

IN THE COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

ANTHONY and VIN SALVATORE,	:	NO. 18-0182
Individually and t/d/b/a 33TWOONECO, LLC,	:	
Plaintiffs	:	
	:	
vs.	:	CIVIL ACTION – Law
	:	In Equity
DANKO HOLDINGS, LP, 3 rd ST. PLCB	:	
VENTURES, LLC d/b/a FAT CAT GRILLE and	:	
NIGHT VENUE,	:	
Defendants	:	

OPINION AND ORDER

Lionel Messi is a soccer genius. While possessing remarkable physical attributes and technical ability, on the pitch, he is always thinking ahead. He anticipates open spaces, runs by his teammates, where the ball will be and how to successfully attack the defensive formation. A good lawyer does the same. A good lawyer must think ahead and plan accordingly.

Discovery enables lawyers to investigate the facts and to gather information prior to trial in order to plan a potentially successful attack or defense. Discovery is broadly construed and a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. Pa. R. Civ. Rule 4003.1 (a). It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Pa. R. Civ. Rule 4003.1 (b).

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action, *Commonwealth v Hernandez*, 2020 Pa. Super 57 (March 10, 2020),

citing, Pa. R.E. Rule 401 (a) – (b). Motive supplies a reason why a particular party may have acted in a particular way. Evidence of motive is normally admissible to support an inference as to intent. *In Re: F.P.*, 878 A.2d 91, 95 n.6 (Pa. Super. 2005).

Discovery, however, is not without limits. Fishing expeditions are not permitted under the guise of discovery. *The Pa. Trust Company v. Wilkes-Barre Hospital Company, LLC*, No. 17-CV-465 (C.P. Lacka. Co. 1-3-19, J. Nealon). As Judge Nealon noted, “[W]hile a limited degree of fishing is to be expected with certain discovery requests, parties are not permitted to fish with a net rather than with a hook or harpoon.” *Id.* [citations omitted].

In this case, Plaintiffs managed a restaurant located at 33 East Third Street, Williamsport, Pennsylvania, under a management agreement with Defendant Third Street PLCB Ventures (“Third Street”). The property is owned by Defendant Danko Holdings, LP.(“Danko”) The liquor license was owned by Defendant Third Street. Among other things, Plaintiffs allege that Defendant, Third Street, violated the management agreement and in early January of 2018, by unilaterally placing chains and locks on the business premises operated by the Plaintiffs. Plaintiffs also allege that Danko was unjustly enriched by improvements made to the building by Plaintiffs. Finally, Plaintiffs allege that both Defendants converted some of Plaintiffs’ property.

On December 17, 2019, Plaintiffs, pursuant to the Pa. Rules of Civil Procedure, served a Request for Production of Documents on the defendants. Defendants failed to respond and/or object to the discovery request within the time limits provided by the Rules and on February 5, 2020, Plaintiffs filed a Motion to Compel. Defendants then filed an Answer indicating among other things that they did not receive Plaintiffs’ Request

until December 27, 2019 and subsequently served their first responses on February 12, 2020.

While Defendants responded to a number of Plaintiffs' requests, they refused and/or objected to Request No. 2, which asked for the production of "any and all documents involving the transfer of the Pennsylvania Liquor License from the restaurant operated by the Plaintiffs to KAOS." Defendants argue that the request seeks information which is not relevant to the subject matter involved in the action.

Plaintiffs first argue that Defendants waived their right to object to the discovery request and should be compelled to provide the requested documents. The parties do not dispute the fact that Defendants failed to respond to the request for production of documents in a timely manner. In weighing the various factors, however, the court will not impose the sanction of waiver. The imposition of waiver would constitute a punishment not befitting the crime. The violation was relatively minimal, the length of the delay was short and its reasons were understandable, and it does not appear that Plaintiffs suffered any prejudice that cannot be cured. See *McGovern v. Hospital Service Association of Northeastern Pennsylvania*, 785 A.2d 1012 (Pa. Super. 2001).

Addressing the merits of Defendants' objection, the court concludes that Defendants have failed to establish that the items are non-discoverable. See *Winck v. Dailey, Mack Sales, Inc.*, 21 Pa. D. C. 3d 399 (1980). The requested documents are not privileged, clearly relate to Plaintiffs' claims and are calculated to lead to admissible evidence.

More specifically, Plaintiffs wish to explore a possible connection between the transfer and/or sale of the liquor license to a third party, and Defendants' alleged conduct in breaching the contract and engaging in tortious conduct. Plaintiffs claim that the

motive for Defendants' alleged conduct can be discovered through the requested documents. Plaintiffs claim that Defendants may have deliberately committed the improper conduct against the Plaintiffs with the expectation that they could be relieved of their contractual obligations and then sell the liquor license at a premium and large profit. Plaintiff allege that prior to Defendants placing chains and locks on the premises, Defendants were actively seeking to transfer the license to the entity known as KAOS.

ORDER

AND NOW, this 13th day of March 2020, following a consideration of Plaintiffs' Motion to Compel and argument by both counsel, said Motion to Compel is GRANTED. Within thirty (30) days of the date of this Order, Defendants must produce to Plaintiffs' counsel "any and all documents involving the transfer of the Pennsylvania Liquor License from the restaurant operated by the Plaintiffs to KAOS."

BY THE COURT

Marc F. Lovecchio, Judge

cc: Joseph Orso, III, Esquire
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