

Zampolli v Range Devs.
2019 NY Slip Op 33138(U)
October 22, 2019
Supreme Court, New York County
Docket Number: 156698/19
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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PAOLO ZAMPOLLI,

Petitioner,

Index No.
156698/19

Decision and
Order

-against-

Mot. Seq. 001

RANGE DEVELOPMENTS, RANGE CAPITAL
PARTNERS (DOMINICA) LIMITED, RANGE
INTERNATIONAL CONSULTANTS,
KEMPINSKI HOTELS, S.A., KAMAL SHEHADA
XAVIER DESTTRIBATS, NH.TT CONSTRUCTION,
and MOHAMMED ASARIA,

Respondents.
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HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Paolo Zampolli (“Petitioner” or “Zampolli”) moves by Order to Show Cause to obtain discovery in aid of arbitration pursuant to CPLR §3102(c), or in the alternative, pursuant to CPLR §3102(e). Petitioner seeks an Order (1) directing Respondents Range Developments, Range Capital Partners (Dominica) Limited (“Range Partners”), Range International Consultants (“Range International”), Kempinski Hotels, S.A. (“Kempinski Hotels”), Kamal Shehada (“Shehada”), Xavier Destribats (“Destribats”), NH.TT Construction, and Mohammed Asaria (“Asaria”) (collectively, “Respondents”) to each produce books and records and other documents pursuant to a subpoena *duces tecum*; (2) compel each of Respondents to appear for a deposition pursuant to a subpoena *ad testificandum*; and (3) stay the underlying arbitration proceeding in London pending the completion of such discovery.

In his supporting affidavit, Zampolli states that he is a citizen of the United States and a resident of New York. Zampolli states on May 7, 2015, he entered into an agreement (the “Agreement”) with Asaria and Range Capital for the development of a “Kempinski-branded hotel” in the Commonwealth of Dominica (the “Project”).

Zampolli states that Kempinski Hotels “is the current Partner of the Project,” and Destribats oversees it for Kempinski Hotels. Zampolli states, “Upon information and belief, Kempinski Hotel is located at and operating from 654 Madison Ave, 9th Floor, New York, NY 10065.”

Zampolli states that Range Developments “led the development and construction of the Project is, upon information and belief, located at and operating from 654 Madison Ave, 9th Floor, New York, NY 10065.” Range International “handled all the marketing and sales for the Project and in most cases collected the sales proceeds and made distributions to the various accounts of the partners.”

Zampolli states that Asaria “has led the Project as the founder and vice president of Range Developments and is a signatory to the Agreement.” Shehada “is the development director of Range Developments and has also been intimately involved with the Project.”

Zampolli states that pursuant to the Agreement, he is “entitled to an amount equal to five percent (5%) of the development profits realized by Range Capital Partners (Dominica) Limited and any affiliate thereof,” and that “[s]uch affiliates included Range Developments and Kempinski Hotels.”

Zampolli states that “[u]pon information and belief, the Project has been completed and the accounts closed.” He states that despite his repeated demands, Respondents have refused to pay him and have offered no information regarding the Project. Zampolli believes that “distributions from the Project in the amount of USD \$30 million were made to Mr. Asaria and Mr. Shehada from a Bank of Dominica account in Geneva, Switzerland.” Zampolli also contends that “it appears that Project funds and personal and other funds have been and are being substantially commingled.”

Zampolli states that on May 5, 2019, in accordance with the arbitration clause of the Agreement, Range Capital commenced an arbitration against Zampolli in London which seeks, among other relief, a declaration that Zampolli’s request for payment under the Agreement is premature because the Project has not been completed. Presently before this Court Zampolli is seeking “discovery of books, records, financial documents and accounts, and other files or materials that relate to the Agreement and the development and construction [of the Project].” He asserts that this discovery is needed in order to assert his own claims in the London Arbitration and to defend against the claims asserted against him.

Zampolli contends that without this discovery, he is unable to calculate the amount he is owed under the Project and “the London Arbitration would be rendered meaningless.” Zampolli contends that these materials are within the exclusive possession and control of Respondents, although he notes that not all of them are parties to the Agreement. Zampolli states that the arbitrator in the London Arbitration may not be able to compel “non signatories to the Agreement” and non-parties to the London Arbitration “produce documents that are stored in New York.” Zampolli “believes that without prompt discovery from respondents at this time he may likely lose any ability to recover his due share.”

Legal Standard

CPLR §3102(c) provides that “[b]efore an action is commenced, disclosure to aid in bringing in action, to preserve information *or to aid in arbitration*, may be obtained, but only by court order.” (emphasis added).

“In exceptional circumstances, pre-hearing discovery pursuant to CPLR 3102(c) may be ordered after the demand for arbitration has been made.” *Kramer v Geldwert*, 123 AD3d 507 (1st Dept 2014). *See also Application of Moock*, 99 AD2d 1003, 1003-04 (1st Dept 1984). In *Moock*, Petitioner demanded arbitration because he claimed his interest in a partnership was undervalued. The Court held that Petitioner demonstrated that access to the books and records of the partnership in order were needed to present a proper case in arbitration. The First Department held, “Under this exceptional situation, Special Term was correct in directing the partnership to produce for inspection items 1 through 8 in petitioner’s exhibit E. We find that there is no need for petitioner Moock to examine respondent Emanuel [his partner]. Likewise, there is no necessity for Emanuel to examine Moock.”

Discussion

Here, Petitioner has demonstrated that the documents requested- the books, records, and other documents that relate to the Agreement and the development and construction of the Project- are required “in order to present a proper case in arbitration.” *Moock*, 99 AD2d 1003-1004. Petitioner has not demonstrated that there is a necessity for the remainder of the discovery from the non-parties to the Agreement.

Wherefore, it is hereby

ORDERED that the Petition is granted without opposition only to the extent that Respondent Capital Partners (Dominica) Limited shall respond to the Subpoena Duces Tecum that was served upon them by Petitioner within 30 days from the date of service of this Order with Notice of Entry.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: OCTOBER 22, 2019


Eileen A. Rakower, J.S.C.