

**Heejoo Pyon, DDS, PC v Chavkin Oral &
Maxillofacial Surgery PLLC**

2024 NY Slip Op 34828(U)

July 18, 2024

Supreme Court, Suffolk County

Docket Number: Index No. 613325/2021

Judge: James Hudson

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**Supreme Court of the State of New York
County of Suffolk
Commercial Division Part XLVI
Memorandum Decision**

P R E S E N T:

HON. JAMES HUDSON
Acting Justice of the Supreme Court

MOTION DATE: 1/8/24
SUBMIT DATE: 5/22/24
Mot. Seq. #: **003 – MotD**

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HEEJOO PYON, DDS, PC,

Plaintiff,

BARNES & BARNES, P.C.
Attorneys for the Plaintiff
445 Broadhollow Road, Suite 226
Melville, NY 11747

-against-

CHAVKIN ORAL AND MAXILLOFACIAL
SURGERY PLLC and ROSS CHAVKIN,

Defendants.

ROSENBERG, FORTUNA & LAITMAN,
LLP
Attorneys for the Defendants
666 Old Country Road, Suite 810
Garden City, NY 11530

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Heejoo Pyon, DDS, PC requests an order: 1) pursuant to **CPLR 3124** that Chavkin Oral and Maxillofacial Surgery PLLC and Ross Chavkin be compelled to produce all disclosure requested in the plaintiff’s first demand for discovery and inspection and plaintiff’s first set of interrogatories; and 2) striking the objections to discovery made by Chavkin Oral and Maxillofacial Surgery PLLC and Ross Chavkin.

This is an action alleging breach of the January 1st, 2021, four (4) year sublease for an oral surgery theater and reception area at a medical suite located at 30 East 60th Street, Suite 702, New York, NY 10022. Heejoo Pyon DDS, P.C. (“Pyon DDS”) sublet a portion of its leased premises to Chavkin Oral and Maxillofacial Surgery, PLLC (“Chavkin Oral”). Dental surgeon Ross Chavkin signed as guarantor. Chavkin Oral paid \$9,000 in rent

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security; but never took possession. They allege that occupancy by another dentist made their tenancy impossible. During February 2021 Dr. Chavkin terminated the sublease and demanded the return of his rent security, which Pyon DDS refused. Pyon DDS also retained dental implant kits which are the property of Chavkin Oral, for which the sublessee paid \$27,465.73.

A dispute has arisen regarding the document discovery demands and interrogatories of Pyon DDS. The plaintiff now moves pursuant to **CPLR 3124** to compel compliance by the defendants.

Generally, the scope of pre-trial discovery is broad; with specific exceptions for material determined to be privileged and that which is an attorney's work product. **CPLR 3101 (a)** mandates full disclosure of all matters material and necessary to an action, consistent with "New York's policy of permitting open and far-reaching pretrial discovery" (*Neves v. Port Authority of New York and New Jersey*, 265 AD2d 393, 394, 697 NYS2d 85 [2d Dept 1999]; *M.C. v. Sylvia Marsh Equities, Inc.*, 103 AD3d 676, 959 NYS2d 280 [2d Dept 2013]).

It is within the sound discretion of the Court to resolve discovery disputes (*Carmona v. HUB Props. Trust*, 186 AD3d 1485, 1486, 131 NYS3d 710 [2d Dept 2020]). The court must balance the need for discovery against the burden of its production (*O'Neill v. Oakgrove Constr.*, 71 NY2d 521, 529, 528 NYS2d 1, 523 NE2d 277, *rearg denied* 72 NY2d 910, 532 NYS2d 785, 528 NE2d 1231 [1988]). The court must liberally interpret whether the disclosure sought is material and necessary. That phrase has been held to

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include “facts bearing upon the controversy which will assist in the preparation for trial . . . the test is one of usefulness and reason” (*Harrison v. Bayley Seton Hosp., Inc.*, 219 AD2d 584, 584, 631 NYS2d 182 [2d Dept 1995]). Discovery which is sought in good faith for use as evidence or in rebuttal, or for purposes of cross-examination, is permitted (*Allen v. Crowell-Collier Publ. Co.*, 21 NY2d 403, 406, 288 NYS2d 449, 235 NE2d 430 [1968]). Discovery demands which are overly broad or tend to confuse pertinent case issues should be denied (*Brandes v. North Shore University Hosp.*, 1 AD3d 550, 767 NYS2d 999 [2d Dept 2003]). The Court’s review is limited to determining where there has been an abuse of the discovery process (*Kavanagh v. Ogden Allied Maintenance Corp.*, 92 NY2d 952, 954, 683 NYS2d 156, 705 NE2d 1197 [1998]).

The Court will now consider plaintiff’s motion (mot. seq. 003).

Counsel for Pyon DDS affirms having conferred with counsel for Chavkin Oral in an unsuccessful attempt to resolve the issues raised by the instant motion; in compliance with **22 NYCRR §202.7 (a)**.

Counsel for Pyon DDS argues that Chavkin Oral waived the right to object to plaintiff’s May 5th, 2023 first set of interrogatories by not timely responding and objecting. In opposition, counsel for Chavkin Oral notes that the parties agreed not to exchange documents until after the August 25th, 2023 order regarding the exchange of confidential information. He avers that the time for document exchange and discovery responses was further extended through October 2023 because counsel for Pyon DDS had not obtained requested documents from his client.

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In reply, counsel for Pyon DDS argues that although the parties agreed to postpone document production, the opposition fails to explain why Chavkin Oral was unable to timely object to his demands. Counsel concedes that Chavkin Oral responded and objected; albeit on October 11th, 2023.

The record reflects that counsel were in regular contact by email and conferences regarding discovery. The Court, in its discretion, finds that Chavkin Oral has sufficiently demonstrated that it did not waive the right to object to the discovery demands of Pyon DDS.

The Court will next consider that portion of the instant motion which requests that the defendants be compelled to respond to plaintiff's discovery demands.

The amended answer contains three (3) counterclaims: 1) for a return of the \$9,000 rent security deposit; 2) for rescission of the sublease; and 3) for compensatory damages in the amount of \$15,000 per month for lost profits due to the inability of Pyon DDS to deliver possession of the demised premises (NYSCEF Doc. No. 63).

Pyon DDS, by document demands Nos. 17, 18, 19, 20, 22, is seeking financial records from Chavkin Oral in relation to the defendants' counterclaim of lost profits (NYSCEF Doc. No. 71). The demanded documents include: 1) federal income tax returns for 2019 through 2022; 2) forms W-2 and 1099 for the same years; and 3) annual general ledgers, balance sheets and statements of profit and loss for those years in electronic format.

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Chavkin Oral has made lost profits an issue in this action. The defendants have demanded compensation for each month commencing November 2020 through the date of judgment.

On August 25th, 2023, the parties' stipulated to a procedure governing the exchange of confidential information (NYSCEF Doc. No. 76). That stipulation affords Chavkin Oral protection for the exchange of the demanded documents.

Chavkin Oral argues that the requested documents constitute "extraneous documents" not relevant to expert opinion as to lost profits. Counsel states, in his memorandum

Because the lost profits calculation concern a branch of COMS' [Chavkin Oral] business that never opened [*sic*]. There are no financial documents that would enable a layperson to make a determination with any measure of credibility as to the amount of damages or net profits that may have been lost. The determination as to lost profits must be made by an expert witness on Defendants' behalf (NYSCEF Doc. No. 93, p. 2-3).

The Court does not find that argument sufficient to defeat the statutory and caselaw mandates for full disclosure. EBTs have yet to be conducted in this action. The requested documents are arguably relevant to the lost profits counterclaim.

The Court has carefully considered the request by Pyon, DDS for a self-effectuating conditional order of preclusion; and declines to grant that relief.

Accordingly, it is

ORDERED, that the motion (seq. no. 003) by the plaintiff Heejoo Pyon, DDS, P.C., which requests, pursuant to **CPLR 3124**, that Chavkin Oral and Maxillofacial Surgery PLLC and Ross Chavkin be compelled to produce all disclosure requested in the plaintiff's

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first demand for discovery and inspection and the plaintiff's first set of interrogatories, is granted; and it is further

ORDERED, that the request to strike the objections to discovery made by Chavkin Oral and Maxillofacial Surgery, PLLC and Ross Chavkin, is denied.

This memorandum also constitutes the Order of the Court.

Dated: July 18th, 2024
Riverhead, NY



HON. JAMES HUDSON
Acting Justice of the Supreme Court