

Platinum Supply Corp. v Turner Constr. Co.

2023 NY Slip Op 34060(U)

November 15, 2023

Supreme Court, New York County

Docket Number: Index No. 157835/2020

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

-----X

PLATINUM SUPPLY CORP.

Plaintiff,

- v -

TURNER CONSTRUCTION COMPANY,

Defendant.

-----X

INDEX NO. 157835/2020

MOTION DATE 11/08/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56 were read on this motion to/for DISCOVERY.

Plaintiff’s motion to compel is decided as described below.

Background

In this dispute concerning building supply materials, plaintiff moves to compel discovery and for an extension of the time to file the note of issue. The Court initially set a deadline of July 28, 2023 to file the note of issue (NYSCEF Doc. No. 43). The parties then requested, and the Court granted, an adjournment of the note of issue deadline to September 26, 2023 (NYSCEF Doc. No. 44). The parties ignored that deadline and failed to file the note of issue so the Court scheduled a conference.

In advance of that conference, plaintiff made the instant motion to compel defendant to produce certain documents, to schedule depositions for the parties, and to extend the note of issue date to April 1, 2024. Plaintiff wants records concerning internal interviews held by counsel for defendant concerning whether defendant’s employees improperly secured excessive orders for plaintiff because they had family ties to plaintiff.

In opposition, defendant explains that the documents plaintiff seeks are internal interview notes of various employees for defendant. It observes that there are no recordings or transcripts of these interviews. Defendant claims that these notes are subject to attorney-client privilege as they were conducted by an outside law firm performing an internal investigation into whether certain of defendant's employees were improperly approving the purchase of goods from plaintiff. Defendant observes that plaintiff is owned by family members of these employees for defendant.

Defendant claims it does not object to an extension of time for the parties to file the note of issue or hold depositions.

Plaintiff did not offer a reply.

Discussion

As an initial matter, the Court must assess whether or not defendant must turn over its attorney's notes concerning the interviews held with certain individuals who were then employees of defendant. The Court finds that these notes (defendant insists there are no transcripts or recordings of the interviews) are subject to the attorney-client privilege and the work product doctrine (*Spectrum Sys. Intern. Corp. v Chem. Bank*, 78 NY2d 371, 380, 575 NYS2d 809 [1991] [finding that reports and notes concerning an internal investigation were privileged and not discoverable]).

There is no dispute that the only potentially discoverable information are the notes prepared by the attorneys in connection with the interviews of certain employees for defendant. An attorney's notes, which may include his or her impressions and thoughts about those interviews, are clearly protected under the attorney-client privilege and the work product doctrine as defendant wanted an assessment of potential wrongdoing and whether it needed to

pursue legal remedies. Critically, these were interviews with then-current employees (*c.f. BDO USA, LLP v Franz*, 208 AD3d 1088, 1089, 175 NYS3d 229 [1st Dept 2022] [finding that interview records with employees who had already given notice they were leaving their employment were not subject to the attorney client privilege as there was no expectation that the interviews would be confidential]).

“An attorney's work product encompasses materials which are uniquely the product of a lawyer's learning and professional skills, such as materials which reflect his legal research, analysis, conclusions, legal theory or strategy. Such material may consist of interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible things” (*Acwo Intern. Steel Corp. v Frenkel & Co.*, 165 AD2d 752, 753, 564 NYS2d 40 [1st Dept 1990] [internal quotations and citations omitted]).

Here, the notes were prepared by defendant's attorney conducting an internal investigation into whether there were unethical transactions with plaintiff by employees who had familial ties to plaintiff. That work product necessarily falls under that doctrine. Moreover, plaintiff did not address defendant's arguments raised in opposition because plaintiff did not file a reply at all.


The Court grants the branch of the motion that seeks to extend the note of issue deadline. However, the record makes clear that the parties have repeatedly ignored this Court's orders and their own discovery schedules by not completing discovery. In fact, to this Court's amazement, the parties have not yet held depositions despite the fact that there were numerous so-ordered stipulations that contained deposition deadlines (*e.g.*, NYSCEF Doc. No. 16 [stating that depositions would be done *by April 1, 2022*]). Obviously, the parties have little interest in the prompt resolution of this case or with following Court deadlines.

Therefore, the Court retracts its note of issue deadline and sets a future conference for March 28, 2024 at 10 a.m. The Court declines to set deadlines for completing the outstanding depositions as previous deadlines have yet to encourage the parties to move this case.

The parties are directed to update the Court about the status of discovery by March 21, 2024 or the conference will be adjourned. As stated in this part’s rules, a note of issue cannot be filed without this Court’s permission.

Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted only to the extent that the note of issue deadline is retracted and there shall be a future conference on March 28, 2024 at 10 a.m. The parties are directed to upload a status update about discovery by March 21, 2024 or the conference will be adjourned.

11/15/2023					
DATE			ARLENE P. BLUTH, J.S.C.		
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" 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
		<input type="checkbox"/> DENIED			