

DUNNEGAN LLC
ATTORNEYS AT LAW
350 FIFTH AVENUE
NEW YORK, NEW YORK 10118

212-332-8300

212-332-8301 TELECOPIER

September 21, 2009

By Hand

Hon. Donald C. Pogue
U.S. Court of International Trade
One Federal Plaza
New York, New York 10278-0001

Re: John Wiley & Sons, Inc. v. Kirtsang
08 Civ. 7834 (DCP)

Dear Judge Pogue:

We are attorneys for plaintiff John Wiley & Sons, Inc. in the above action.

In accordance with Rule 37.2 of the Civil Rules of this Court, we are writing to request a conference to seek an order (i) compelling (a) defendant Supap Kirtsang to comply with Wiley's request for production of documents, and (b) Mr. Kirtsang's counsel, Sam P. Israel, Esq. to appear for a deposition at our offices, and (ii) quashing the notice of deposition of my associate, Laura Scileppi.

I.

Motion to Compel

Plaintiffs are seeking discovery to prepare for the contempt hearing scheduled for October 28, 2009. The issue at that hearing is whether defendant Supap Kirtsang had notice of the April 27, 2009 order of this Court at the time he withdrew \$6,400 in currency from a Bank of America branch on April 28, 2009. Mr. Kirtsang and Mr. Israel, deny all wrongdoing. To prove their contempt, plaintiff needs to discover the available facts within defendant's

control. As explained below, Mr. Kirtsaeng and Mr. Israel do not want to provide that discovery.

A. Wiley's Document Requests

Document Request 2 requested "Any and all documents that constitute, refer, or relate to a withdrawal by Supap Kirtsaeng of United States Currency in an amount in excess of \$1,000 from any financial institution before April 6, 2009."

Mr. Kirtsaeng objected to producing any documents, stating "The Request is objectionable on the bases that it is overbroad and not sufficiently tailored to permit a reasonable response and/or is not likely to lead to the discovery of evidence admissible on the issue of whether the Defendant was in contempt of Court. The request is further objectionable in that it is post-judgment based discovery, as to which the Court (Hon. Gerard E. Lynch) found premature."

We request that the Court compel Mr. Kirtsaeng to provide those documents. The relevance of this request is as follows. Wiley will argue that the withdrawal of \$6,400 was an extraordinary event. We expect Mr. Kirtsaeng to disagree. We would therefore like to have the documents that Mr. Kirtsaeng has to prove that cash withdrawal was not extraordinary, and to be able to question him about them at his deposition.

Document Request 3 provided "Any and all documents that constitute, refers or relate to the disposition of the United States currency that Supap Kirtsaeng withdrew from the Bank of America on April 28, 2009."

Mr. Kirtsaeng objected to producing any documents, stating "The Request is objectionable on the bases that it is overbroad and not sufficiently tailored to permit a reasonable response and/or is not likely to lead to the discovery of evidence admissible on the issue of whether the Defendant was in contempt of Court. The request is further objectionable in that it is post-

judgment based discovery, as to which the Court (Hon. Gerard E. Lynch) found premature."

We request that the Court compel Mr. Kirtsaeng to provide those documents. The relevance of this request is as follows. Mr. Kirtsaeng seems to claim in paragraph 6 of his July 6, 2009 declaration that that he withdrew the money because his father was coming to visit him for his graduation. We are interested in knowing whether after he withdrew the currency from the Bank of America, he spent it on his father, put it in a different bank or kept it at his house.

Document Request 5 provided "Any and all documents that constitute, refer or relate to telephone calls placed by Supap Kirtsaeng to Sam Israel, or from Sam Israel to Supap Kirtsaeng, from April 26, 2009 to May 4, 2009.

Mr. Kirtsaeng objected in part, stating "The Request is objectionable on the bases that it is overbroad and not sufficiently tailored to permit a reasonable response; the Request is directly aimed at procuring privileged materials not susceptible to discovery. Notwithstanding the foregoing objection, and without waiver of the Defendant's privileges from disclosure, the Defendant will make available any non-privileged, or sufficiently redacted materials responsive to the Request for the period of April 27-28, 2009 (the date the relevant order was issued and the following day - when funds were allegedly withdrawn), as are within his custody or control. See Exhibit 2 hereto."

While certain documents concerning Mr. Kirtsaeng's telephone records have been produced, Mr. Israel has refused to produce, or even search for, the calls from his BlackBerry. Even if Verizon does not provide a log of these calls, a BlackBerry provides a log. It is likely that Mr. Israel spoke with Mr. Kirtsaeng using his BlackBerry, especially since Mr. Israel tells us that he was out of his office all day on April 28, 2009. Mr. Israel has refused to look through his BlackBerry.

Any such calls, could contradict the declarations on file and prove important to the outcome of the contempt hearing.

B. Notice of Deposition to Mr. Israel

On September 8, 2009, we noticed the deposition of Mr. Israel for September 25 at our office. Mr. Israel originally refused to appear at all, and then refused to appear at our offices, asserting that he is too busy to travel. We have all the files, at our office, and do not want to either lug them to his office or spend the time assembling everything that might be necessary. We request that the Court compel him to attend his deposition as noticed.

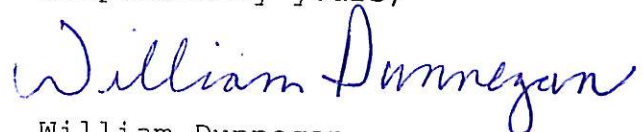
II.

Deposition of Ms. Scileppi

Mr. Israel on September 18, 2009 noticed the deposition of my associate, Ms. Scileppi. She has no knowledge of the communications between Mr. Israel and Mr. Kirtsaeng. Mr. Israel claim that her testimony is necessary to show that she sent the order to him by e-mail and served the Bank of America by hand. This is admitted, and irrelevant. Noticing her deposition is, at a minimum, an attempt to retaliate for noticing his deposition. We request that the Court quash Mr. Israel's notice of deposition to her.

I have spoken with Mr. Israel in a good faith attempt to resolve these disputes and have been unable to do so.

Respectfully yours,


William Dunnegan

Cc: Sam P. Israel, Esq. (By e-mail)