

**Chelsea v Tekiner**

2024 NY Slip Op 34447(U)

December 18, 2024

Supreme Court, New York County

Docket Number: Index No. 154224/2023

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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GONCA TEKINER CHELSEA, BREMEN HOUSE INC.

INDEX NO. 154224/2023

Plaintiffs,

MOTION DATE 10/11/2024

- v -

YASEMIN TEKINER, ZEYNEP TEKINER,

MOTION SEQ. NO. 004

Defendants.

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107

were read on this motion to COMPEL DISCOVERY.

Plaintiffs Gonca Tekiner Chelsea and Bremen House, Inc.’s (“Plaintiffs”) move for an Order (i) pursuant to CPLR 3124, to compel Defendant Zeynep Tekiner (“Zeynep”) to produce all outstanding responsive documents, and (ii) pursuant to CPLR 3126 and 22 N.Y.C.R.R. § 130-1.1, imposing sanctions on Zeynep and awarding to Plaintiffs costs and reasonable attorneys’ fees.

As relevant here, the sole allegation against Zeynep in this action is that she aided and abetted a breach of fiduciary duty (*see* NYSCEF 1 [“Compl.”] ¶¶75–82). Plaintiffs served Zeynep with a First Notice for Discovery and Inspection on February 29, 2024. In response, Zeynep asserted that she was not in possession or control of responsive documents, or that “she is in possession or control of no responsive documents that have not been produced by Yasemin Tekiner.” (NYSCEF 92 [“Hill Aff.”] ¶7, NYSCEF 94).

On June 4, 2024, the parties submitted a joint letter to the Court, providing an update on the status of discovery in advance of a June 11, 2024, compliance conference. This issue was raised at the conference. Plaintiffs argued that Zeynep has produced “no documents” and Zeynep’s counsel responded, again, that the only responsive documents located are documents that have already been produced in this action by Yasemin. Zeynep’s counsel also argued that the fees and expenses of re-producing the duplicative documents via an e-discovery vendor are prohibitive. This Court’s law clerk advised Zeynep’s counsel that she was obligated to produce all relevant, responsive documents in her possession, but in the interest of efficiency, recommended that Plaintiffs and Zeynep pursue a mutually-agreeable compromise.

Following the conference, the parties worked out language for a proposed stipulation (the “Proposal”). Specifically, Zeynep’s counsel proposed that she would stipulate that: “

- (1) she timely received all documents and their attachments that have been produced on which Zeynep is copied,
- (2) she received no copies of those documents on which she is not copied, and
- (3) she received copies of those documents on which she is a signatory as of their dates, and has no copies of other documents to which she is not a signatory or party.

(NYSCEF 99). In response, Plaintiffs’ wrote:

“If I understand your most recent offer correctly, you are proposing the following with respect to non-privileged documents that have already been produced by Yasemin:

- Zeynep will stipulate to having timely received and kept copies of those communications appearing in Yasemin’s production (together with any attachments) on which she is copied,
- Zeynep will stipulate to having no copies of those communications on which she is not copied.
- Zeynep will stipulate to having copies of responsive documents to which she is a signatory—the Payment Agreement and the Amendment to the Payment Agreement—as of their date and to having no copies of other documents—any life insurance trust agreement, any split dollar

agreement, any life insurance policy, any life insurance trust asset documents—to which she is not a signatory or party.

“In connection with those stipulations, Plaintiffs will agree that Zeynep has satisfied her discovery obligations, provided that both you and Zeynep execute Jackson affidavits containing the following terms . . . .”

(NYSCEF 99 [list of terms omitted]). Specifically, Plaintiffs requested that Zeynep and her counsel affirm under penalty of perjury that they had searched for all relevant emails, texts, or other messages, across all devices Zeynep used to send or receive such messages, and that Zeynep and her counsel specify the methodology and search terms they used (Hill Aff. ¶18, NYSCEF 99).

In response, Zeynep’s counsel replied: “It seems we have agreement. Your three bullet-pointed clauses for the stipulation are substantially accurate. Please go ahead and draft the stipulation and, subject to a review of exact wording, we will be able to counter-sign it. As to your reference to a Jackson Affidavit, please note that a Jackson Affidavit has no application here . . . .” (NYSCEF 99 [going on to discuss cases involving Jackson affidavits]). The parties continued to dispute the applicability of a Jackson affidavit.

Thereafter, Plaintiffs and Zeynep filed their joint Commercial Division Rule 14 letter concerning this dispute. Since this issue had previously been addressed at the compliance conference, the Court ordered Plaintiffs to file their motion (NYSCEF 100).

### **DISCUSSION**

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action” (CPLR 3101[a]). “The words ‘material and necessary’ as used in section 3101 must ‘be 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” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014]). Courts will compel the production of relevant materials so long as the moving party’s discovery requests are not overbroad nor unduly burdensome (*see FC Bruckner Assoc., L.P. v Fireman's Fund Ins. Co.*, 114 AD3d 542, 543 [1st Dept 2014]).

A court may impose financial sanctions upon a party engaging in frivolous conduct (*see* 22 NYCRR 130-1.1). Rule 130 provides that conduct is frivolous if “it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another.” (*id.* at 130-1.1(c)(2); *Lis v Lancaster*, 225 AD3d 568, 569 [1st Dept 2024] [imposing sanctions for “frivolous discovery conduct” where a party improperly withheld “documents [that] should have been produced . . .”] [internal quotation marks omitted]).

As an initial matter, the fact that Plaintiffs already have all of Zeynep’s documents due to Yasemin’s production does not relieve Zeynep of her responsibility to produce documents. However, the parties’ Proposal is a reasonable way to resolve this dispute, and both parties appear to agree with the Proposal. The only dispute is over whether Zeynep and her counsel should also be required to submit a *Jackson* affidavit or a *Jackson*-type affidavit.

While this is not the typical situation in which a *Jackson* affidavit is ordered—*e.g.*, “when a party seeks documents from another party who claims that the requested documents are missing or otherwise unavailable to them” (*DiMaggio v Port Auth. of New York and New Jersey*, 228 AD3d 426 [1st Dept 2024]; *see also Lis v Lancaster*, 210 AD3d 505, 506 [1st Dept 2022] [same]), requesting that Zeynep and her counsel submit an affidavit outlining their good faith effort to search for all relevant emails, texts, or other messages, across all devices Zeynep’s devices, and specify the methodology and search terms they used to do so is reasonable (regardless of whether it’s called a *Jackson* affidavit).

Therefore, Zeynep can either produce all documents responsive to Plaintiffs’ requests, as required, or agree to the Proposal (as outlined, *supra*) **and** provide an affidavit from Zeynep and her counsel outlining the details of the search that was performed, and confirming that they found no additional documents beyond those already produced by Yasemin.

Plaintiffs’ request for sanctions is denied.

The Court has considered the parties’ remaining arguments and finds them unavailing.

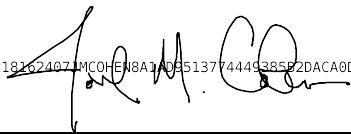
Accordingly, it is

**ORDERED** that Plaintiffs’ Motion is **GRANTED IN PART**, and Zeynep is directed to provide Plaintiffs a signed version of the Proposal, along with an affidavit from Zeynep and her counsel as detailed herein within fourteen (14) days of the date of this Order **OR** Zeynep shall produce documents responsive to Plaintiffs’ requests, along with a privilege log, within thirty (30) days thereafter.

This constitutes the Decision and Order of the Court.

12/18/2024

DATE



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JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: