

Beach v Touradji Capital Mgt., LP
2022 NY Slip Op 34313(U)
December 18, 2022
Supreme Court, New York County
Docket Number: Index No. 603611/2008
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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<p>GENTRY T. BEACH and ROBERT A. VOLLERO, Plaintiffs, - v - TOURADJI CAPITAL MANAGEMENT, LP, PAUL TOURADJI, VOLLERO BEACH CAPITAL PARTNERS, VOLLERO BEACH CAPITAL FUND, VOLLERO BEACH ASSOCIATES LLC, VOLLERO BEACH CAPITAL OFFSHORE, LTD., GARY BEACH, and DEEPROCK VENTURE PARTNERS, LP, Defendants.</p>	<p>INDEX NO. <u>603611/2008</u></p> <p>MOTION DATE <u>N/A</u></p> <p>MOTION SEQ. NO. <u>049</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 049) 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1034, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062

were read on this motion to/for DISCOVERY.

In motion sequence number 049, plaintiffs move to (1) compel the deposition of Sean O'Brien, Esq., counsel for Touradji Capital Management, LP (TCM LP), Paul Touradji, and DeepRock Venture Partners (collectively TCM Defendants), (2) compel TCM LP to produce the documents identified in Michael Stolper, Esq.'s Affirmation (NYSCEF Doc. No. [NYSCEF] 1016), and (3) disqualify O'Brien and his firm from representing TCM LP.

For the reasons stated on the record on October 21, 2022, the portion of plaintiffs' motion to compel TCM LP to produce certain documents is granted. TCM LP was to produce those documents by November 4, 2022. (NYSCEF 1065, tr at 60:4-13.)

The court also permitted plaintiffs until November 4, 2022 to file a motion to renew/reargue regarding their labor law claims, if so advised, or waived. (*Id.*; see also

NYSCEF 1064, Interim Order [mot. seq. no. 049].) Plaintiff did not file a motion, and thus, it is waived.

As to the deposition and disqualification of O'Brien, this portion of the motion is denied without prejudice. Plaintiffs assert that O'Brien negotiated with the U.S. Securities and Exchange Commission (SEC) on TCM LP's behalf and was directly responsible for "TCM's effort to have the SEC blame Plaintiffs for the Reg M violations" by telling "the SEC that Plaintiffs were the trading decision makers with respect to certain TCM portfolios in an effort to enforce that point" in direct conflict with TCM LP's position in this action. (NYSCEF 1015, Plaintiffs' Memo in Support at 7.) Plaintiffs argue that O'Brien's deposition is necessary (1) to defend against the Reg M counterclaim, (2) to address any representations O'Brien made to the SEC in regard to plaintiffs' roles at TCM LP in order to support plaintiffs' compensation claim, and (3) to develop a record to support an appropriate sanction for TCM's previous discovery failure.

A party who seeks to depose opposing counsel must show that the information sought is material and necessary and demonstrate a good faith basis for taking the deposition. (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 406 [1st Dept 2018] [citations omitted].) The party seeking the deposition of opposing counsel must also show "that the deposition is necessary because the information is not available from another source" because deposing opposing counsel raises the possibility of attorney disqualification. (*Id.*) Courts must scrutinize these requests "to ensure that the value of the information that may be obtained is worth the substantial costs associated with disqualification." (*Id.* at 407.)

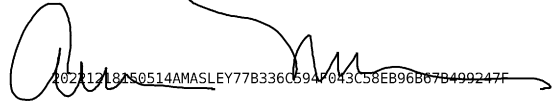
Plaintiffs have not sufficiently shown the court that O'Brien is the only source who can testify as to the Reg M issues. Plaintiffs shall first depose Touradji or another TCM LP corporate representative, if so advised, and based on that deposition, the court can revisit whether O'Brien's deposition is necessary.

Plaintiffs also assert that O'Brien's deposition is necessary to create a record as to the appropriate sanction for withholding discovery. On the appeal of the Judgment after a jury trial, the Appellate Division, First Department, held that "[t]he record as a whole does not support a finding of willfulness or bad faith so as to justify the severe sanctions imposed. No basis exists to indicate that this was anything other than a disagreement over the scope of discovery." (*Beach v Touradji Capital Mgt., LP*, 179 AD3d 474, 477-478 [1st Dept 2020] [citation omitted].) While plaintiffs are correct that the First Department did "not determine whether a discovery omission occurred, because even if the SEC communications should have been turned over prior to the trial, the delay in the document production did not warrant the severe sanctions imposed" (*id.* at 477), this was not an invitation to revisit whether defendant's conduct was sanctionable especially in light of the Court's determination that it was a disagreement over the scope of discovery and nothing more.

Accordingly, it is

ORDERED that plaintiffs' motion is granted, in part, to the extent that defendant TCM LP was to produce the documents identified in Michael Stolper, Esq.'s Affirmation; and it is further

ORDERED that plaintiff's, if so advised, shall depose Touradji or another TCM LP corporate representative within 10 days of the date of this order.



12/18/2022

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE