

Parizat v Meron

2023 NY Slip Op 34587(U)

December 14, 2023

Supreme Court, Nassau County

Docket Number: Index No. 611677-2021

Judge: Jerome C. Murphy

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: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT:

**HON. JEROME C. MURPHY,
Justice.**

**AMNON PARIZAT and ION
TECHNOLOGY SOLUTIONS, LLC,**

Plaintiffs,

- against -

**OVADIA MERON, GALIT MERON,
and JOHN DOES 1-3,**

Defendants.

TRIAL/IAS PART 5

Index No.: 611677-2021

Motion Date: 9-29-23

Sequence Nos.: 003 & 004

DECISION and ORDER

The following papers were read on these motions:

Motion Seq. 003

| | |
|---------------------------------------------------------------------|---|
| Notice of Motion, Affirmation, Affidavit, & Exhibits | 1 |
| Memorandum of Law in Support..... | 2 |
| Defendants' Opposition, Affirmation & Affidavits ¹ | 3 |
| Plaintiffs' Reply Memorandum of Law | 4 |

Motion Seq. 004

| | |
|-------------------------------------------------------------|---|
| Notice of Motion, Affirmation, Affidavit, & Exhibits | 1 |
| Memorandum of Law in Support..... | 2 |
| Plaintiffs' Opposition to Defendants' Motion to Compel..... | 3 |
| Reply Affirmation & Exhibits..... | 4 |
| Reply Memorandum of Law | 5 |

PRELIMINARY STATEMENT

In Motion Sequence 003, plaintiffs move, pursuant to CPLR 3124, to compel the production of the tax returns of defendants Ovadia Meron and Galit Meron for the years 2008 through 2011 and

¹ The affidavit of Ovadia Meron and the affirmation of Penelope Taylor are also submitted in support of defendants' motion to compel.

2019 through 2022 and the Form 1099s issued by defendant Ovadia Meron to TRV Corp, for the years 2008 through 2022, and for such other and further relief as this Court deems just and proper. Opposition and reply have been submitted.

In Motion Sequence 004, defendants, Ovadia Meron and Galit Meron, move to compel plaintiffs to produce unredacted copies of the tax documents of plaintiff ION Technology Solutions, LLC which had already been produced to them by plaintiff in redacted form. Opposition and reply have been submitted.

BACKGROUND

In September 2021, plaintiffs, Amnon Parizat and ION Technology Solutions, LLC (hereinafter ION Tech), commenced this action against defendants Ovadia Meron (hereinafter Ovadia), Galit Meron (hereinafter Galit and together with Ovadia as defendants), and John Does 1-3 to recover damages for battery (first cause of action against Ovadia and John Does 1 and 2), assault (second cause of action against defendants and John Does), false imprisonment (third cause of action against Ovadia and John Does 1 and 2), unjust enrichment (fourth cause of action against Ovadia), tortious interference with contract (fifth cause of action against Ovadia and Galit), conspiracy (sixth cause of action against defendants and John Does), Racketeer Influenced and Corrupt Organizations Act (hereinafter RICO) violations (seventh cause of action against defendants and John Does), and RICO conspiracy (eighth cause of action against defendants and John Does) (*see* NYSCEF Doc. No. 1: Complaint). Plaintiffs also seek a judgment declaring that Ovadia has no ownership interest in ION Tech (ninth cause of action against Ovadia) (*see id.*).

In their amended answer, dated December 6, 2021, defendants denied the material allegations of the complaint and asserted various affirmative defenses² (*see* NYSCEF Doc. No. 21: Answer [Amended]). In response to the 31st paragraph of the complaint which alleged, inter alia, that “[a]the time of its founding [in June 2008], ION Tech. was co-owned by [] Parizat and his now-deceased wife. [] Parizat is now the sole owner of ION Tech.; he is also the Company’s President”, in addition to denying those allegations, defendants averred that “[Ovadia] has been, and is, a one-half owner

² Defendant Ovadia Meron also interposed seven counterclaims against plaintiff Amnon Parizat in the amended answer which were dismissed by this Court in its decision and order, entered May 16, 2022 (*see* NYSCEF Doc. No. 40).

of ION Tech” (NYSCEF Doc. Nos. 1, 21 at ¶ 21). Further, in paragraph 38 of the complaint, plaintiffs alleged “Parizat agreed to collaborate with [Ovadia] but on the condition that [Ovadia] would not be an owner or have any stake in this future semiconductor company. And the two struck a deal. [] Parizat would own and run the business, and [Ovadia], as an outside consultant, would try to grow the business by bringing in new customers” (NYSCEF Doc. No. 1 at ¶ 38). In response, defendants denied the allegations of that paragraph, but stated that “[Ovadia] and [] Parizat agreed that title to the shares in ION Tech. would be in the name of [] Parizat, but that both had a one-half interest in the Company” (NYSCEF Doc. No. 21 at ¶ 38). Defendants similarly asserted that Ovadia was an owner of iON Tech in their responses to paragraphs 39, 54, 69, 169, and 170 (*see id.* at ¶¶ 39, 54, 69, 169-170).

In plaintiffs’ First Set of Requests for the Production of Documents, dated August 15, 2022, plaintiffs sought from defendants, among other things, all documents related to Ovadia’s 50 percent ownership of ION Tech (*see* NYSCEF Doc. No. 106: Plaintiffs’ Exhibit I). Defendants did not provide copies of their tax returns in response to that demand. Thereafter, after obtaining copies of defendants’ tax returns filed for years 2012 through 2018 in response to a subpoena served upon nonparty Tokyo Electron Arizona, LLC, which had copies of same as a party to a judgment enforcement action which it filed against Ovadia and Discreet Industries Corporation, plaintiffs served upon defendants a Second Set of Requests for the Production of Documents in which plaintiffs requested the following:

- “1. All Documents and Communications Relating to Your U.S. federal, state, and local tax filings for each calendar year of 2008 through 2022 (inclusive) and any amended versions thereof, including but not limited to any of Your Form 1040s, Schedule Cs, Schedule Es, and/or Schedule Fs annexed thereto or filed in connection therewith.
2. All Documents and Communications Relating to Your Form W2s and 1099s for each calendar year of 2008 through 2022 (inclusive).
3. All Documents and Communications Relating to Your foreign tax filings from each calendar year of 2008 through 2022 (inclusive)” (NYSCEF Doc. No. 107: Plaintiffs’ Exhibit J).

Defendants did not produce their tax returns in response to plaintiffs’ Second Set of Requests

for the Production of Documents. Subsequently, plaintiffs served their First Set of Requests for Admission, dated July 7, 2023, upon defendants seeking certain admissions with respect to their tax returns (*see* NYSCEF Doc. No. 109: Plaintiff's Exhibit L). In response, along with their objections to plaintiffs' First Set of Requests for Admission, defendants admitted that they did not receive a Schedule K-1 for 2008 through 2021 and that Ovadia did receive a Form 1099-MISC from ION Tech for 2014 through 2022 (*see* NYSCEF Doc. No. 110: Plaintiff's Exhibit M). They also responded that they were unable to provide a response to those requests which sought an admission that Ovadia received a Form 1099-MISC from ION Tech for 2008 through 2013, that he did not file a Schedule E (Form 1040) to report income or distributions related to ION Tech for 2008 through 2014, and that he filed a Schedule C or C-EZ for 2008 through 2014 (*see id.*). However, with respect to requests to admit that Ovadia did not file a Schedule E for 2015 through 2021 and that he did file a Schedule C form for those same years, defendants admitted that Ovadia did not file a Schedule E for those years "because ION never disclosed to [him] whether ION was filing as a partnership or elected to be classified as an association taxable as a corporation" and for the same reason he filed Schedule C or C-EZ forms during those same years (*id.*). Defendants also provided that as the same reason for admitting that they did not disclose Ovadia's ownership interest in ION Tech on their tax returns for 2008 through 2021.

Defendants served a First Request for the Production of Documents dated August 15, 2022, which sought, among other things, documents and communications concerning or reflecting the equity interests of ION Tech's members since June 1, 2008 (*see* NYSCEF Doc. No. 147). During the course of discovery, plaintiffs produced certain ION Tech's Schedule K-1's to defendants redacting ION Tech's financial information. Defendants requested that plaintiffs produce the schedules without redacting the financial information. Plaintiffs objected to that request on the basis that such information was irrelevant and overbroad, and given that defendants would not be permitted to rely on parol evidence to prove their defense that Ovadia was 50% owner of ION Tech.

Plaintiffs now move, pursuant to CPLR 3124, to compel the production of the tax returns of Ovadia and Galit for the years 2008 through 2011 and 2019 through 2022 and the Form 1099s issued by Ovadia to TRV Corp. for the years 2008 through 2022. Ovadia and Galit separately move to compel plaintiffs to produce unredacted versions of the tax documents of ION Tech, the Schedule

K-1's, which have previously been produced by plaintiffs in redacted form.

DISCUSSION

“CPLR 3101 provides that ‘[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by . . . a party, or the officer, director, member, agent or employee of a party’” (*Bayview Loan Serv., LLC v Charleston*, 175 AD3d 1229, 1231 [2nd Dept. 2019], quoting CPLR 3101[a][1]; *Deutsche Bank Nat. Trust Co. v Mecca*, 202 AD3d 1052, 1055 [2nd Dept. 2022]). The phrase “material and necessary” should be interpreted liberally, and the test is one of usefulness and reason (*see Allen v Crowell–Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; *Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d 1283, 1283 [2nd Dept. 2011]). “Unlimited disclosure, however, is not required” (*Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d at 1283 [internal citations and quotations omitted]; *see Levine v City Med. Assocs., P.C.*, 108 AD3d 746, 747 [2nd Dept. 2013]).

“Under our discovery statutes and case law, competing interests must always be balanced; the need for discovery must be weighed against any special burden to be borne by the opposing party” (*O’Neill v Oakgrove Constr.*, 71 NY2d 521, 529 [1988]; *see Kavanagh v Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954 [1998]). “Thus, when courts are called upon to resolve a dispute, discovery requests ‘must be evaluated on a case-by-case basis with due regard for the strong policy supporting open disclosure’” (*Forman v Henkin*, 30 NY3d 656, 662 [2018], quoting *Andon v 302-304 Mott St. Assoc.*, 94 NY2d 740, 747 [2000]).

“Pursuant to CPLR 3124, ‘[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order . . . the party seeking disclosure may move to compel compliance or a response’” (*Bayview Loan Serv., LLC v Charleston*, 175 AD3d at 1231). “It is incumbent on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims, and unsubstantiated bare allegations of relevancy are insufficient to establish the factual predicate regarding relevancy” (*Crazytown Furniture v Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2nd Dept. 1989][citations omitted]; *see Whitnum v Plastic & Reconstructive Surgery, P.C.*, 142 AD3d 495, 496 [2nd Dept. 2016]; *Wadolowski v Cohen*, 99 AD3d 793, 794 [2nd Dept. 2012]). “A motion to compel responses to demands and interrogatories is properly denied

where the demands and interrogatories seek information which is irrelevant, overly broad, or burdensome” (*Accent Collections, Inc. v Cappelli Enters., Inc.*, 84 AD3d at 1283).

“Due to the confidential and private nature of tax returns, tax returns generally are not discoverable in the absence of a strong showing that the information is indispensable to a claim or defense and cannot be obtained from other sources” (*Nill v Gaco Western, LLC*, 203 AD3d 1173, 1174-1175 [2nd Dept. 2022])[internal quotation marks and citations omitted]; see *Katz v Castlepoint Ins. Co.*, 121 AD3d 948, 949 [2nd Dept. 2014]; *Levine v City Med. Assoc., P.C.*, 108 A.D.3d 746, 747 [2nd Dept. 2013]).

Here, with respect to plaintiffs’ motion, whether Ovadia is an owner or a consultant of ION Tech through to the present is the central issue in this action. While, through plaintiff’s request to admit, Ovadia has made admissions with respect to certain information he disclosed on his tax returns for the years 2008 through 2011 and 2019 through 2021, additional information concerning the question of Ovadia’s relationship with ION Tech can only be gleaned from the disclosure of those tax returns and the corresponding Form 1099’s issued and plaintiff has demonstrated that it requires this tax information, which cannot be obtained from other sources, in order to move for summary judgment on its cause of action seeking a declaratory judgment³. As a result, such information is indispensable to plaintiff’s prosecution of this action and to defend against defendants’ affirmative defense asserting Ovadia’s alleged ownership interest in ION Tech. As a result, Ovadia is to produce the documents as requested for the time periods of which plaintiff is not in possession and during which Ovadia alleges that he is a 50% owner of ION Tech (see *McMahon v Manners*, 158 AD3d 616, 617 [2nd Dept. 2018]; *Chaudhry v Abadir*, 261 AD2d 497, 497-498 [2nd Dept. 1999]; *Kay v Kay*, 223 AD2d 684, 684 [2nd Dept. 1996]).

With respect to defendants’ motion to compel production of unredacted copies of the tax documents of ION Tech, the Schedule K-1’s, which plaintiffs produced in redacted form, defendants maintain that the ION tax documents as produced are useless with respect to determining ION Tech’s

³The merits of plaintiffs’ intention to move for summary judgment on their ninth cause of action premised upon the theory of tax estoppel were not weighed in considering plaintiffs’ motion to compel. The only consideration that the Court ascribed to plaintiffs’ intention to rely on that theory in moving for summary judgment was the fact that such theory would require the tax returns of Ovadia in so moving on that basis.

profits and losses or value of the assets that were transferred to it- information which is “highly relevant as it goes to the issue whether [Ovadia] is a fifty percent (50%) owner of ION” (Defendants’ Memorandum of Law in Support of Motion to Compel, p. 2). However, defendants do not demonstrate that such unredacted versions of these documents will lead to the discovery of relevant evidence with respect to the identified issues of Ovadia’s purported ownership interest in ION Tech or with respect to Parizat’s purported admission that he agreed to share profits with Ovadia. Further, defendants’ request is overboard in that it seeks unredacted versions of ION Tech’s tax documents which were produced for the years 2009 through 2020 even though the purported transfer of assets from I Technology Solution, LLC, occurred as early as June 2008, the date that Ovadia alleges that he started transferring assets of I Technology Solution, LLC, to ION Tech, due to an oral agreement between him and Parizat concerning ownership of ION Tech, but no later than 2010, the year that ION Tech, through Parizat as president, and I Technology Solution, LLC, through Moshe Mizrahi, entered into an Asset Purchase Agreement, dated December 7, 2010 (*see* NYSCEF Doc. No. 127), and Ovadia and ION Tech, through Parizat, as its president, entered into a consulting agreement on February 2, 2010 (*see* NYSCEF Doc. No. 125). In addition, defendants do not address whether the information they seek is not ascertainable through other records. Since defendants did not establish that the unredacted copies of ION Tech’s Schedule K-1’s were indispensable to their affirmative defenses alleging that Ovadia is an owner of ION Tech based on an oral agreement between Parizat and Ovadia and that Ovadia transferred the assets of I Technology Solution, LLC to ION Tech in exchange for a 50 percent share of ION Tech, and that information pertaining to those issues could not be obtained from other sources, their motion is denied (*see Moran v Grand Slam Ventures*, __AD3d__, 2023 NY Slip Op 06133, at *2 [2nd Dept. Nov. 29, 2023]; *Nilil v Gaco Western, LLC*, 203 AD3d at 1175; *Katz v Castlepoint Ins. Co.*, 121 AD3d at 949).

Accordingly, it is

ORDERED that plaintiff’s motion, pursuant to CPLR 3124, to compel the production of the tax returns of defendants Ovadia Meron and Galit Meron for the years 2008 through 2011 and 2019 through 2022 and the Form 1099s issued by defendant Ovadia Meron to TRV Corp. for the years 2008 through 2022 is GRANTED and the defendants shall produce these documents within 40 days and also provide authorizations for the aforementioned personal tax returns in 40 days; and it is

further


ORDERED that the motion of defendants Ovadia Meron and Galit Meron to compel plaintiffs to produce unredacted copies of the tax documents, the schedule K-1's, of plaintiff ION Technology Solutions, LLC, which had already been produced to them by plaintiff in redacted form is DENIED.

To the extent that any other requested relief has not been granted, it is expressly denied.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
December 14, 2023

ENTER:



JEROME C. MURPHY
J.S.C.

ENTERED

Dec 19 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE