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| Violet Realty, Inc. v Amigone Sanchez & Mattrey LLP |
| 2025 NY Slip Op 35388(U) |
| January 24, 2025 |
| Supreme Court, Erie County |
| Docket Number: Index No. 812665/2021 |
| Judge: Emilio Colaiacovo |
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

VIOLET REALTY, INC.,

Plaintiff,

Memorandum Decision

vs.

AMIGONE SANCHEZ & MATTREY LLP,
BAUMEISTER DENZ LLP, ARTHUR G.
BAUMEISTER, JR., MICHAEL D. DENZ,
VINCENT J. SANCHEZ; RICHARD CLACK,
NICHOLAS P. AMIGONE, III; WILLIAM H.
MATTREY; and B.P. OLIVERIO,

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Defendant.

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John G. Schmidt, Esq.
Mitchell P. Snyder, Esq.
Jeremy M. Amar-Dolan, Esq.
Attorneys for Plaintiff

HODGSON RUSS LLP
Julia M. Hilliker
Attorney for Defendants

Colaiacovo, J.

On April 5, 2023, this Court granted Defendant Clack and Oliverio’s motion to dismiss. See Memorandum Decision; NYSCEF Doc. #56. In that decision, this Court detailed the facts and prior procedural history. This Court assumes the parties’ familiarity with the underlying facts, procedural history, and arguments, to which the Court will refer only as necessary to explain its decision.

Before the Court are two motions, Defendants' motion to dismiss and Plaintiff's motion to compel. Plaintiff seeks to compel seeks Defendants to produce complete copies of the email boxes and file server of Amigone Sanchez & Mattrey LLP (hereinafter "ASM"). The Court will begin with Plaintiff's motion first.

PLAINTIFF'S MOTION TO COMPEL

The production of documents has remained an issue in this matter. This Court previously granted Plaintiff's motion to compel the production of documents related to payments made concerning the dissolution of ASM. They maintained that the production of these documents were essential to their allegations that Defendants fraudulently distributed partnership assets to individuals in order to avoid paying the firm debt owed to the Plaintiff. In its decision, the Court noted the appropriate evidentiary standard concerning motions to compel, and directed that Defendants were to produce those documents within twenty days.

Now, insisting that production is not complete, Plaintiff seeks ASM's email boxes and servers. Plaintiff notes that Defendants have previously offered to do so. A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is "material and necessary"—i.e., relevant—regardless of whether discovery is sought from another party ... or a nonparty..." See generally Matter of Kapon v. Koch, 23

N.Y.3d 32 (2014). The "statute embodies the policy determination that liberal discovery encourages fair and effective resolution of disputes on the merits, minimizing the possibility for ambush and unfair surprise." See generally Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d 371 (1991). The Court finds that these documents are indeed material and necessary. See generally Forman v. Henkin, 30 N.Y.3d 656 (2018). Because the scope of discovery is broad and to be construed liberally, the Court agrees with Plaintiff that these items should be produced. Id.

As such, the Court orders that these documents be produced. However, the Court notes that this case has been pending for nearly seven years. It is odd that even at this stage, demands such as these remain outstanding. Yet, the production of documents responsive to these outstanding requests may prove useful to the Court in reaching its decision on whether the matters survive Defendant's motion to dismiss.

Directing the production of these items is not as simple as found in an ordinary discovery dispute. Instead, there are more sensitive issues that need safeguarded. As such, the Court finds this is an appropriate case to appoint a Special Master to supervise this portion of disclosure. See CPLR 3104(a); see also 22 NYCRR 202.14. This appointment is especially necessary as the Court cannot simply direct the wholesale disclosure of this information to Plaintiff, as these electronic servers and email boxes are bound to have other protected, attorney-

client privileged materials on them. This Court finds that a Special Master can review this electronic data to not only ensure the protection of other privileged materials, but to examine those suspected communications that might give rise to an indicia of fraud as Plaintiff submits. This is crucial, as the crux of Plaintiff's remaining arguments are that if fraud can be shown, then Defendants are without the protections otherwise afforded to the individual members under Article 29 of the Lease. To that end, a report of a Special Master on this discrete issue will be of assistance to the Court. The appointment of a private attorney to act as a Special Master is necessary due to the lack of any judicial hearing officer as well as the 8th Judicial District's policy not to refer commercial matters to current court administration employees.

To that end, the Court hereby appoints **Terrence M. Connors, Esq.** (1000 Liberty Building, 424 Main Street, Buffalo, New York 14202) to act as Special Master. The Special Master will be designated to review the desired production, review it for privileged materials, and then report on the question of whether Defendants engaged in such activity that would deprive them of the protections afforded under Article 29 of the Lease.

So that the Special Master may perform his duties, Defendants shall forthwith provide the requested items no later than thirty (30) days from this decision. The Special Master shall maintain normal billing records of the time spent on this matter, with reasonably detailed descriptions of his activities, and

shall be compensated for services rendered at his regular hourly rate by Plaintiff, subject to future allocation. Any motion to confirm or disaffirm the final Report of the Special Master shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts. Lastly, the powers of the Special Master shall not exceed those set forth in the CPLR. The Court hereby directs the Special Master to serve his report within ninety (90) days of receiving the server, email boxes as well as submissions from counsel, unless so modified.

MOTION TO DISMISS

As the matter is already deemed submitted, for reasons explained herein, the Court shall reserve its decision until it receives the report of the Special Master.

This shall constitute the decision of the Court. Plaintiff shall submit an Order consistent with this Memorandum, on notice to Defendants.

The parties will report back to this Court on April 24, 2025 at 2:30 p.m. in person for status.



Hon. Emilio Colaiacovo, J.S.C.

January 24, 2025
Buffalo, New York