S.K.I. Wholesale Beer Corp. v Smuttynose Brewing Co., Inc.
2018 NY Slip Op 32322(U)
September 13, 2018
Supreme Court, Kings County
Docket Number: 521167/17
Judge: Lawrence S. Knipel
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At an IAS Term, Part Commercial 4 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the ~~7th day of June, 2018~~ Sept. 13, 2018

PRESENT:

HON. LAWRENCE KNIPEL,
Justice.

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S.K.I. WHOLESALE BEER CORP., AND
J.R.C. BEVERAGE, INC.,

Petitioners,

- against -

Index No.: 521167/17

SMUTTYNOSE BREWING COMPANY, INC., BREWERY OMMEGANG, NORTH AMERICAN BREWERIES, INC, D/B/A MAGIC HAT, MAD SCIENTISTS BREWING PARTNERS LLC D/B/A SIXPOINT, BLUE POINT BREWING COMPANY INC.,

Respondents.

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The following papers numbered 1 to 7 read on this motion:

	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1, 2, 3, 4 - 7
Opposing Affidavits (Affirmations)	8
Reply Affidavits (Affirmations)	9
Affidavit (Affirmation) Memorandum of Law	10 - 11
Other Papers	

In a one-page handwritten "Final Discovery Order" in a related action, *UB Distributors v SKI Wholesale Beer Corp. and JRC Beverage, Inc.* (Index No. 29238/09), *inter alia*, SKI and JRC Beverage Inc. (defendants in the 2009 action and petitioners in this proceeding) were granted leave to serve subpoenas on non-party Breweries (Respondents in this proceeding). Petitioners served subpoenas for the production of documents, consisting of five pages of instructions and 14 document requests.

By letter dated June 15, 2017, counsel for Ommegang and Magic Hat stated the subpoenas were overly broad, unduly burdensome, sought documents not relevant to the claims or defenses, and requested documents that were "can and should be" available from UB, and would disrupt respondents' businesses and force them to incur significant expenses.

On or about October 31, 2017, petitioners commenced this special proceeding seeking to hold respondents in civil contempt for failure to comply with the subpoenas and failing to move to quash.

Respondents Smuttynose Brewing Company, Inc., Brewery Ommegang, North American Breweries, Inc., and Mad Scientists Brewing Partners, LLC move (Motion Sequence 2) to dismiss the petition and for sanctions. Respondent Blue Point Brewing Company Inc. moves (Motions Sequence 3) to dismiss the petition and quash the amended subpoena served upon it. Respondents argued that they fully complied with CPLR 3122(a) by providing timely and specific objections to

the subpoenas, and that any attempt to obtain discovery was untimely because they filed a note of issue.

Petitioners opposed, arguing that the subpoenas were not overbroad, respondents failed to make a timely motion to quash, petitioners' rights were prejudiced, and "most importantly, this activity was authorized by Hon. Lawrence Knipel in his June 2, 2017 Order." This court disagrees.

CPLR 3122 provides that within 20 days of service of a subpoena duces tecum, "the party or person to whom the notice or subpoena duces tecum is directed, if that party or person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularly the reasons for each objection." This rule prescribes a procedure "whereby the recipient of the notice makes her objections to the serving party in a 'response' instead of to the court in a motion for a protective order. If the parties are then still at odds about their rights and obligations, it is the party who served the notice or subpoena who must bring the dispute to court * * * The Advisory Committee's purpose in recommending these altered procedures under CPLR 3122 was to have disputes resolved by the parties themselves, or at least to encourage a substantial effort in that direction" (McKinney's Cons Law of NY, Volume 7B, Rule 3122, Section C3122:1 at 373).

As stated, the Petitioners served subpoenas consisted of five pages of instructions and 14 document requests. Two of the requests were "Any and all emails and correspondence reflecting a credit memo or reduction of invoicing due to charge backs or bill backs involving Plaintiff and/or

its accounts, including all details of the exchange" and "Any and all emails and correspondence reflecting marketing spending including, but not limited to, expense reports, either shared with Plaintiff and/or its accounts or directly spent by your representatives, including but not limited to, credit card swipes, free product and expensed spending." The Definitions and Instructions section states "All request for documents are for the period from August 1, 2009 through the present."

Respondents argue that they complied with the law by promptly serving a "response" stating with reasonable particularity their objections: the requests are overbroad, burdensome, and would disrupt their businesses and force respondents to incur significant expenses. Petitioners did not engage in any effort to resolve the dispute, and instead chose to move to punish for contempt. This court agrees that these subpoenas cannot support contempt. The document demands are plainly overbroad and burdensome. Moreover, reliance on the June 2, 2017, Final Discovery Order is misplaced, since this court did not see or approve the subpoenas that were sent to respondents, and it strains credulity to suggest the June 2, 2017 short form order provides approval for the form of the subpoenas actually served on respondents.

Accordingly, respondents' motions to dismiss is granted and the petition is dismissed.

The foregoing constitutes the decision and judgment of this court.

E N T E R,

J. S. C.