Li v Satsuma USA LLC
2023 NY Slip Op 31716(U)
May 22, 2023
Supreme Court, New York County
Docket Number: Index No. 454084/2021
Judge: Jennifer G. Schecter

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

PRESENT: HON. JENNIFER G. SCHECTER **PART** 54

Justice

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INDEX NO 454084/2021

MOT SEQ NOS 016 018 019

JEANETTE LI, SATSUMA USA LLC,

Plaintiffs,

- v -

SATSUMA USA LLC,TATSUYA YAMAMOTO, JWD INC., MASAHIKO TOKOROKI,

Defendants.

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DECISION + ORDER ON MOTIONS

The following e-filed documents, listed by NYSCEF document number (Motion 016) 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562

were read on this motion to/for SANCTIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 018) 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 534, 535, 536, 537, 538, 550, 563, 564, 565, 566, 567

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 505, 506, 507, 508, 509, 510, 511, 512, 532, 539, 540, 541, 542, 543

were read on this motion to/for DISCOVERY.

Before the court are three motions addressing the parties' post-deposition discovery disputes. As an initial matter, the court has already ruled on all of the parties' pre-deposition discovery disputes and, by order dated December 19, 2022, the court explained the showing that would be necessary to compel post-deposition discovery (Dkt. 449). Yet, as discussed below, most of the post-deposition demands and the arguments made to justify them really have nothing to do with the deposition testimony. Rather, they appear to instead be another attempt to relitigate the proper scope of discovery in this case. For the reasons that follow, aside from one issue raised by plaintiff, all of the objections to the post-deposition discovery requests are sustained.

Plaintiff's Motion (Seq. 16)

Plaintiff seeks to shift the costs of the $1,050 Veritext invoice (Dkt. 481) due to defendants' counsel canceling the January 11, 2023 deposition because they miscommunicated the date to their clients (*see* Dkt. 480 at 3). It is regrettable that this issue required motion practice. While sanctions are not warranted, the court finds it appropriate to exercise its discretion to shift these costs (*see* CPLR 3116[d]). Plaintiff should not have to pay for an

expense incurred solely due to opposing counsel's logistical error. The deposition issues that occurred months later have no bearing on this issue.

The balance of plaintiff's motion is denied. Despite the court's admonishment on the prior motion, plaintiff again fails to properly explain the basis for her requests (*see* Dkt. 449 at 1-2). Merely asserting that "there cannot be any objections as these are not matters that are improper nor prejudicial" is insufficient (*see* Dkt. 480 at 9). Equally unavailing are her recycled assertions about the insufficiency of the prior production and accounting (*see* Dkt. 449 at 2 ["Asserting that the production is insufficient and complaining about deficiencies in the accounting are not substitutes for actually addressing these issues"]). If plaintiff is correct that defendants will not be able to carry their burden of proof because certain portions of the accounting are not properly supported (*see* Dkt. 480 at 11), that will result in a surcharge (*see O'Mahony v Whiston*, 2023 WL 2020049, at *5 [Sup Ct, NY County Feb. 15, 2023]). But that possibility does not justify the additional discovery sought at this juncture.

Plaintiff's other arguments about why further discovery is needed are equally uncompelling. Indeed, certain assertions in her brief appear to be lifted directed from portions of her prior brief that the court rejected as insufficient (*see* Dkt. 449 at 2; *compare* Dkt. 480 at 11, *with* Dkt. 391 at 9). For instance, repetition of the line that "JFORWARD should want to show that it is not merely an alter ego for YAMAMOTO" (Dkt. 480 at 11) is particularly concerning, as the court specifically quoted this line from the prior brief to demonstrate that plaintiff was seeking discovery on an alter ego claim that was no longer part of the case (*see* Dkt. 449 at 2). Yet again, "the excessive rhetoric and inaccuracies about the scope of the pending claims make it extremely difficult to parse the validity of plaintiff's arguments" (*see id.* at 2).

Plaintiff alternatively requests that "to the extent that the Court declines to direct responses and production, it should at a minimum preclude the Defendants from offering any documents not already produced as exhibits to motions, at trial or otherwise, since such documents are not being produced in discovery" (Dkt. 480 at 9). The court has already issued a ruling to this effect (Dkt. 449 at 2).

While plaintiff's order to show cause includes a request for further depositions (*see* Dkt. 488 at 2), her brief is unclear about whether she is actually seeking a further deposition (*compare* Dkt. 480 at 9-10, *with id.* at 20). Regardless, the court does not find a further deposition to be warranted. The court agrees with plaintiff's counsel, however, that "offensive and abusive language by attorneys in the guise of zealous advocacy is plainly improper, unprofessional, and unacceptable" (*see id.* at 18). Plaintiff's counsel should heed his own admonition (*see, e.g.*, Dkt. 551 at 2, 6). The court is yet again "dismayed by the record on this motion" that, "in addition to reflecting a lack of civility, distracts from the relevant issues and does not help the court make an informed decision" (Dkt. 449 at 4). The lack of merit in opposing counsel's arguments or disagreement with their strategic decisions are not valid excuses for demonstrating a lack of civility towards fellow members of the

bar (*see* Dkt. 472 ["In light of the court's previous admonitions (Dkt. 371 at 2; Dkt. 449 at 4), the parties are cautioned that a further lack of civility may result in sanctions. Even if an attorney has a negative view of the way in which another attorney is handling the case, that is simply no excuse for a lack of civility"]). Enough is enough.

Yamamoto Defendants' Motion (Seq. 18)

While plaintiff's responses were untimely under the April 4, 2023 order (Dkt. 466), late responses do not result in waiver of objections to palpably improper demands (*see Worldview Entertainment Holdings, Inc. v Woodrow*, 204 AD3d 629, 630 [1st Dept 2022]). The Yamamoto Defendants' post-deposition demands are palpably improper (*see* Dkt. 516). They are not really post-deposition demands. Rather, they are demands for basic documents that could have been requested from the outset, including "all written communications" on core topics at issue in this case (*see id.* at 9). This is another attempted end-run around the preclusion order (Dkt. 152; *see* Dkt. 457). To be sure, plaintiff has invoked that order at various times to suggest there is no discovery that could possibly be sought by the Yamamoto Defendants. That is not the case. A proper, narrowly tailored post-deposition demand would not be precluded. But their request for broad categories of documents that could have been demanded from the outset is improper at this juncture. This, of course, would be true regardless of whether a preclusion order was issued. In light of the demands being vastly overbroad and that many of them, including those specifically discussed in their brief (e.g., the request for tax returns that is not supported by any persuasive justification), are also palpably improper on their face, the court will not prune them (*see Kimmel v Paul, Weiss, Rifkind, Wharton & Garrison*, 214 AD2d 453, 454 [1st Dept 1995]).

The same is true of the post-deposition demands served on the other parties, which, even assuming some of them were proper, include requests for basic information that could have and should have been requested much earlier. The court also does not find that any additional ESI is warranted. Furthermore, given the nature of this action, in which plaintiff asserts derivative claims seeking redress for alleged fiduciary duty breaches, the Yamamoto Defendants are naturally the parties who should be the source of most of the discovery. It seems unlikely that plaintiff or the other parties have any material evidence that has not already been produced. Thus, the lack of any further discovery should not be prejudicial.

The court declines to impose sanctions due to conduct during the second deposition of plaintiff that defense counsel himself ended. The court has already addressed this issue (Dkt. 472 ["all the court is prepared to do is ensure the final two hours of plaintiff's deposition are completed. Any further relief would need to be sought by motion, **which the court discourages to avoid a further waste of resources** that are better spent finally completing fact discovery"] [emphasis added]). The court had hoped its comments in the prior order and citations to the deposition transcripts would have made it apparent that further pressing this issue would be ill advised (*see id.* ["a review of the deposition

transcripts is disconcerting"]). But as noted, the lack of civility in this case is intolerable and must cease.

In the exercise of discretion the court also declines to impose the sanctions requested by third-party defendants in their cross motion.

Jforward's Motion (Seq. 19)

The portion of Jforward's post-deposition demands to which it seeks to compel responses (*see* Dkt. 512 at 4) are also palpably improper, as they too seek broad categories of documents that could have been previously sought and are mostly not tailored to the specific testimony from the depositions (*see* Dkt. 507 at 7-8). They appear to be principally focused on testing certain of the allegations in the complaint (*see* Dkt. 512 at 6). In any event, not only does plaintiff claim to lack further responsive documents (*see* Dkt. 538), but, as noted, given the nature of plaintiff's claims, it is unclear why plaintiff would be expected to have substantial additional documents that are material and necessary to this action or why failing to produce further documents that would support her claims would be prejudicial to Jforward. As plaintiff herself has observed, the parties will not be permitted to rely on documents that are not produced during discovery.

Finally, Jforward seeks to compel compliance with the April 18, 2023 order, which directed plaintiff to serve a sworn interrogatory response with a damages calculation (Dkt. 472). The court previously granted Jforward's motion to compel this information (*see* Dkt. 449 at 4), and the April 18 order set the deadline for plaintiff to do so. On May 2, 2023, plaintiff served (apparently in error) a supplemental response that again objected to providing a damages calculation (*see* Dkt. 509 at 7). But on May 3, 2023--prior to this motion being filed--along with her objections to the accounting (Dkt. 475), plaintiff filed the following supplemental response: "see Exhibit 'A', which used the Ledger and other documents to estimate losses to Satsuma" (Dkt. 474 at 6; *see* Dkt. 476 [Exhibit A]). The court will not opine on this document since Jforward's motion does not address it.

Accordingly, it is ORDERED that plaintiff's motion is GRANTED IN PART only to the extent that by May 31, 2023, Yamamoto and Jforward shall each remit $525 to Veritext, and the motions and cross-motion are otherwise DENIED.

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5/22/2023
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE: [ ] CASE DISPOSED [X] NON-FINAL DISPOSITION
[ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER