O P Solutions, Inc. v Buchanan Ingersoll & Rooney P.C.

2019 NY Slip Op 33743(U)

December 24, 2019

Supreme Court, New York County

Docket Number: 655151/2017

Judge: John J. Kelley

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY	**PART** **IAS MOTION 56EFM**
Justice	

---X

O P SOLUTIONS, INC.,

                     Plaintiff,

             - v -

BUCHANAN INGERSOLL & ROONEY P.C.,

                   Defendant.

---X

INDEX NO.	655151/2017
MOTION DATE	12/03/2019, 12/03/2019
MOTION SEQ. NO.	006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 167, 169, 180, 181, 182, 183, 184, 185

were read on this motion to/for   DISCOVERY   .

The following e-filed documents, listed by NYSCEF document number (Motion 007) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179

were read on this motion to/for   DISCOVERY   .

In this action to recover damages for breach of contract and related relief, the plaintiff moves (SEQ 006) pursuant to CPLR 3124 to compel the defendant to comply with this court's January 15, 2019 discovery order. Specifically, the plaintiff demands that the defendant produce all documents responsive to its requests for production of the defendant's communications involving a company known as CPA Global and its access to software known as PATTSY, provide substantive responses to Supplemental Interrogatories 47-53 and 55-57, provide documents in response to Supplemental Document Requests 27-36, and withdraw several of its objections to the Supplemental Interrogatories and Document Requests. The plaintiff also moves (SEQ 007) to compel nonparty CPA Global to comply with a subpoena duces tecum served upon it in Virginia.

655151/2017 O P SOLUTIONS, INC. vs. BUCHANAN INGERSOLL & ROONEY PC
Motion No. 006 007

Page 1 of 4

1 of 4

The plaintiff's motion under sequence 006 is granted to the extent that the defendant must respond to Supplemental Interrogatories 47-51 and to Supplemental Document Requests 27-36 and is otherwise denied. The plaintiff's motion under sequence 007 to compel CPA Global to respond to the subpoena duces tecum is granted.

This dispute revolves around the plaintiff's provision of PATTSY software to the defendant for a period of time, and the defendant's alleged replacement of the software with a product developed by CPA Global and/or IP-Central by means of wrongfully appropriating the plaintiff's intellectual property that it used to develop the PATTSY system.

Supplemental Interrogatories 47-51 seek information concerning prior claims or litigation asserted against the defendant for failing to protect intellectual property, information concerning the identity of persons with whom the defendant discussed the plaintiff, along with the subject matter of the communications, the nature of work performed for the defendant by one Eyal Iffergan, the identity of the defendant's employees who had a relationship with one Tammie Seely prior to the defendant's retention of a firm known as IP-Central, and the identity of all persons at IP-Central who did work for the defendant. All of these questions are proper subjects of interrogatories, as they seek limited information that can be easily compiled and stated.

Supplemental Interrogatories 52, 53, 55, 56, and 57, however, seek a description of IP-Central's work for the defendant, a description of IP-Central's recommendations to the defendant regarding the PATTSY software system, a description of communications addressing work of IP-Central for the defendant in connection with PATTSY, a description of communications between the defendant and Crowell Moring related to the plaintiff, and information regarding the defendant's replacement of the PATTSY system with CPA Global's Foundation IP docketing software. "While multiple discovery devices are permitted interrogatories should be employed 'only for the limited purpose of supplementation of discovery, not duplication'" (*Acwoo Intl. Steel Corp. v Frenkel & Co.*, 165 AD2d 753, 754 [1st

655151/2017 O P SOLUTIONS, INC. vs. BUCHANAN INGERSOLL & ROONEY PC
Motion No. 006 007

Page 2 of 4

Dept 1990], quoting *Wagner v NFS Financial Servs., Inc.*, 96 Misc 2d 134, 136 [Sup Ct, N.Y. County 1978] [Kassal, J.]). An interrogatory that requires an extensive and detailed narrative is not one that serves the function of an interrogatory (*see Bassett v Bando Sangsa Co.*, 94 AD2d 358, 364 [1st Dept 1983] [Ross, J., dissenting]; *Breest v Haggis*, 2019 NY Slip Op 51115[U] [Sup Ct, N.Y. County, Jul. 9, 2019]; *Batan v Ball*, 2014 NY Slip Op 31992[U] [Sup Ct, N.Y. County, Jul. 28, 2014]).

Generally, where interrogatories are unduly burdensome and prolix as to be oppressive, the appropriate remedy is not judicial pruning but vacatur of the interrogatories in their entirety (*see Mendler v Mendler*, 135 AD2d 469, 470 [1st Dept 1987]; *Suffolk Business Ctr., Inc. v Applied Digital Data Sys.*, 128 AD2d 861 [2d Dept 1987]). Nonetheless, when a certain small set of interrogatories is clearly proper and another is clearly not, the court may direct the responding party to provide answers to the appropriate interrogatories (*see Barr v Raffe*, 96 AD2d 800 [1st Dept 1983]). Hence, the motion to compel is granted as to Supplemental Interrogatories 47-51, but denied as to Supplemental Interrogatories 52, 53, 55, 56, and 57.

The test of whether a document is discoverable

> "is one of usefulness and reason. CPLR 3101 (subd.[a]) should be construed, as the leading text on practice puts it, to permit discovery . . . 'which is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable' (3 Weinstein-Korn-Miller, N. Y. Civ. Prac., par. 3101.07, p. 31-13)"

(*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403, 407 [1968]). The party seeking disclosure need only demonstrate that the discovery sought is reasonably calculated or reasonably likely to lead to the discovery of information bearing on the claims (*see Forman v Henkin*, 30 NY3d 656, 661, 666 [2018]; *Crazytown Furniture, Inc. v Brooklyn Union Gas Co.*, 150 AD2d 420, 421 [2d Dept 1989]). The court concludes that Supplemental Document Requests 27-36 and the subpoena duces tecum served upon CPA Global seek production of documents that may lead to relevant information.

Accordingly, it is

655151/2017   O P SOLUTIONS, INC. vs. BUCHANAN INGERSOLL & ROONEY PC
Motion No. 006 007

Page 3 of 4

ORDERED that the plaintiff's motion to compel disclosure (SEQ 006) is granted to the extent that the defendant is directed to respond to Supplemental Interrogatories 47-51 and to Supplemental Document Requests 27-36, and the defendant shall serve responses no later than 30 days after the entry of this order, and the motion is otherwise denied; and it is further,

ORDERED that the plaintiff's motion to compel nonparty CPA Global to respond to a subpoena duces tecum served upon it by the plaintiff (SEQ 007) is granted, and CPA Global is directed to serve responses to the subpoena duces tecum no later than 30 days after the entry of this order.

This constitutes the Decision and Order of the court.

12/24/2019				
DATE			**JOHN J. KELLEY, J.S.C.**	
CHECK ONE: SEQ 006	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION		
	☐ GRANTED	☐ DENIED	☒ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT		☐ REFERENCE

CHECK ONE: SEQ 007	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION		
	☒ GRANTED	☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT		☐ REFERENCE

655151/2017   O P SOLUTIONS, INC. vs. BUCHANAN INGERSOLL & ROONEY PC
Motion No. 006 007

Page 4 of 4

4 of 4