Twitchell Tech. Prods., LLC v Mechoshade Sys., LLC
2024 NY Slip Op 34922(U)
July 30, 2024
Supreme Court, Queens County
Docket Number: Index No. 713089/2020
Judge: Leonard Livote
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SHORT FORM ORDER

SHORT FORM ORDER
NEW YORK STATE SUPREME COURT - QUEENS COUNTY
Present: HONORABLE Leonard Livote
Supreme Court Justice

IAS: COMMERCIAL DIVISION PART A

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Index No: 713089/2020

TWITCHELL TECHNICAL PRODUCTS, LLC,

Plaintiff(s),

Motion Date: 03/26/2024

-against-

Seq. Nos: 14 and 15

MECHOSHADE SYSTEMS, LLC,

Defendant(s).

----------x

FILED
7/30/2024
COUNTY CLERK
QUEENS COUNTY

Motions bearing sequence numbers 14 and 15 of 03/26/2024 are hereby consolidated for disposition. The following papers numbered below read on this motion by defendant Mechoshade Systems, LLC ("Mechoshade") (seq. 14) for an Order: pursuant to CPLR 3124 compelling Plaintiff Twitchell Technical Products, LLC ("Twitchell") to produce documents responsive to Mechoshade's Eighth Notice for Discovery and Inspection of Documents on the grounds that Twitchell has refused to produce responsive documents and other information regarding its damages calculations, and for such other and further relief as the Court deems just and proper; and motion by plaintiff Twitchell (seq. 15)for an order pursuant to CPLR 3124 compelling defendant Mechoshade to comply with discovery obligations; amending the Stipulation and Order for the Exchange of Confidential Information and for such other and further relief as the Court deems just and proper.

PAPERS
NUMBERED

SEQ. 14
Notice of Motion, Affirmation, Affidavits
and Exhibits..... 273-283
Cross Motion, Affirmation, Affidavits
and Exhibits.....
Answering Affirmations, Affidavits
Exhibits and Memorandum of Law..... 290
Reply Affirmations, Affidavits
And Exhibits.....
Other .....

SEQ. 15

Notice of Motion, Amended Notice of Motion, Affirmation,
Affidavits, Exhibits and Memorandum of Law..... 264-272; 285
Cross Motion, Affirmation, Affidavits
and Exhibits.....
Answering Affirmations, Affidavits
And Exhibits..... 294-298
Reply Affirmations, Affidavits, Exhibits and Memorandum
of Law 300
Other .....

Upon the foregoing papers, the within motions are decided as follows:

Throughout the course of the within litigation, extensive discovery has been exchanged between parties. Despite this extensive exchange of discovery, defendant Mechoshade alleges that plaintiff Twitchell still has not exchanged all documentation it relied upon to formulate its damages calculation (seq. 14). Twitchell asserts that it has responded in full to Mechoshade's demands and points to its August 3, 2023, response to defendant Mechoshade's Third Set of Interrogatories. The court concludes that plaintiff Twitchell has provided a responsive analysis for the calculation of the damages claim asserted by it and has exchanged documentation relied upon it to arrive at the monetary amount of the damages claim. To the extent that Twitchell, at trial, attempts to rely on documentation which has not been disclosed and exchanged to Mechoshade

pursuant to Twitchell's August 3, 2023, response to defendant Mechoshade's Third Set of Interrogatories, Twitchell shall be precluded from introducing said documentation and any testimony pertaining to said documentation to establish its damages claim.

Additionally, plaintiff Twitchell moves (seq. 15) for an order pursuant to CPLR 3124 seeking, *inter alia*, an order compelling defendant Mechoshade to either produce the pre-July 5, 2017, fabric purchase data and associated purchase orders, or supplement its affidavit to state that no such information exists. The court previously ordered that this discovery or an affidavit be supplied. Chetan Balsara, Chief Information Officer for Springs Window Fashions, LLC (parent company of Mechoshade) and Mechoshade. states, in his sworn affidavit, that Mechoshade implemented its current enterprise resource planning system in 2017 (the "Current ERP System") and that the Current System contains information for the window shade fabric that Mechoshade purchased from manufacturers other than Twitchell beginning in 2017. He further states that prior to implementing the Current ERP System, Mechoshade used a different inventory management system to maintain purchase information (the "Legacy Inventory Management System"). and that Mechoshade no longer has access to its Legacy Inventory Management System because Mechoshade terminated the relevant license in approximately 2017 when Mechoshade transitioned to its Current ERP System. Chetan Balsara states that as such, the Legacy Inventory Management System is no longer operational and any data contained therein is not accessible to Mechoshade. He goes on to state that Mechoshade saved a "snapshot" of certain information from its Legacy Inventory Management System before transitioning to its Current ERP Syste and that the snapshot also contained purchase information. He further states that Mechoshade has not been able to locate individual printed or electronic purchase orders for this time period; that Mechoshade has not been able to locate any fabric purchase information for any time periods that pre-date the information contained in the abovereferenced snapshot from its Legacy Inventory Management System; and that Mechoshade has conducted a reasonable search to locate the purchase information in its possession that is responsive to Twitchell's requests. He states that Mechoshade has reviewed the available data from its Current ERP System and Legacy Inventory Management System and spoken with current and former employees about both systems. The court finds that this affidavit is detailed; however, Mr. Balsara falls short of stating that the pre-July 5, 2017, fabric purchase data and associated purchase orders do not exist. While this conclusion may be implied from the details provided by Mr. Balsara, such extrapolation does not comply with the court's previous order.

Next, Twitchell seeks an order amending the Protective Order issued by this court on February 7, 2022, pursuant to the Parties' stipulation, to allow discovery obtained in the instant case to be used in a Wisconsin litigation entitled *Twitchell Technical Products, LLC v. Springs Window Fashions, LLC*, bearing Case No. 2020CV0019. Springs Window Fashions, LLC is the parent company of Mechoshade. Mechoshade is not a defendant in the Wisconsin action. Twitchell asserts a claim against Springs for breach of contract relating to outstanding accounts receivables for fabric that Twitchell allegedly supplied to Springs. Springs denies liability and asserts a counterclaim for breach of contract against Twitchell for damages allegedly caused by Twitchell's defective fabrics. Based upon the representations submitted by Joshua D. Roth, counsel for defendant Mechoshade, the deadline to complete discovery in the Wisconsin action is April 5, 2024, dispositive motions are set for April 16, 2024, and a pretrial conference scheduled for July 15, 2024. All these dates have now passed. Currently, there is no need for this court to amend the previously issued Protective order.

Finally, the request for a briefing schedule for dispositive motions is granted.

Accordingly, it is,

ORDERED, that the motion by defendant Mechoshade (seq. 14) for an order pursuant to CPLR 3124 compelling plaintiff Twitchell to produce documents responsive to Mechoshade's Eight Notice for Discovery and Inspection of Documents on the grounds that Twitchell has refused to produce responsive documents and other information regarding its damages calculations is denied; and it is further,

ORDERED, that the branch of the motion by Twitchell for an order compelling Mechoshade to either produce the pre-July 5, 2017, fabric purchase data and associated purchase orders, or supplement its affidavit to state that no such information exists is granted to the extent that Mechoshade shall provide a supplemental affidavit from Chetan Balsara stating explicity that no such information exists within 15 days of service of a copy of the within Order with Notice of Entry; and it is further

ORDERED, a TEAMS conference shall be held on September 19, 2024 at 11:30a.m. for the purpose of establishing a briefing schedule for dispositive motions. The link shall be forwarded by chambers.

Any other and/or further relief requested and not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: July 30, 2024

Leonard Livote, J.S.C.

FILED
7/30/2024
COUNTY CLERK
QUEENS COUNTY