

Sustainable Pte Ltd v Peak Venture Partners LLC

2018 NY Slip Op 32137(U)

August 30, 2018

Supreme Court, New York County

Docket Number: 650340/2015

Judge: O. Peter Sherwood

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49**

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SUSTAINABLE PTE LTD, et al.,

Plaintiffs,

-against-

PEAK VENTURE PARTNERS LLC,

Defendant.

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O. PETER SHERWOOD, J.:

**DECISION AND ORDER
Index No.: 650340/2015**

Motion Sequence No.: 018

This case arises from the acquisition by defendants of Silverlink Resorts Limited (BVI), a holding company for entities that owned and operated hotels and held related licenses and intellectual property. Plaintiffs assisted defendants in the acquisition but plaintiffs were not compensated. Defendant Nader Tavakoli is Chairman and Chief Executive Officer of non-party EagleRock Capital Management and was a director of other involved (but non-party) entities.

Kasowitz, Benson & Torres (KBT) represented Tavakoli (along with some other defendants) until June 2017 (Consent to Change of Attorneys, NYSCEF Doc. No. 314). Tavakoli subsequently changed attorneys at least two more times, including in June 2018, when his current lawyers, Harris, St. Laurent & Chaudhry (HSC) appeared (Consent to Change Attorney, NYSCEF Doc. No. 357). By stipulation dated February 28, 2018, the complaint was dismissed as against some defendants, including Tavakoli and the other individual defendants. Also, plaintiffs' withdrew their motion seeking to hold Tavakoli in contempt (NYSCEF Doc. No. 349 and 346).

In this motion, Tavakoli seeks an order requiring KBT to turn over his file. According to HSC, KBT provided it with only the mediation statements and some of the discovery produced in

this action. HSC asserts that KBT's failure to turn over the entire file hampers Tavakoli's pursuit of his affirmative claims. Tavakoli also requests attorneys' fees for making this motion.

Tavakoli claims that his current counsel discovered documents in the productions it received which indicated Tavakoli had claims against his co-defendants, who were other clients of KBT. KBT did not bring the documents to Tavakoli's attention (Memo at 4-5). KBT wanted to hold off providing the file until the parties had resolved their dispute through mediation (*id.*). The mediation failed. Tavakoli then renewed his efforts to obtain the file and KBT refused, later offering to provide certain types of documents (which HSC claims have little value) if Tavakoli paid a \$20,000 retainer (*id.*). Tavakoli declined, demanding the complete file. Tavakoli now has an action against co-defendants Doronin, TIL, Eliasch, Sherway, and Djanogly pending in the Southern District of Florida.

KBT opposes the motion, claiming Tavakoli is seeking documents which are unrelated to the joint representation. He is attempting an "end-run" around attorney-client privilege to get documents for use in its litigation in Florida (Opp at 1). KBT has offered to make Tavakoli's file available in exchange for copying costs, and has made un-met offers to movant to meet and confer about this dispute (*id.* at 2). Tavakoli is not entitled to more than that, and is not entitled to fees in bringing this unnecessary motion (*id.*).

KBT claims to have successfully represented Tavakoli as he was dismissed from this action in March 2018, along with most of the other defendants (*id.* at 4, see Order dated March 13, 2018, NYSCEF Doc. No. 350). There was a subsequent mediation (largely related to Tavakoli's claims against his co-defendants) to which KBT attended at the request of Tavakoli. At that time the issue of the file was not raised. As noted above, the mediation was unsuccessful (Opp at 4).


KBT has agreed to provide Tavakoli with most of the desired documents, subject to the provision of a retainer to cover the work of preparing the file (*id.*). KBT resists providing documents which are privileged communications with co-defendants received prior to the joint representation as well as internal law firm documents (*id.* at 6-7). It relies on *Sage Realty Corp. v Proskauer Rose Goetz & Mendelsohn L.L.P.*, 91 NY2d 30, 37-38 [1997] [“Proskauer . . . should not be required to disclose documents which might violate a duty of nondisclosure owed to a third party, or otherwise imposed by law Additionally, nonaccess would be permissible as to firm documents intended for internal law office review and use. The need for lawyers to be able to set down their thoughts privately in order to assure effective and appropriate representation warrants keeping such documents secret from the client involved. This might include, for example, documents containing a firm attorney's general or other assessment of the client, or tentative preliminary impressions of the legal or factual issues presented in the representation, recorded primarily for the purpose of giving internal direction to facilitate performance of the legal services entailed in that representation”][internal citations and quotations omitted]]. Further, as far as the expenses related to preparing the copies are concerned, “as a general proposition, unless a law firm has already been paid for assemblage and delivery of documents to the client, performing that function is properly chargeable to the client under customary fee schedules of the firm, or pursuant to the terms of any governing retainer agreement” (*Sage Realty*, 91 NY2d at 38). KBT claims entitlement to fees work to be performed preparing the file for Tavakoli’s new counsel. Finally, there is no basis for awarding movant his expenses for bringing this motion. If anyone gets fees, it should be KBT.

The motion is granted in part and otherwise denied in accordance with the transcript dated August 28, 2016 on condition that Tavakoli make a deposit in an amount determined by KBT to

cover the time and expense required to assemble and provide the requested and approved documents. KBT shall not be required to produce ESI, collected by KBT from co-defendants then represented by the firm which ESI was deemed non-responsive. The request for an award of attorney fees is denied.

This constitutes the decision and order of the court.

DATED: August 30, 2018

ENTER,

O. PETER SHERWOOD J.S.C.