

SUMMARY

_____ James Zhou Liu (“Plaintiff”) and Lixin Lilly Zhang (“Defendant Zhang”) are a divorcing couple who conducted business together while married. While the divorce is pending, Plaintiff and Defendant Zhang are also litigating disputes over the shared business. Weineng Zuo (“Defendant Zuo,” together with Defendant Zhang, “Defendants”) is another ex-husband of Defendant Zhang and serves as her current business partner.

Plaintiff subpoenaed certain non-parties to the suit unsuccessfully with questions regarding Defendants’ ongoing business operations, with no response. Plaintiff moved to compel and Defendants moved to quash the subpoenas, respectively. Because the information sought by Plaintiff’s subpoena falls within the scope of discovery and is not privileged, Defendants’ motion to quash is **DENIED**, and Plaintiff’s motion to compel is **GRANTED IN PART**. _____

FACTS

Plaintiff and Defendant married in Pennsylvania in 2004, where they conducted various business ventures together. Their relationship deteriorated, leading Plaintiff to file for divorce in Pennsylvania. Defendants are conducting business ventures together now, picking up where Defendant Zhang and Plaintiff left off. Meanwhile, Plaintiff continues to run the same or a similar business himself.

The alleged crux of this dispute is that Defendants’ business ventures are harming the reputation of Plaintiff’s business. Who owns or runs the business is in dispute, as well as whether the two operations are the same business or not.

Liu v. Zhang, et. al.
C.A. No.: K15C-11-005 RBY
January 21, 2016

Currently, Defendants order vitamins from United States manufacturers to be sold in Asia. Plaintiff sells similar products in the United States.

PROCEDURAL BACKGROUND

Recently, this Court ordered a corresponding case between Plaintiff and Defendant Zhang stayed pending the outcome of the Pennsylvania divorce action. The claims in both cases seem to be based on the contentious divorce. Thus, the Court is issuing an order in conjunction with this decision consolidating the two cases.

In the instant case, Plaintiff sent subpoenas to two of Defendants' vitamin manufacturers ("Manufacturer Bactolac" and "Manufacturer GMP Labs"). Plaintiff's subpoenas requested documents recording the purchase and fulfillment of contract orders of vitamins. Plaintiff seeks to learn whether Defendants are complying with national and international drug regulations. Plaintiff claims that the non-party witnesses refused to comply with the subpoenas. Plaintiff wants the Court to compel the witnesses to answer questions about the manufacture of vitamins for Defendants' business.

Defendant Zhang moves to quash Plaintiff's subpoenas on the non-party manufacturers based on claims of privilege, trade secret, and undue burden. One of Defendants' manufacturers submitted a formal objection to the subpoena on grounds of privilege.

APPLICABLE LAW

Superior Court Civil Rule 45© governs persons subject to subpoenas. The Court must quash or modify a subpoena which "requires disclosure of privileged

or other protected matter” not subject to a waiver, or which “subjects a person to undue burden” under 45(c)(3)(A)(ii), (iii). The Court must also quash or modify a subpoena which “requires disclosure of a trade secret or other confidential research, development, or commercial information” under 45(c)(3)(B)(I).

Generally, the scope of discovery is broad. According to Superior Court Civil Rule 26(b)(1), “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” A party does not have standing to object to a subpoena served on a non-party absent a claim of privilege.¹

DISCUSSION

Here, Defendant Zhang moves to quash the subpoena of a non-party on the basis of privilege or trade secret. While a claim of privilege would give standing to Defendant Zhang to object to the subpoena of the non-party manufacturers, it is not clear that the claim is hers to make, because control of the underlying business is in dispute.

Manufacturer Bactolac has objected to Plaintiff’s subpoena on the record.² Bactolac claims “that the information being requested requires disclosure of privileged or other confidential, protected matter.”³ Plaintiff’s two precise inquiries are: 1) whether the pills were shipped in bulk or bottled, and 2) whether one particular lot of pills was released for shipment prior to quality control testing.

¹ *Cede & Co. V. Joule Inc.*, 2005 WL 736689 (Del. Ch., Feb. 7, 2005).

² Bactolac Pharmaceutical Inc.’s Objection to Subpoena.

³ *Id.*

Liu v. Zhang, et. al.
C.A. No.: K15C-11-005 RBY
January 21, 2016

Admittedly, some information about *how* a manufacturer packages pills could be proprietary information subject to trade secret protection or otherwise privileged. However, *when* the pills were bottled (i.e., whether the pills were shipped to China in bulk or bottled) was a basic term of the contract order and is subject to FDA oversight. Additionally, whether the pills from one lot of the order were released prior to quality control testing is not a trade secret.

Furthermore, at oral argument Defendants suggested that the contract orders were supposed to be and were approved as either bulk or bottled. Thus, there is no reason perceived for Defendants to quash subpoenas requesting information as to whether the orders were filled with bulk or bottled quantities of vitamins.

Hence, although Manufacturer Bactolac does have standing to object to the subpoena, Plaintiff's motion to compel should be granted insofar as his inquiries seek basic contract information not invoking trade secrets or privileged information. Moreover, the answers to these questions are critical to Plaintiff's underlying claim regarding the business malfeasance of Defendant Zhang. Thus, the information requested is reasonably within the broad scope of discovery.

_____ Here, Plaintiff's subpoena is not unduly burdensome on the non-party witnesses. Nonetheless, whether or not Defendant Zhang actually owns or runs the disputed business, her claims in combination with Manufacturer Bactolac's formal objection justify modifying the subpoena to avoid disclosure of any trade secret. Therefore, Defendants' motion to quash is **DENIED**, and Plaintiff's motion to compel is **GRANTED IN PART**. Accordingly, pursuant to Rule 45(c)(3), the Court will modify the disputed subpoenas as follows:

Liu v. Zhang, et. al.
C.A. No.: K15C-11-005 RBY
January 21, 2016

Document Production

Request 1: Motion to Compel GMP LABS - **GRANTED IN PART**. The request is overbroad in its scope and implicates potentially privileged information and trade secrets. The Court will modify the request to require production of documents that contain information about: A) whether specified lots of vitamins were made in bulk or were bottled before being released for export to China; and B) whether those vitamins from the specified lots marked “in packaging stage” were subject to quality control tests before being released for export to China.

Request 2: Motion to Compel Bactolac - **GRANTED IN PART**. The request is overbroad in its scope and implicates potentially privileged information and trade secrets. The Court will modify the request to require production of such documents that contain information about whether Defendants’ orders of vitamins were made in bulk or were bottled before being released for export to China.

CONCLUSION

_____For the foregoing reasons, Defendants’ motion to quash is **DENIED** and Plaintiff’s motion to compel is **GRANTED IN PART**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc
cc: Mr. James Zhou Liu
Ms. Lixin Lilly Zhang
Mr. Weineng Zuo
Opinion Distribution