case regarding BDO's practices. As discussed on the record, BDO is also entitled to question Everglade at deposition about the testimony of Mr. Argy who has provided testimony in this action about the formation of Everglade. To the extent that Everglade contends that any of this information is confidential or proprietary, Everglade's production shall be on an attorneys' eyes only basis and may be shared with BDO's experts and other third party professional professionals in this litigation. The portions of the transcripts for Mr. Jia-Sobota's and Everglade's depositions discussing such confidential and proprietary information shall also be maintained on an attorneys' eyes and third party professionals only basis. The motion for a protective order is therefore denied.

2. The branch of Plaintiff's motion (Mtn. Seq. No. 027) seeking to strike Mr. Stiles' second counterclaim (tortious interference) must be granted as unopposed and because it is utterly devoid of merit (*Eighth Ave. Garage Corp. v H.K.L. Realty Corp.*, 60 AD3d 404, 405 [1st Dept 2009]). This Court previously dismissed this claim without prejudice. It is now dismissed with prejudice. The branch of the motion seeking to dismiss Mr. Stiles'

second affirmative defense (unclean hands) however is not dismissed. As alleged, BDO acted against out against Mr. Stiles when they learned that Mr. Stiles was expressing concern about BDO's business practices, both prior to and after his departure from BDO. Mr. Stiles argues that BDO can not claim that Mr. Stiles was acting in concert with Mr. Jia-Sobota because, according to Mr. Stiles, his involvement with Mr. Jia-Sobota and Mr. Jia-Sobota's departure was based solely on his concerns over BDO's alleged improper business practices. Under the doctrine of unclean hands, Mr. Stiles argues that, because of BDO's retaliation, even if he ultimately is found to have acted in violation of his duties to BDO, BDO can not recover because they violated their obligations to him.

3. BDO's motion (Mtn. Seq. No. 030) to require non-parties Eric Jia-Sobota and Everglade to appear for depositions must be granted as moot. Mr. Jia-Sobota and Everglade have agreed to be deposed following resolution of Everglade's motion for a protective order.
4. The Plaintiff's motion (Mtn. Seq. No. 031) to seal NYSCEF Doc. Nos. 530, 531, 532, 541, 546, 548, and 552 is granted for good cause shown in accordance with Part 216 of the Uniform Rules for the Trial Courts.

It is hereby ORDERED that Everglade's motion for a protective order is denied; and it is further

ORDERED that the Plaintiff's motion to strike Mr. Stiles' second affirmative defense and second counterclaim is granted to the extent of striking the second counterclaim; and it is further

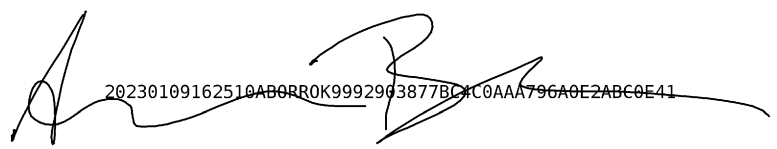
ORDERED that the motion to require Mr. Jia-Sobota and Everglade to appear for depositions is granted; and it is further

ORDERED that within 7 days of the date of this order, the parties shall submit a deposition schedule for Mr. Jia-Sobota and Everglade and that such depositions shall occur by early March 2023; and it is further

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF Doc. Nos. 530, 531, 532, 541, 546, 548, and 552 and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that 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).


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1/9/2023
DATE

ANDREW BORROK, J.S.C.

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