

Houston v Rai

2023 NY Slip Op 33945(U)

October 31, 2023

Supreme Court, Kings County

Docket Number: Index No. 524041/2022

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: CCP

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LINOBA D. HOUSTON,

Plaintiff, Decision and order

- against -

Index No. 524041/2022

MAN K. RAI, ZWANZIG-NY, LLC, UBER
TECHNOLOGIES, INC., and UBER USA, LLC,

Defendants, October 31, 2023

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #3

The defendants Zwanzig-NY, LLC, and Uber Technologies Inc., and Uber USA, LLC, have moved seeking a protective order regarding certain discovery responses. The plaintiff opposes the motion. Papers have been submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On April 2, 2021 the defendant driver Man K. Rai was involved in a car accident with the plaintiff. The plaintiff served discovery demands and seeks the insurance policies of the defendants. The defendants move seeking a protective order to prevent the insurance policies from being available to public disclosure. Thus, the defendants agree to furnish all insurance policies sought provided they cannot be disclosed outside this lawsuit. The plaintiff opposes the motion and seek unrestricted access to the insurance policies as well as the unfettered right to share such policies in any manner plaintiff chooses.

Conclusions of Law

Pursuant to CPLR §3103(a) "the court may at any time on its own initiative, or on motion of any party or of any person from whom or about whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts" (id). The party seeking a protective order must demonstrate its entitlement to such relief (see, Nimkoff v. Central Park Plaza Associates LLC, 123 AD3d 679, 997 NYS2d 698 [2d Dept., 2014]).

In the context of trade secrets there is a "minimal initial burden" necessary to assert the information sought contains trade secrets (Linderman v. Pennsylvania Building Company, 289 AD2d 77, 734 NYS2d 67 [1st Dept., 2001]). Once that showing is made the burden then shifts to the plaintiff to demonstrate the information sought is "indispensable to support its case" (Bristol, Litynski, Wojcik, P.C. v. Town of Queensbury, 166 AD2d 772, 562 NYS2d 976 [3rd Dept., 1990]).

In this case the defendant Uber has not satisfied its initial burden demonstrating the insurance policies should be subject to a protective order. The defendant has submitted the affidavit of Erin O'Keefe a senior manager for defendant, Uber Technologies, Inc. The affidavit explains that "plaintiff seeks documents that implicate the business structure, insurance

innovations, and trade secrets of Uber. Uber devotes significant resources to researching and developing innovative technologies and has had to similarly innovate to ensure these products' proper insurance. Uber could lose the benefit of its highly negotiated, bespoke insurance agreements if this information were disclosed to Uber's competitors. Uber protects such information carefully, by limiting its disclosure both inside and outside of the company" (Affidavit of Erin O'Keefe, ¶10 [NYSCEF Doc. No. 56]). Further, "it is Uber's practice not to publicly disclose its insurance policies and excess insurance policies. This commercially sensitive information is confidential, proprietary, and trade secret information. This information cannot be acquired by those outside of Uber or by those inside of Uber without the proper authorization. Uber derives economic value from the fact that this information is not generally known or readily discoverable by proper means. If this commercially sensitive information were disclosed, Uber's competitors would be able to create or improve their own operations, thereby depriving Uber of its significant monetary investment in this area" (id., at ¶12).

Thus, Uber has not satisfied its minimal burden the insurance policies are proprietary and should be subject to a protective order. Uber has concluded the insurance policies are confidential, however, that is a conclusion unsupported by any

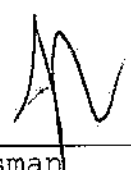
basis at all. To be sure, Uber has developed technology which it seeks to keep confidential. The statement that insurance policies for vehicles are somehow connected to Uber's proprietary technology is unsupported and conclusory and cannot establish the insurance policies themselves are protected as trade secrets. Uber has failed to explain the nature of the secret. Therefore, without any specific information demonstrating the nature of the secret no such secret has been established and consequently, Uber cannot be entitled to any protective order (cf., Drammeh v. Uber Technologies Inc., 2021 WL 3664008 [Western District of Washington 2021]).

Therefore, based on the foregoing the Uber's motion seeking a protective order is denied.

So ordered.

ENTER:

DATED: October 31, 2023
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC