

**Zelkis v Brain Fashion, Inc.**

2003 NY Slip Op 30163(U)

March 20, 2003

Supreme Court, New York

Docket Number:

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: WALTER B. TOLUF

PART 15

Justice

*Zeldis J.*

INDEX NO. 125154-00

MOTION DATE 11/22/2002

MOTION SEQ. NO. 02

MOTION CAL. NO. 014

- v -

*Pratt Lakon Inc*

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH  
THE ACCOMPANYING MEMORANDUM DECISION.**

**SCANNED**

**MAR 31 2003**

Dated: 3/20/03

*W*  
**WALTER B. TOLUF J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: IAS PART 15

-----x  
 GEORGES ZELDIS

Plaintiff,

**Index No.** 125154/2000  
**Mtn Seq.** 002

-against-

BRAIN FASHION, INC., ELISA SALINAS, and  
 JACOBO KANONO,

Defendants.  
 -----x

**WALTER B. TOLD, J.:**

By this motion, plaintiff Georges Zeldis (hereinafter, plaintiff) seeks an order pursuant to CPLR 3124 directing defendants Brain Fashion, Elisa Salinas, and Jacobo Hanono (hereinafter, defendants) to produce documents and things requested in Plaintiff's First Notice of Discovery and Inspection and to answer Plaintiff's first set of interrogatories. Defendants cross move pursuant to CPLR 3126 for an order dismissing the complaint for failure to abide by discovery orders, for an order requiring plaintiff to post security pursuant to CPLR 8501, and for this Court to strike plaintiff's notice of discovery and inspection pursuant to CPLR 3103(a). Defendants additionally seek an order directing that defendant's depositions be held either in Mexico, by written questionnaire, or at the time of trial. Lastly, defendants seek an order directing that any oral deposition of defendants proceed with a Spanish interpreter at the expense of plaintiff.

Plaintiff's original complaint contained seven causes of action, three of which were dismissed by this Court's 3/18/2002

decision. Plaintiff's remaining four causes of action allege violations of the New York State and New **York** City Human Rights Laws (first and second causes of action), discrimination (third cause of action) and breach of contract (sixth cause of action).

Defendant's answer to the Complaint contained four affirmative defenses and asserted four counterclaims. The **first** and fourth counterclaims allege that plaintiff misrepresented his qualifications and failed to produce designs in a timely and economical manner, thereby damaging the defendants. The second counterclaim alleges abuse of plaintiff's expense account during business trips. The third counterclaim alleges breach of a confidentiality agreement contained within the employment contract and alleges improper **use** of proprietary information.

#### Discussion

Upon review of the papers presented, plaintiff's and defendant's motions **are** granted in part, and denied in part.

#### *Discovery Issues*

CPLR 3101 mandates that full disclosure be given of "all matter material and necessary in the prosecution and defense of an action" (CPLR 3101[a]). In the instant matter, this information includes among other things, information concerning plaintiff's medical conditions that have been put into issue (Davidson v. Steer/Peanut Gallery, 277 A.D.2d 965 [4<sup>th</sup> Dept 2000]). It also includes discovery pertaining to counterclaims raised by the

defendants (Huntington Tobacco Company Inc. Money Pension & Profit Sharins Fund v. Fromer, 193 A.D.2d 718 [2<sup>nd</sup> Dept. 1993]; City Mortgage Co. v. Leopold Seidl Corporation, 261 A.D. 831 [2<sup>nd</sup> Dept. 1941])).

With regard to plaintiff's First Notice of Discovery and Inspection and First Set of Interrogatories, this Court notes that the lengthy documents do contain some requests that are confusing, overbroad, or both. However, this does not explain why defendants have failed to answer numerous questions concerning issues that they themselves opened the door on when they asserted counterclaims alleging among other things, economic damage to the company as a result of failure to timely produce designs, abuse of an expense account, and improper use of proprietary information. Plaintiff is clearly entitled to discovery on counterclaims much like defendants are entitled to discovery on stated causes of action (Huntington Tobacco, 193 A.D.2d 718; City Mortgage, 261 A.D.831).

Plaintiff however, bears the responsibility of adequately disclosing relevant and necessary information to allow defendant to defend against the remaining causes of action in the instant Complaint. Additionally, when a plaintiff places a medical condition in issue, plaintiff has a responsibility to turn over authorizations for medical records, including those for all treating physicians. Substitution of this process for exchanging copies of medical records in possession by the plaintiff or his

attorneys is not sufficient.

That having been said, discovery will proceed as per the directives in this Order and Decision. Defendant's cross-motion to dismiss pursuant to CPLR 3216 is denied.

*Depositions*

Defendants' cross-motion requesting an Order directing that any depositions required of defendants be held either in Mexico, at time of trial, or by written questionnaire is denied. In August 2002, this Court So-Ordered a stipulation signed by the attorneys representing all parties to this action providing for, among other things, defendants' depositions to be held in New York. Inasmuch as the validity of the stipulation has not been disputed, defendants depositions shall be held in New York.

Defendants however, are entitled to utilize the services of an interpreter. Although evidence **has** been presented indicating that at least Ms. Salinas speaks English competently enough to be interviewed by the *New York Times*, a deponent who speaks English as a second language has a right to have a competent interpreter present at pre-trial depositions and at trial (People of the State of New York v. Pavao, 59 N.Y.2d 282 [1983]; 9<sup>th</sup> Street Estates Inc. v. Rohatvnska, 160 Misc.2d 560 [Civ. Ct. NY 1994]). Moreover, plaintiff bears the responsibility of paying for the interpreter's services.

Lastly, defendants motion for an Order requiring plaintiff to

post security pursuant to CPLR 8501 in the sum of \$1000.00 is granted. Plaintiff admits that he is no longer a resident of the State of **New** York. Accordingly, he is required to post security for costs (CPLR 8501[a]; Verdino v. Alexandrou, 253 A.D.2d 553 [2<sup>nd</sup> Dept. 1998]; Gonzalez v. Flushing Hospital Medical Center, 245 A.D.2d 543 [2<sup>nd</sup> Dept. 1997]). This Court finds no reason to require plaintiff to post security for costs in an amount that is greater than proscribed by statute. As such, plaintiff shall post security in the amount of \$500 (CPLR 8503).

Accordingly, it is

ORDERED that plaintiff's motion to compel defendants to produce documents and things requested in Plaintiff's First Notice of Discovery and Inspection is granted to the following extent:

- (1) Plaintiff shall revise items 7 and 53 to clarify the items requested and submit new requests to defendants within 30 days of this order. Defendants shall respond to the new requests within 30 days of receipt of the new request.
- (2) Defendants are to answer item 25 and provide **business** travel expenditure records from 1997-2001 within 30 days of this order.
- (3) Defendants are to answer item 54 and produce datebooks, dayplanners, appointment books and calendars detailing defendants' business travel for the years 1997-2001 within 30 days of this order.

(4) Defendants are to answer and/or produce documents relevant to items 36, 37, 38, 46, 47, **48**, 50, 51, 59, 60, 61, 67, 68, 70, 71, 72, 73, 74, and 75 within 30 days of this order; and it is further

ORDERED that plaintiff's motion to compel defendants to answer requests 76, 77 and 78 in plaintiff's First Notice of Discovery and Inspection are denied for failure to provide information, plaintiff's requests for information pertaining to requests No. 62, 63, 64, 65, and 66 are denied; and it is further

ORDERED **that** plaintiff's motion to compel defendants to produce documents and things requested in plaintiff's First Set of Interrogatories is granted to the following extent:

- (1) Plaintiff shall revise interrogatory No. 2 to clarify the items requested and submit said interrogatory to defendants within 30 days of this Order.
- (2) Defendants are to answer interrogatories Nos. 5 and 6. If no additional information is available to be provided, defendants shall provide a stipulation to that effect within 30 days of this Order.
- (3) Defendants **are** to answer interrogatories Nos. 27, 28, 38, 39, 40, 41, 46, and 54 within 30 days of this Order; and it is further

ORDERED that plaintiff's motion to compel defendants to produce documents and things requested in plaintiff's First Set of Interrogatories is denied as to interrogatories 18-26 as there is no indication that these documents were not produced; and it is



further

ORDERED that plaintiff's motion to compel defendants to produce documents and things requested in plaintiff's First Set of Interrogatories **is** denied **as** to interrogatories 32, 34, 43, and 45 is denied; and it is further

ORDERED that plaintiff's motion to compel defendants to produce documents and things requested in plaintiff's First Set of Interrogatories is denied as to interrogatories 47, 48, and 53 are denied for failure to provide information; and it is further

ORDERED that plaintiff shall provide defendant with medical authorizations for plaintiff's doctors and medical records, to the extent not already provided within 30 days of this Order, and it is further

ORDERED that depositions of defendants shall take place within 60 days of this Order in New York County; and it is further

ORDERED that a competent Spanish translator shall be provided for defendants' depositions, the cost of which shall be paid by plaintiff; and it is further

ORDERED that plaintiff shall obtain an undertaking in the amount of \$500.00 within 20 days of service of a copy of this order with notice of entry, and must file proof of said undertaking with the Court; and it is further

ORDERED that defendant's remaining cross-motion requests are denied.

Counsel for the parties are directed to appear for a Compliance Conference at I.A. Part 15, Room 335, 60 Centre Street, New York, New **York on** March 28, 2003 at 11:00 a.m.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 3/20/03



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HON. WALTER B. TOLUB, J.S.C.