

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

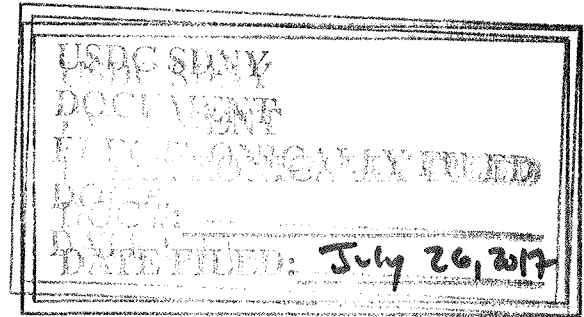
Republic of Turkey,

Plaintiff,

–v–

Christie’s, Inc. *et al.*,

Defendants.



17-CV-3086 (AJN)

MEMORANDUM &
ORDER

ALISON J. NATHAN, District Judge:

Before the Court is the Republic of Turkey’s (the “Republic”) motion to compel production of the name and contact information of the unidentified winning bidder (the “Bidder”) at Christie’s April 28, 2017 auction of the antiquity that is the subject of this case, a Kiliya-Type idol (the “Idol”).¹ For the following reasons, that motion is granted. However, the Court does not order Christie’s to provide the requested information immediately; instead, the Court orders the parties to meet and confer to negotiate the terms of a protective order to govern that disclosure.²

I. Legal Standard

¹ The Court assumes that Christie’s indeed possesses this information, as Christie’s has not suggested to the contrary throughout the briefing process. *See* Plaintiff’s Memorandum of Law in Response to John Poe’s Motion to Intervene Pseudonymously at 13 (Dkt. No. 55) (hereafter “Pl. Mem.”) (in which the Republic addresses this point).

² On June 26, 2017, the Bidder pseudonymously moved to intervene in this action for the purpose of opposing the motion to compel. Dkt. No. 51. That motion to intervene is granted for the limited purpose of opposing the Republic’s discovery request. Additionally, in its letter motion to compel, the Republic moved to compel Christie’s to provide several additional categories of information beyond the identity of the Bidder. *See* Dkt. No. 47, at 2-3. Christie’s represents that it has provided all of the requested information, except for the information at issue in this Memorandum and Order. *See* Dkt. No. 54 at 1 n.1. The motion to compel as to these other categories of information is thus denied as moot (and no sanctions or fees will be awarded).

Under Federal Rule of Civil Procedure 26, a party must provide various categories of evidence as part of its initial disclosures. In particular, “[e]xcept as exempted by Rule 26(a)(1)(B) or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties . . . the name and, if known, the address and telephone number of each individual likely to have discoverable information--along with the subjects of that information--that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.” F.R.C.P. 26(a)(1)(A)(i) . Beyond initial disclosures, Rule 26 defines the scope of permissible discovery as follows: “Unless otherwise limited by court order . . . : [p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Rule 26(b)(1). “Relevance to the subject matter under Rule 26 is ‘construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.’” *U.S. Commodity Futures Trading Comm'n v. Parnon Energy Inc.*, 593 F. App'x 32, 36 (2d Cir. 2014) (summary order) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)).

II. Discussion

The Republic makes two primary arguments why the Court should order Christie's to produce the contact information and name of the Bidder. First, the Republic argues that Christie's must produce that information on the basis of the fact that Christie's initially listed the Bidder (without any identifying information) in its June 1st, 2017 initial disclosures. *See* Pl. Mem. at 3-5. Christie's removed the Bidder from its list of individuals in its amended Rule 26 disclosures, provided on June 27, 2017, after the Bidder pulled out of the sale. Dkt. No. 54-2. Nevertheless, the Republic argues that inclusion of the Bidder in the unamended disclosures

necessitates production of his contact information now. Second, the Republic argues that the name and contact information of the Bidder is “relevant to” the Republic’s claims and defenses in this action “and proportional to the needs of the case,” such that the Republic may seek disclosure pursuant to Federal Rule of Civil Procedure 26(b). Pl. Mem. at 3, 5.

In response, the Bidder submitted a declaration of counsel disputing that he has any relevant information. *See* Dkt. No. 53 (“Pitt Decl.”). In that declaration, counsel represents that the Bidder “first learned of the Idol’s existence—and that it would be featured at auction—on or about April 17, 2017.” *Id.* ¶ 4. He further represents that his client’s knowledge of the history and provenance of the Idol “is limited to the information contained in the auction catalog prepared by Christie’s,” that his client “had no private communication with the consignor or any other prior possessor of the Idol,” and that “[o]ther than publicly filed pleadings in this case, [his client] possesses no documents about the provenance of the Idol.” *Id.* ¶ 5. Counsel for the Bidder further represents that his client received assurances from Christie’s that his identity would remain confidential, and that confidentially “has been a condition of [his] bids at every art auction in which [he] has ever participated.” *Id.* ¶ 6. Counsel also provides a number of additional reasons why his client wishes to remain anonymous. *Id.* ¶¶ 11-16.

As an initial matter, the Court declines to reach the Republic’s first argument, that disclosure of the Bidder’s identity is required under Rule 26(a) because Christie’s included the Bidder, anonymously, in the first iteration of its initial disclosures (prior to amending them to remove the Bidder altogether). The Court holds that the Bidder’s name is discoverable under Rule 26(b), more generally.

Beginning with relevance, the Court finds that the Republic has established its minimal burden of showing that disclosure of the Bidder’s identity “reasonably could lead to . . . matter that could bear on[] any issue that is or may be in the case.” *Parnon Energy, Inc.*, 593 F. App’x at 36 (internal quotation marks omitted). First, and as a general matter, it is reasonable to believe that the Bidder – who elected to bid a hammer price of more than \$12 million dollars on the Idol notwithstanding an announcement that the Republic had filed this suit, and later pulled out of the

sale after the suit was not resolved within 60 days – might have information about the Idol, about the bidding process, or about Christie’s vigilance in determining the provenance of the Idol – subjects that at least “may be in the case.” *Id.* Although the Bidder’s counsel disclaims that the Bidder has any relevant information in an affidavit, neither the Bidder nor Christie’s cites any authority for the proposition that the Republic must rely on this affidavit of a third party as proof that the Bidder has no relevant information, and the Republic explicitly argues that such reliance should not be required. *See* Pl. Mem. at 7.

Second, and relatedly, the Republic points to various statements in the submitted affidavit that it claims require clarification, including that the Bidder “has no interest in owning a piece of stolen art.” Pitt Decl. ¶ 10. The Bidder’s counsel provides various compelling arguments contextualizing these statements and suggesting the Republic has misconstrued them, *see* Dkt. No. 57 at 2, and, as noted, counsel generally represents that the Bidder has no more information about the provenance of the Idol than what Christie’s published. Again, however, it is not clear why the Republic should have to rely not only on counsel’s affidavit, but also on counsel’s unsworn contextualizations of the affidavit in counsel’s brief, rather than ask such questions directly to the Bidder.

Finally, whether or not the Bidder has any information about the Idol’s provenance, the Republic argues that the Bidder may have information as to Christie’s and the Consignor’s vigilance in ascertaining the provenance themselves on the basis of communications made prior, during, or after the bidding process. *See* Pl. Mem. at 6-7. Putting aside the ultimate merits of any vigilance argument, the Republic is correct that some cases have held that the vigilance of a defendant can be relevant to the availability of a laches defense. *See Solomon R. Guggenheim Found. v. Lubell*, 153 A.D.2d 143, 152 (N.Y. App. Div. 1st Dep’t 1990), *aff’d*, 77 N.Y.2d 311, (1991) (“We comment on this argument only to point up that defendant's vigilance is as much in issue as plaintiff's diligence, which is another reason why we characterize the defense urged here as laches. The reasonableness of both parties must be considered and weighed.”). Although Christie’s argues that some, if not all, of the Republic’s likely arguments as to vigilance rely on

speculation and conjecture, *see* Dkt. No. 56, at 2, the Republic has the right to use reasonable avenues of discovery to attempt to build this argument before the Court rejects it as insufficiently developed. *See Ratliff v. Davis Polk & Wardwell*, 354 F.3d 165, 170 (2d Cir. 2003) (“Discovery rules ‘are to be accorded a broad and liberal treatment [] to effectuate their purpose that civil trials in the federal courts no longer need be carried on in the dark.’” (quoting *Schlagenhauf v. Holder*, 379 U.S. 104, 115 (1964))).

As to whether the burden of disclosure would outweigh the significance of this information, the Court concludes that it would not. The Court is sensitive to the privacy concerns cited by the Bidder, and cited by Christie’s – as well as Christie’s own concern with maintaining the confidentiality of its bidders. However, although these concerns may be significant, neither Christie’s nor the Bidder has presented the Court with a compelling argument why no protective order could be fashioned to largely safeguard those interests. Instead, the Bidder appears to take a position that his “right to safeguard from family, friends, and outsiders information regarding how [he] spends money” is of such importance that even Turkey’s “lawyers” have no business knowing this information. Dkt. No. 52 at 10. Although the court recognizes that the case for disclosure of the Bidder’s identity was stronger prior to the Bidder pulling out of the sale, it is nevertheless the case that the Bidder was on notice that Turkey had laid a claim to the Idol, prior to bidding, and nevertheless entered the highest bid. Given that there is at least a reasonable case that the Bidder might have relevant information to provide the Republic, the Court will not block such discovery on the basis of a parade of horribles neither the Bidder nor Christie’s compellingly establishes will occur.

III. Conclusion

In conclusion, the motion to compel is granted.³ However, Christie’s need not provide the information immediately. Instead, the parties (including counsel for the Bidder/Intervenor)

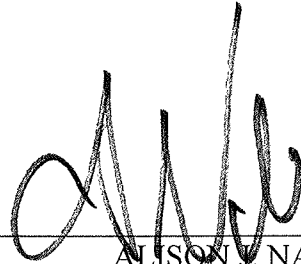
³ The Republic also moved for leave to file an amended complaint. Dkt. No. 48. Christie’s does not oppose the motion, Dkt. No. 59, and the motion is granted.

are ordered to meet and confer to come up with an appropriate protective order. The parties will submit their proposed protective order to the Court on or before August 4th, 2017. Should they fail to reach agreement, they may submit instead a letter of no more than four pages laying out each party's position as to the appropriate scope of the order.

This resolves docket numbers 47, 48, and 51.

SO ORDERED.

Dated: July 26, 2017
New York, New York

A handwritten signature in black ink, appearing to read 'Alison J. Nathan', written over a horizontal line.

ALISON J. NATHAN
United States District Judge