

ALP, Inc. v Park W. Galleries, Inc.
2022 NY Slip Op 33467(U)
October 14, 2022
Supreme Court, New York County
Docket Number: Index No. 153949/2019
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 42

Justice

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ALP, INC.,
Plaintiff,

- v -

PARK WEST GALLERIES, INC., GENE LUNTZ, and GENE
LUNTZ MANAGEMENT, INC.,

Defendants.

-----X

ALP, INC., and LIBRA MAX,
Plaintiffs,

- v -

LAWRENCE MOSKOWITZ, BENDER CICCOTTO &
COMPANY CPA'S, LLP, ROBERT FRANK, ROBERT J.
FRANK, GENE LUNTZ, and LAUREN MOSKOWITZ,

Defendants.

-----X

ADAM MAX, on behalf of himself and derivatively on behalf of
ALP, INC., a New York corporation,

Plaintiff,

- v -

ALP, INC., LIBRA MAX, and MICHAEL ANDERSON,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 013) 459, 460, 461, 462,
463, 464, 465, 466, 467, 468, 469, 470, 474, 475, 476, 480, 482, 483

were read on this motion to/for DISCOVERY.

In these consolidated actions arising from a dispute over control of the plaintiff (in the actions filed under Index Nos. 153949/2019 [the Park West action] and 652326/2019 [the Moskowitz action]) / defendant and counterclaim plaintiff (in the action filed under Index No. 650618/2019 [the Adam Max action]) ALP, Inc. (ALP), defendants Gene Luntz Management, Inc., and Gene Luntz (together, Luntz) move pursuant to CPLR 3124 to compel ALP and the

plaintiff (in the Moskowitz action) / defendant and counterclaim plaintiff (in the Adam Max action) Libra Max (Libra) to produce certain documents sought in discovery. ALP and Libra oppose the motion and seek sanctions against Luntz.

The facts underlying the claims in these consolidated matters have been recited in numerous prior orders. As relevant here, the gravamen of ALP and Libra's claims against Luntz is that Luntz, acting in concert with defendants Park West Galleries, Inc. (Park West), Robert M. Frank, Robert J. Frank, Bender Ciccotto & Co. CPAs, LLP, and Lawrence Moskowitz (Moskowitz), and with the permission of plaintiff / counterclaim defendant Adam Max (Adam), took advantage of the declining health of the artist Peter Max (Peter) and looted ALP of hundreds of millions of dollars of cash and artwork during Luntz's tenure as ALP's art sales manager. Central to ALP and Libra's claims is that Luntz facilitated the sale of over 20,000 of ALP's most valuable artworks (the Peter's Keepers) to Park West at fire sale prices (the Park West transaction). ALP and Libra further allege that Luntz wrongfully embezzled millions in commissions he did not earn from ALP's sales and for Peter's public appearance fees. Luntz has filed counterclaims in the Park West action seeking \$1.5 million in unpaid commissions purportedly due to him.

Discovery in the consolidated actions commenced in or about 2019. Luntz served initial document demands on ALP on June 12, 2019, and amended and supplemental demands on September 6, 2019. Luntz served initial document demands on Libra on June 17, 2021. ALP and Libra served responses to the demands with objections. The parties met and conferred on the disputed demands and appeared for a pre-motion conference on October 28, 2021. In connection with the disputed demands, ALP and Libra have agreed to produce documents pertaining to ALP's art sales, the Peter's Keepers, the Park West transaction, the inventory of artworks in ALP's warehouse at the time of the Park West transaction, documents sufficient to show the provenance of certain amounts paid by ALP to Moskowitz in December 2018, and all documents pertaining to Luntz, Park West, and the other defendants, including correspondence each was involved or mentioned in. Further, ALP has agreed to produce all of Adam's communications pertaining to the defendants, Adam's health, the circumstances that led to Adam's becoming more involved in ALP's business in 2012, Adam's absences from the office or involvement in ALP's business while he was President, discussions related to Adam's role or title at ALP, and Adam's efforts to remain in power at ALP. Finally, ALP amended its response to Luntz's interrogatory seeking a computation of its alleged damages.

Luntz nonetheless remains unsatisfied with ALP's proposed production and seeks further production, namely (1) financial documents and tax returns showing ALP's revenues and Libra, Adam, and Peter's annual income from ALP from 2010 to the present; (2) documents and communications concerning Peter Max's "financial condition and needs," "legal claims asserted or threatened against Peter" and his "tax liabilities," and his communications "urging ALP to make sales and/or distributions to him" from 2010 through 2019; (3) documents concerning Libra's "financial needs," including all of Libra's "communications urging ALP to distribute money to her" or make sales from 2010 through 2019; (4) *all* of Adam's communications from 2010 through 2019; (5) documents showing ALP's distribution of \$48.8 million in insurance proceeds

it received in 2018; and (6) a more detailed computation of each category of damage alleged by ALP and Libra.

CPLR 3101(a) provides that “there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” This language is “interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” Oowski v AMEC Constr. Mgt., Inc., 69 AD3d 99, 106 (1st Dept. 2009) (quoting Allen v Crowell-Collier Publ. Co., 21 NY2d 403, 406-407 [1968]). Nonetheless, demands for disclosure must be “relevant, describe documents with ‘reasonable particularity,’ not impose an undue burden and not represent a ‘fishing expedition.’” Konrad v 136 E 64th St. Corp., 209 AD2d 228, 228 (1st Dept. 1994) (citations omitted); see, e.g., Abony v TLC Laser Eye Center, Inc., 44 AD3d 553 (1st Dept. 2007); Thomas v Holzberg, 227 AD2d 175 (1st Dept. 1996). Accordingly, speculation that the materials sought may include relevant information does not meet the threshold for relevance. See, e.g., Dani v 551 W. 21st St. Owner LLC, 181 AD3d 420, 420-21 (1st Dept. 2020); McAlwee v Westchester Medical Assoc., PLLC, 163 AD3d 547, 549 (2nd Dept. 2018); Vyas v Campbell, 4 AD3d 417, 418 (2nd Dept. 2004). Moreover, a party does not establish entitlement to disclosure where the party could not establish his or her claims or defenses even with such disclosure. Horn v Nestor, 172 AD3d 659, 659 (1st Dept. 2019).

Here, Luntz does not establish that the discovery he seeks to compel is material and necessary to his defense to ALP and Libra’s claims or to his counterclaims. See CPLR 3101(a).

First, ALP’s total revenues and dividend distributions do not demonstrate the propriety or impropriety of Luntz’s conduct in connection with art sales he was involved in or collected commissions on, particularly since one of ALP’s claims is that Luntz collected commissions even though he did *not* cause certain sales to occur. Additionally, while ALP’s financial documents would reflect the amount ALP earned for its art sales, they also contain a large amount of additional information that is both irrelevant and confidential. ALP has already agreed to produce all documents related to its sales and Luntz states no basis for finding that to be insufficient.

Second, Luntz’s demands for documents reflecting Peter and Libra’s personal “financial needs” are vague, speculative, and without connection to what any party could be required to prove in these matters. To be sure, that Peter or Libra personally needed cash is not a defense to ALP’s claims that Luntz made sales that were otherwise not beneficial to ALP. Further, ALP and Libra have agreed to produce all communications involving Luntz. Luntz has no cogent argument as to why he requires *all* information related to Peter and Libra’s “financial needs,” even that which was never communicated to him at the time of his alleged misconduct and could not have informed his decisions.

Third, Luntz’s demand for “all” of Adam’s communications is patently improper. Luntz articulates no specific reason why he needs nearly 10 years of email and other correspondence, with no filter, other than to say every correspondence has the potential to bear on whether

Adam was “competent.” This is pure speculation and not a valid basis for a motion to compel. Luntz’s wholesale refusal to narrow his demand at the pre-motion conference, or to even review ALP’s proposed production prior to making his motion, confirms that this demand is a fishing expedition.

Fourth, Luntz makes no showing why documents regarding ALP’s distribution of \$48.8 million in insurance proceeds it received in 2018 have any bearing on the claims against him or his defenses and counterclaim.

Finally, ALP’s amended response to Luntz’s interrogatory seeking a computation of damages is sufficient. Luntz has not presented any basis for requiring more than what ALP has provided.

The court further notes that most of Luntz’s demands are overbroad insofar as they seek documents outside of the period when Luntz worked for ALP and, in several cases, seek “all” documents from a certain time period regardless of whether they are relevant to a claim or defense in these matters. Where a demand contains requests that are so overbroad as to be palpably improper, the appropriate remedy is to vacate the entire demand rather than prune it. Lerner v 300 West 17th Street Housing Development Fund Corp., 232 AD2d 249 (1st Dept. 1996); see Pascual v Rustic Woods Homeowners Assoc. Inc., 173 AD3d 757 (2nd Dept. 2019).

The court denies without prejudice ALP and Libra’s application for sanctions against Luntz, which is made in their opposition papers and without a Notice of Motion (CPLR 2214).

Accordingly, it is

ORDERED that the motion to compel discovery pursuant to CPLR 3124 filed by Gene Luntz Management, Inc., and Gene Luntz is denied; and it is further

ORDERED that the application for sanctions against Gene Luntz Management, Inc., and Gene Luntz, made by ALP, Inc., and Libra Max, is denied without prejudice.

This constitutes the Decision and Order of the Court.

10/14/2022
DATE


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	OTHER