SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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DEUTSCHE OEL & GAS S.A.,

Plaintiff,

- v -

ENERGY CAPITAL PARTNERS MEZZANINE OPPORTUNITIES FUND A, LP, ENERGY CAPITAL PARTNERS MEZZANINE OPPORTUNITIES FUND, LP, ENERGY CAPITAL PARTNERS MEZZANINE OPPORTUNITIES FUND B, LP, ENERGY CAPITAL PARTNERS MEZZANINE (ALASKA MIDSTREAM CO-INVEST), LP, ENERGY CAPITAL PARTNERS MEZZANINE (ALASKA MIDSTREAM CO-INVEST) II, LP

Defendant.

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INDEX NO. 656717/2019

ORDER - CASE MANAGEMENT

HON. ROBERT R. REED:

The instant dispute involves the loss of collateral pledged under a debt and financing agreement. Plaintiff is a Luxembourg company that held equity in shares pledged as collateral under a 2014 pledge agreement. Defendants are Delaware companies that manage and control energy infrastructure projects. The complaint asserts that defendants failed to disclose material facts to plaintiff – the equity owner of the collateral – and conspired to prevent the proper management of the company the shares of which were pledged as collateral under the 2014 agreement. The alleged mismanagement purportedly led to a 2020 bankruptcy reorganization which ultimately resulted in a June 2020 order from a Delaware bankruptcy court directing that certain equity shares held by plaintiff be surrendered to debtors. Plaintiff's complaint asserts a cause of action for fraudulent inducement and an additional count for civil conspiracy to commit fraud.

Pursuant to Rule 14 of the Commercial Division the parties have jointly filed discovery correspondence identifying disputes regarding the disclosure of records. The following document demands were identified by the parties as in dispute:

1. Defendant's request for production Nos. 11-15

In document requests number 11-14, defendants demand production of documents reflecting the ownership, control, and relationship between certain identified entities. Document request number 15 requests identification and/or information regarding the purported "fraudulent misrepresentations" alleged in the complaint. Plaintiff objects to production of these documents on the grounds that the requests are overbroad and seek irrelevant information.

2. Defendants' interrogatories nos. 2-7, 9-12, and 15

Defendants seek the identity of witnesses with material knowledge, and information regarding the existence, custodian, and location of "material documents." Defendants request a response from a company named Alecto, a purported successor in interest to plaintiff, that provides documents within its possession, custody and control or a statement unequivocally that no such information is known or available. Plaintiff objects to production of these documents on the grounds that the requests are overbroad and seek irrelevant information, and to the extent the request seeks a "legal conclusion" as to the identity of witnesses and documents relating to the existence of a fiduciary relationship, justifiable reliance or punitive damages.

3. Plaintiff's request for production nos. 1, 9, 12-13, 15-17, 19-24, 30-34, 36-37, and 39-40

Plaintiff seeks disclosure of documents concerning defendants' performance under a pledge agreement and any proposed amendments to the agreement. Plaintiff also seeks documents and internal communications regarding certain nonparty individuals concerning the operation or "any aspect" of business by the nonparty entities, including documents reflecting defendants "role or

influence" over operations, management, and business affairs. Plaintiff also seeks documents regarding defendants' direction and control of nonparty entity Ankura, payment records, financing records, and communications concerning financing and bankruptcy strategy, along with records reflecting the management of drilling and gas operations.

It is well settled that the trial court has broad power to supervise disclosure (*Daniels v City of New York*, 291 AD2d 260 [1st Dept 2002]). Generally speaking, and as applicable to discovery in every litigation, 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." The words, "'material and necessary,' are to 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" (*Allen v Crowell—Collier Publ. Co.*, 21 NY2d 403, 406 [1968]). The party seeking disclosure must demonstrate that "the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims" (*Abrams v Pecile*, 83 AD3d 527, 528 [1st Dept 2011], quoting *Vyas v Campbell*, 4 AD3d 417, 418 [2d Dept 2004]).

Here, the court is satisfied that both parties have demonstrated a relevant basis for the document demands, but finds that some demands, as stated, are overly broad. Defendants' request for assignment records is properly stated, along with the demand for identification of the purported misrepresentations made by defendants that form the basis for plaintiff's claims in the complaint. Defendants' requests for information regarding the existence, custodian, and location of "material documents," however, are vague and overbroad.

Similarly, plaintiff's demands for information regarding operations and management decisions are properly stated, along with its request for information regarding the management

structure of Ankura, along with records reflecting information regarding drilling operations and financing. On the other hand, plaintiff's request for documents "concerning or relating to the pledge agreement" is overbroad and doesn't sufficiently identify a line of inquiry that will sharpen the issues (plaintiff request no. 1). Requests for internal communications regarding "any aspect of Furie's business," which, by definition, may include information falling outside the scope of the operative pleadings (plaintiff request nos. 9, 36-37, 39-40), are overly broad, burdensome, and fail to reduce prolixity (*Allen*, 21 NY2d at 406). However, requests for internal communications, from the specific entities identified, pertaining to the business management at issue in this litigation, are proper.

An application to compel discovery responses must be denied where the demands are overbroad or lack specificity (*Brandes v N. Shore Univ. Hosp.*, 1 AD3d 550, 551 [2d Dept 2003]). Under such circumstances, the appropriate remedy is to vacate the improper demands, rather than pruning them, but such vacatur should be without prejudice to the service of properly limited discovery requests (*Astudillo v St Francis Beacon Extended Care Facility*, 12 AD3d at 469, 470 [2d Dept 2004]).

Accordingly, all parties are directed to supplement their demands by limiting the scope of overly broad requests, or face vacatur of the demands. Specifically, plaintiff is directed to serve discovery demands that limit the scope of, and specifically identify, the information sought for requests nos. 1, 9, 36-37, and 39-40, and defendants shall serve supplemental interrogatories nos. 2-7, 9-12, and 15 that specifically identify the information sought. All remaining demands identified in this Rule 14 application shall be fully responded to and the responding party must produce non-privileged, responsive, information within the "possession, custody or control" of the party served. Under certain circumstances, this can also require production of records within

the responding party's "constructive possession," documents the responding party has the right, authority, or practical ability to obtain (*Commonwealth of N. Mariana Islands v Canadian Imperial Bank of Com.*, 21 NY3d 55, 62–63 [2013]).

Accordingly, it is hereby

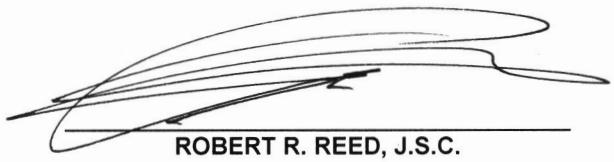
ORDERED that the parties' request to compel supplemental discovery responses is granted in part, and both parties shall supplement their demands in accordance with the directives of this order no later than twenty (20) days from entry of this order, and all parties shall serve complete responses to all other outstanding demands no later than December 31, 2026; and it is further

ORDERED that discovery shall continue with the completion of depositions no later than March 5, 2027, expert disclosure by June 4, 2027, and an end date of June 11, 2027; and it is further

ORDERED that the note of issue shall be filed no later than June 18, 2027; and it is further

ORDERED that the parties shall appear for a virtual status conference on January 21, 2027 at 11 a.m.

10/28/26
DATE



ROBERT R. REED, J.S.C.

CHECK ONE:	[ ]	CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[X]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE