UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STEVE AARON, et al,

Plaintiffs,

v. Case No. 8:09-cv-2493-T-23AEP

THE TRUMP ORGANIZATION, INC., a New York Corporation, and DONALD J. TRUMP, an individual,

Defendants.

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ORDER

THIS MATTER is before the Court on **Plaintiffs' Motion to Compel Production of Other Similar Licensing Agreements and Buyer Disclosures from Defendants** (Dkt. No. 69), which was filed on March 14, 2011. The discovery dispute concerns Defendants' disclosures provided to potential buyers in "Donald J. Trump Signature Properties." On November 2, 2010, Plaintiffs served Defendants with their Second Request for Production of Documents. Specifically, Plaintiffs sought other similar licensing agreements entered into by Defendants for any of their "Donald J. Trump Signature Properties." In addition, Plaintiffs sought the disclosures given to buyers or prospective buyers in those other similar projects. Defendants object on the ground that the requested documents relating to a large number of real estate development projects are "wholly irrelevant to, and have no bearing upon, the claims at issue in this case." (Dkt. No. 102 at 1.) However, for the reasons stated herein, the Court finds that Plaintiffs' Motion is due to be granted but ***only*** insofar as to fulfill request for

production numbers 3 and 4 in Plaintiffs' Second Request for Production of Documents to Defendants (Dkt. No. 69, Ex. 1).

The scope of discovery is governed by Rule 26(b) of the Federal Rules of Civil Procedure. Pursuant to that rule, litigants "may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. *Id.* Relevant information for discovery purposes includes any information "reasonably calculated to lead to the discovery of admissible evidence." *Id.* Nevertheless, Rule 26(c) authorizes a court, for good cause, to issue an order limiting the extent of discovery in order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). The burden is upon the party seeking a protective order to show good cause. *Grams v. Am. Med. Instruments Holdings*, No. 3:08-cv-1060-J-12MCR, 2009 WL 2926844, at *5 (M.D. Fla. Sept. 14, 2009). "This burden contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *Id*. (internal citations and quotations omitted).

The following are the specific requests for production numbers 3 and 4:

> 3. All licensing agreements entered into by Trump and/or Trump Co. for any of the Donald J. Trump Signature Properties referenced and identified by Trump at his September 20, 2010 deposition at pages 12-24, including, without limitation, "Trump International Golf Club -Canouan Island, Gernadines," "Trump Tower- White Plains, NY," "Trump Plaza- New Rochelle, NY," "Trump Hollywood- Hollywood Beach, FL," "Trump Plaza- Jersey City, NJ," "Trump International Hotel & Tower- Fort Lauderdale, FL," "Trump Towers- Sunny Isles, FL," "Trump Las Olas Beach Resort- Fort Lauderdale, FL,"

> "Trump Grande Ocean Resort& Residences – Sunny Isles, FL," "Trump Ocean Club International Hotel & Tower-Panama," "Trump Tower, Philadelphia, PA," "Trump International Hotel & Tower –Waikiki, HI," "Trump International Hotel & Tower- New Orleans, LA," "Trump World- Seoul, South Korea," "The Palm Trump International Hotel & Tower- Dubai, UAE."
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> 4. Any and all documents that disclosed the licensing agreements referenced in Paragraph No. 3 above to buyers and/or potential buyers of units in the referenced projects.

(Dkt. 69 at 2-3.) Plaintiffs allege that the disclosures regarding other projects which were subject to license agreements like Trump Tower Tampa are "not only within the scope of admissible discovery, but directly relevant to Plaintiff's claims." (Dkt. No. 69 at 3.) More specifically, Plaintiffs contend that although Defendants' confidential licensing agreement in the Tampa project prohibited disclosure of Defendants' status as a licensor, disclosures were made in other similar projects. As such, Plaintiffs allege that they need to explore whether Defendants made those disclosures in violation of other licensing agreements or whether those agreements did not contain a confidentiality provision similar to that used in the Tampa project.

In this case, Plaintiffs contend that Mr. Trump did not disclose the actual truth of his participation as a mere name licensor, or the existence of the confidential licensing agreement, until he removed the use of his name from the project and sued SimDag/Robel for breach of that agreement in federal court. *See Trump v. SimDag/Robel*, Case No. 8:07-cv-00910 (M.D. Fla. May 29, 2007). Although, in his deposition, Mr. Trump acknowledged that there "are probably different disclosures for different deals" (Dkt. No. 60 at 36), he also stated that he

believes he has similar confidentiality provisions in "every one or almost every one" of his other licensing agreements (Dkt. No. 60 at 34-35). As stated by Mr. Trump himself, "[c]onfidentiality is very important. I don't want my competitors to know my deals." (Dkt. No. 60 at 35.) Despite his seemingly strict adherence to confidential licensing agreements, Plaintiffs found that in at least the Trump International Hotel & Tower Toronto, Defendants "prominently displayed on the marketing website created for the Toronto project" a disclosure that provides as follows:

> Trump International Hotel & Tower Toronto is not owned, developed or sold by Donald J. Trump, The Trump Organization or any of their affiliates. Talon International Development Inc., the owner and developer of the property, uses the "Trump" name and mark under license from Trump Marks Panama LLC, which license may be terminated or revoked according to its terms. In addition, Trump International Hotels Management LLC was retained to manage the operations of the hotel pursuant to the terms of a management agreement, which management agreement may be terminated or revoked accordingly to its terms.

(Dkt. No. 60, Ex. 3.) When asked about this disclaimer in his deposition, Eric Trump stated that he has "seen this disclaimer get used several times" and that he knows they "used that disclaimer as general practice." (Dkt. No. 70 at 47-48.)

Pursuant to Rule 26(b)(1), parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. As negligent and fraudulent misrepresentation are claims in the underlying action, the Court finds that a comparison of Defendants' actions regarding disclosures and/or confidentiality of licensing agreements in this and similar projects would clearly be permissible under this Rule. In addition, Rule

26(b)(1) provides that, for good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Thus, even if it can be argued that the information sought is not relevant to a claim or defense in this case, it certainly would fall within this larger scope of the Rule.[1] Finally, as stated by this Court previously, "[i]t is well established that courts employ a liberal discovery standard in keeping with the spirit and purpose of the discovery rules." *Townsend v. Hospital Board of Directors of Lee County*, No. 2:10-cv-59-FtM-29SPC, 2010 WL 3702546, at *1 (M.D. Fla. Sept. 16, 2010) (internal quotations omitted). To disallow the disclosure of the requested information would therefore undercut the truth-seeking function of this stage of the litigation process.

As a final matter, the Court would like to note that "Federal Rule of Evidence 404(b) – which applies is *both* civil and criminal cases – generally prohibits the introduction of evidence of extrinsic acts that might adversely reflect on the actor's character." *Huddleston v. U.S.*, 485 U.S. 681, 685, 108 S. Ct. 1496, 1499 (1988) (emphasis added). However, the requested discovery may be admissible for other permissible purposes, such as proof of motive, opportunity, intent, preparation, plan, or knowledge. Fed. R. Evid. 404(b). It is possible that evidence of Defendants' actions in other projects with similar licensing agreements may be admissible for one of these purposes.[2] Accordingly, for the reasons stated

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[1]Defendants' contention that their other real estate developments "are wholly irrelevant to this case" is unfounded, as Defendants' behavior and buyer disclosures in similar licensing agreements could very well shed light on the underlying claims or subject matter of this case.

[2]Although this information *may* be admissible, the Court need not make a finding as to this issue at the present time.

in both Plaintiffs' Motion and herein, it is hereby **ORDERED** that Plaintiffs' Motion to Compel Production of Other Similar Licensing Agreements and Buyer Disclosures from Defendants (Dkt. No. 69) is **GRANTED**.

DONE AND ORDERED at Tampa, Florida, this 13th day of May, 2011.

ANTHONY E. PORCELLI
United States Magistrate Judge

Copies furnished to:

Counsel of Record