

GRATO PARQUET LLC; and WOOD  
MANNERS S.L.,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: HUDSON COUNTY

Plaintiffs,

DOCKET NO. HUD-L-4548-21

v.

*Judge Anthony V. D'Elia*

HOBOKEN FLOORING LLC; HW  
FLOORING LLC; and JOEL  
LEFKOWITZ, ABCD CORPORATIONS  
1-10,

Civil Action

**OPINION/ORDER**

Defendants,

**FILED**

**APR 26 2024**

ANTHONY V. D'ELIA, J.S.C.

Pending before this Court is Plaintiff's discovery demand seeking the Defendant's Hoboken Flooring LLC., HW Flooring LLC., and Joel Lefkowitz financial records and tax returns.

Plaintiff served supplemental discovery demands upon the Defendants. The Defendants refused to provide certain discovery – including income tax returns for the years 2016 – 2021. Defendants did produce the requested bank records of Hoboken Flooring but have never produced any bank records of the Defendants, Joel Lefkowitz or HW Flooring.

In April of 2023 Plaintiff moved to compel production of tax returns for all three Defendants. In its moving papers, Plaintiff argued that the Defendants had not provided the bank records of Mr. Lefkowitz.

Defendants opposed Plaintiff's motion, arguing that the Plaintiff did not have a compelling need for information contained in the tax documents ("plural") and that the "bank records already produced" contained all the relevant financial records pertinent to this matter. Again, no bank records for Mr. Lefkowitz have been produced.

On June 29, 2023, the Court denied the motion to compel without prejudice to give the parties an opportunity to resolve the issues.

The issues have not been resolved. Defendants now acknowledge that only the Defendant Mr. Lefkowitz has filed income tax returns. Significantly, his personal bank records as requested have not been produced, but only the bank record of the LLC's have been produced. Mr. Lefkowitz argues that the LLC's bank records contain all relevant information which is reflected in his personal income tax return.

After the parties tried to, but couldn't, resolve the issues, the Court ordered that the three Defendants provide the Court with their 2020 tax returns for an in limine review and that Plaintiff and Defendants parties could provide the Court with certifications explaining why the tax returns might lead to relevant evidence in this matter.

As a result, the Plaintiff submitted a forensic accounting expert certification (1/4/24) explaining why the Defendants should now be compelled to produce the requested tax returns and the bank records/statements of Mr. Lefkowitz from 2016 to 2021.

The Defendants submitted a certification arguing why the bank records of the two LLC Defendants should be the only requested financial records produced to the Plaintiff.

#### Background

The Plaintiff Grato Parquet LLC (Grato) and Wood Manners S.L. (Wood Manners) assert that Wood Manners is a manufacturer of wood flooring used in commercial and residential development. Wood Manners is a Spanish manufacturer whose participation in the United States market was facilitated by the Defendant Joel Lefkowitz. Mr. Lefkowitz is the sole owner of Hoboken Flooring and HW Flooring.

In December 2016 Wood Manners and Hoboken entered into an exclusive sale representative agreement whereby Hoboken would serve as the exclusive sales rep. for Wood Manners products in Maine, New Hampshire, Vermont, Connecticut, New York, New Jersey, Pennsylvania, Maryland and Washington, DC.

Plaintiff alleges, that from 2016 through 2018, Wood Manners sold products to Hoboken but only was paid a fraction of what it was owed. Plaintiff alleges that by 2019 Defendants owed Plaintiffs approximately \$2,598,072.45.

Notwithstanding the above, Wood Manners created Grato, a United States Company, for which Mr. Lefkowitz individually was to serve as the sales representative. Mr. Lefkowitz, (it is alleged) was compensated via commission payments and other related compensation.

This relationship continued through the end of 2019 when disagreements arose again between Grato and Mr. Lefkowitz regarding payments that allegedly were due to the Plaintiffs. Plaintiffs allege that Mr. Lefkowitz personally retained a significant amount of payments that have been received by him and which Plaintiff claim should have been paid to the Plaintiff.

The parties attempted to modify their relationship, but to no avail.

In November of 2021, Plaintiff filed the within Complaint against the various Defendants seeking a minimum of \$4,000,000.00 in compensatory damages and also sought equitable relief, including an accounting, etc. Plaintiff's Complaint also alleges violations of the criminal code and seeks injunctive relief.

Prior to engaging in discovery, the parties mediated the matter with the Hon. Peter E. Doyme, A.J.S.C. (Ret'd). the parties jointly retained an accounting firm (Withum) to provide an independent accounting and audit the parties business transactions and issue a report. In September of 2022 Withum issued its report finding that the Defendant owes Plaintiff a minimum of \$2,155,314.00 and potentially a maximum of \$4,054,944.00 depending on resolution of various claims in this litigation.

Thereafter, in November of 2022, Plaintiff served discovery demands upon the Defendants seeking to uncover where the various monies Defendants collected for Plaintiffs goods went. The efforts to uncover and track the various payments made to the three Defendants generated this discovery dispute pending before this Court.

The Defendants have pursued a Counterclaim, asserting that they are owed commissions from the Plaintiffs and are claiming entitlement to offset for expenses that the three Defendants allegedly incurred relative to a defective product that Defendants claim had to be repaired or replaced at Defendants' expense. Defendants are claiming to be owed millions of dollars in commission and apparently expensed repair and replacement costs for a defective product.

The parties have entered into a Confidentiality Order.

Plaintiffs' Initial Brief in Support of Motion to Compel Discovery

In its initial brief to compel discovery on April 28, 2023, the Plaintiff sought tax returns of the various Defendants.

As to tax returns: New Jersey Courts permit the discovery and inspection of income tax returns for good cause. DeGraff v. DeGraff, 163 N.J. Super 578, 582 (App. Div. 1978). Each case must be decided upon its own fact. Ullmann v. Hartford Fire Ins. Co., 87 N.J. Super 409, 414. The trial court must perform a sensitive balancing act to accommodate the needs for discovery and the non-moving party's right to maintain confidentiality of information about its financial condition. Herman v. Sunshine Chem. Specialty Inc., 133 N.J. 329, 344 (1993). Production of tax returns should not be ordered unless it clearly appears that they are relevant to the subject matter of the action or to the issues raised thereunder, and further, that there is a compelling need therefore because the information contained therein is not otherwise readily obtainable. Harmon v. Great Atl. and Pac. Tea Co., 273 N.J. Super 552, 558 – 59 (1994).

The Plaintiffs argue that due to the allegations of the Plaintiffs and the arguments raised by the Defendants in their Counterclaim, it is imperative that the Plaintiffs be able to independently analyze the tax returns for the various Defendants to see whether the Defendants' allegations are supported by their financial records. For example, Plaintiff argues that income reported by the Defendants on their tax returns during the relevant time period could certainly lead to relevant evidence and just as

importantly, Plaintiffs must determine whether the Defendants treated any invoices issued to them as well as payments received in a way that would support or contradict the Defendants contentions.

As noted above, the Court permitted both parties to submit certifications from their respective experts regarding the need to produce the tax returns. Plaintiffs submitted a certification (and a “reply” certification) of Gerard Giannetti. Defendants submitted a certification of Henry L. Fuentes, in response to the initial certification of Mr. Giannetti.

In his initial certification, Mr. Giannetti affirmed that Withum found that from 2016 to 2021 Plaintiff invoice \$4.83 million dollars to the Defendants. However, Defendants only paid \$1.1 million dollars to the Plaintiffs. Mr. Giannetti argued that in order to accurately trace the funds that flowed between the parties, it is necessary for him to determine what Defendants reported as the Cost of Goods sold (COGS) on Schedule C of their tax returns. The COGS represents the direct expenses related to producing or acquiring the goods for sale. Mr. Giannetti explained that if the Defendants reported the entire invoice amount, as Plaintiffs expect in this matter, this would result in a lower tax liability and increased income for the Defendants at the expense of Plaintiffs who never received the amount Defendants reported for the COGS.

Mr. Giannetti emphasized that it was his understanding that the two Defendant limited liability companies (Hoboken Flooring and HW Flooring) did not file tax returns but that they were “included in Schedule C of the Defendant Mr. Lefkowitz’, personal tax returns for the relevant years. Mr. Giannetti noted that the only bank account records produced in discovery were the accounts of Hoboken Flooring. HW Flooring and Mr. Lefkowitz did not provide bank statements. Plaintiff’s expert emphasized that now that it has been disclosed that Mr. Lefkowitz included the corporate Defendants’ information on Schedule C of his tax returns, it is “important” that Mr. Giannetti review Mr. Lefkowitz’ and HW Flooring’s bank records, for without that information, he is unable to determine exactly how much Defendants collected for the sale of Plaintiffs’ goods and where the monies went.

In this regard, he also argued that he would need to review and analyze the business income loss as reported in Schedule C of Mr. Lefkowitz' personal tax returns for 2016 through 2021 to compare that information to the bank records referenced above.

As noted, Defendants submitted the responsive certification of Mr. Fuentes.

Mr. Fuentes asserts that Defendant Hoboken Flooring and HW Flooring have produced bank records to the Plaintiffs. The record is clear, however, Mr. Lefkowitz himself has refused to produce his personal bank records.

In his "reply" certification Mr. Giannetti emphasized that upon his review of the bank records that have already been provided, there were numerous instances of funds being freely transferred between the business accounts of HW Flooring/Hoboken Flooring and an identified account (which might be a personal account). Additionally, it is clear that Mr. Lefkowitz frequently treated the business account of Hoboken Flooring and HW Flooring as if they were his own personal checking account, consistently covering personal expenses from those accounts. Consequently, Mr. Giannetti argued that both the business accounts and the associated personal accounts of Mr. Lefkowitz could be reasonably considered part of the business domain. Therefore, Giannetti claims that his review of Mr. Lefkowitz personal bank records and tax returns could be extremely relevant to the issues raised in this litigation.

As noted, the Court has conducted an in limine review of the 2020 Federal and State income tax returns for Joel Lefkowitz. Counsel for Mr. Lefkowitz represented that Defendants Hoboken and HW Flooring have not filed tax returns.

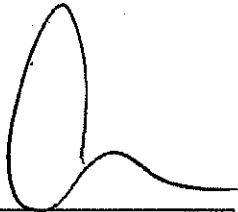
The Court reviewed the 2020 1040 individual income tax returns for Mr. Lefkowitz and notes that Schedule D reports a net short-term capital gain or (loss) of \$1,564,528. It also lists a net long term capital gain or (loss) of \$448,911.

Conclusion

The Court recognizes that public policy favors non-disclosure of income tax returns. Production of tax returns should not be ordered unless it clearly appears that they are relevant to the subject matter of the action or to the issues raised thereunder and that there is a compelling need therefore because the information contained therein is not otherwise readily obtainable. Cooper v. Hallgarten and Co., 34 F.R.D. 482, 483-84 (D.C.S.D.N.Y. 1964). However, in light of the clear evidence that Mr. Lefkowitz treated the bank accounts of the two limited liability companies and his own personal business interchangeably and as the issues raised both in Plaintiffs' complaint and Defendants' counterclaim clearly require an analysis of all relevant bank records and income tax returns for the period requested of 2016 – 2021, the Court orders that the Defendants produce the requested bank statements and tax returns for the relevant period of time for any and all of the three Defendants who maintained any bank accounts or filed tax returns for the period in question.

For the reasons expressed in Mr. Giannetti's certifications, this discovery may lead to relevant evidence.

So ordered,



Hon. Anthony V. D'Elia, J.S.C.  
(Decided on April 26, 2024)