

Ben-Ari v Davidov

2022 NY Slip Op 32910(U)

August 24, 2022

Supreme Court, New York County

Docket Number: Index No. 657308/2020

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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MIRI BEN-ARI, individually and derivatively on behalf of
NEW YORK CITY TANGO, LLC

Plaintiffs,

- v -

JEVGENI DAVIDOV, HUDSON DANCE STUDIOS LIMITED
LIABILITY COMPANY,

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for

DISCOVERY

The motion by plaintiff to *inter alia* compel defendants Davidov and Hudson Dance Studios Limited Liability Company (“Hudson”) to produce documents and appear for a deposition is granted in part and denied in part.

Background

Plaintiff and Davidov used to be in a relationship for seven years, allegedly entered into a joint business venture (New York City Tango, LLC), and later entered into a contract to invest in the purchase of a three-family residence. Plaintiff contends that she and Davidov contributed 50% of the funds required to secure a bank mortgage in the investment property.

Plaintiff argues that Davidov breached his fiduciary duty to New York City Tango by abandoning it and by misappropriating clients and funds. She also argues that Davidov misappropriated corporate business opportunities by diverting clients to other dance studios in which he holds an interest. Apparently, the parties operated a dance studio.

In this motion, plaintiff argues that Davidov did not fully respond to various document demands and cancelled a deposition at the last minute. She maintains that Davidov claimed he had to go to Germany for his ailing father but she insists she saw him teaching dance classes at another studio a few days later (plaintiff included an undated photo allegedly proving Davidov was at the dance class on July 20, 2022 when he said he was in Germany). She wants sanctions for this behavior. Plaintiff also wants to compel non-party Diane Langmuir to produce documents and appear for a deposition pursuant to a separate subpoena. Lastly, plaintiff seeks copies of all subpoenas issued by defendants in this case.

In opposition, defendants attach documents purporting to show that he was, in fact, in Germany and that a purported photo of him teaching dance classes during the subject time period is not accurate. They claim they are willing to appear for a deposition and that he has provided all documents in defendants' possession. Defendants also attach copies of all subpoenas they have issued in connection with this case.

In reply, plaintiff insists that she saw Davidov teaching a dance class on July 20, 2022 when he says he was in Germany. She wants him to provide a copy of his passport to prove he was actually out of the country. Plaintiff also says that she has not received any documents from the subpoenas defendants attached in opposition.

Deposition of Defendants

Defendants contend that they are ready to appear for a deposition and attach an affidavit from Davidov insisting he was in Germany as well as copies of a boarding pass showing a flight for Davidov was purchased to go from Newark to Munich on July 18, 2022 (NYSCEF Doc. No. 40). Also included was a return ticket for July 26, 2022 (*id.*). The deposition was scheduled for July 19, 2022.

The Court sees no reason to pursue this point any longer. While cancelling a deposition at the last minute is unfortunate, a single cancellation where Davidov swears he was in Germany visiting his sick father is enough to deny the branch of the motion that seeks sanctions. The grainy photo attached by plaintiff, that is undated, that purportedly shows that Davidov was teaching a dance class on July 20, 2022 is not enough to compel the Court to issue sanctions. The Court finds, at this point, that further inquiry on this point would only serve to ratchet up the animosity and would not be a productive use of the parties' time.

Defendants must appear for a deposition on or before September 22, 2022. Any further delays caused by defendants may result in the imposition proper penalties.

Further Document Production

Davidov insists that he has turned over all the documents he possesses. The Court cannot order him to produce documents he swears he does not have. Therefore, the Court finds that Davidov has until September 8, 2022 to produce any other documents he possesses. Any documents not turned over may not be used in this case, meaning they cannot be used at trial or in subsequent motion practice.

While plaintiff may not believe Davidov's insistence that he has turned everything over, the Court is satisfied with Mr. Davidov's affidavit swearing that he has complied by producing all documents in his possession. Plaintiff is free to try to get documents from third parties.

Langmuir Subpoena

Plaintiff demonstrated that the documents it wants from this non-party are relevant and that it served Ms. Langmuir with a copy of the instant motion. She did not oppose. Therefore, she must produce all documents by September 15, 2022 and appear for a deposition on or before September 29, 2022.

Non-Party Subpoenas

Defendants submitted copies of the subpoenas they have issued in connection with this case in opposition. They must produce all documents and correspondence they have received pursuant to these subpoenas on or before September 8, 2022.

Accordingly, it is hereby

ORDERED that the motion by plaintiff is granted only to the extent that defendants have until September 8, 2022 to produce any other relevant documents that they have in their possession and any documents not produced by this date cannot be used in this matter (either in a subsequent motion or at trial) and defendants must appear for a deposition on or before September 22, 2022; and it is further

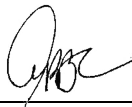
ORDERED that non-party Diane Langmuir must produce documents in response to the subpoena served on her by September 15, 2022 and appear for a deposition on or before September 29, 2022; and it is further

ORDERED that defendants must produce to plaintiff copies of all documents and correspondence they have obtained from the non-party subpoenas they have served in this case on or before September 8, 2022; and it is further

ORDERED that the remaining branches of the motion by plaintiff are denied, including her request for sanctions.

Next Conference: Already Scheduled for November 17, 2022 (NYSCEF Doc. No. 38

[ordering that a discovery update be e-filed by November 10, 2022]).

<u>8/24/2022</u> DATE		 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE