

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: CYNTHIA S. KERN J.S.C. Justice

PART

Index Number : 451463/2013
PEOPLE OF THE STATE OF
VS.
TRUMP ENTREPRENEUR
SEQUENCE NUMBER : 009
PARTIAL SUMMARY JUDGMENT

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits No(s).
Answering Affidavits -- Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is denied in accordance with the decision on the record which is annexed hereto. This constitutes the decision and order of the court.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 4/21/15

CYNTHIA S. KERN J.S.C.

- 1. CHECK ONE: CASE DISPOSED
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: TRIAL TERM PART 55

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PEOPLE OF THE STATE OF NEW YORK,

PETITIONER,

- against -

TRUMP ENTREPRENEUR INITIATIVE; TRUMP UNIVERSITY;
LLC; DJT ENTREPRENEUR MEMBER, LLC; DJT UNIVERSITY
MEMBER, LLC; DJT ENTREPRENEUR MANAGING MEMBER;
DJT UNIVERSITY MEMBER, LLC; TRUMP ORGANIZATION,
INC.; TRUMP ORGANIZATION, LLC; DONALD J. TRUMP;
MICHAEL SEXTON; TRUMP ENTREPRENEUR INITIATIVE,

RESPONDENTS.

----- X
INDEX NO: 451463/13E 60 Centre Street
New York, New York 10007
April 21, 2015

BEFORE: HONORABLE CYNTHIA S. KERN, Justice

APPEARANCES:

STATE OF NEW YORK
Office of the Attorney General
Consumer Frauds and Protection Bureau
120 Broadway
New York, New York 10271-0332
BY: JANE M. AZIA, ESQ.
 LAURA J. LEVINE, ESQ.
 MELVIN L. GOLDBERG, ESQ.
 KATE MATUSCHAK, ESQ.

BELKIN BURDEN WENIG & GOLDMAN, LLP
Attorneys for Trump Respondents
270 Madison Avenue
New York, New York 10016
BY: JEFFREY L. GOLDMAN, ESQ.

PROCEEDINGS

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LANKLER SIFFERT & WOHL, LLP
Attorneys for Respondent Sexton
500 Fifth Avenue
New York, New York 10110-3398
BY: CHARLES SPADA, ESQ.

NINA KOSS, C.S.R., C.M.
OFFICIAL COURT REPORTER

PROCEEDINGS

(Whereupon, there was a discussion had off the record among all the parties, in the robing room, at this time.)

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THE COURT: As I have indicated off the record and I will now state on the record, I carefully read the parties' motions and am now prepared to issue a decision on the motions.

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Respondents The Trump Entrepreneur Initiative, LLC, f/k/a Trump University, LLC; DJT Entrepreneur Member, LLC; DJT Entrepreneur Managing Member, LLC; The Trump Organization Inc.; Trump Organization LLC and Donald J. Trump (collectively hereinafter referred to as the "Trump Respondents") and Michael Sexton ("Mr. Sexton"), have

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brought the present motions pursuant to CPLR 409 and 3212 granting them partial summary judgement on the second and third causes of action. In the alternative, they request pursuant to CPLR 409 and 3212, that this Court limit the class of consumers on whose behalf Petitioner is entitled to recover on the second and third causes of action to only those consumers who purchased or attended a course in New York State.

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They also request, pursuant to CPLR 409 and 3212, that this Court limit the class of consumers on whose behalf Petitioner is entitled to recover on the fifth cause of action to only those consumers who purchased or attended a

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PROCEEDINGS

course in New York State.

Petitioner, the People of the State of New York, by Eric T. Schneiderman, Attorney General of the City of New York ("Petitioner") has brought a cross motion for an Order requiring the Trump Respondents to produce all post May 31, 2010 advertisements, seminar transcripts and compliance reviews; and also to determine that the produced compliance reviews are not privileged and to consider such evidence in reviewing the Trump Respondents' motion for partial summary judgement. For the reasons stated below, the Court finds that none of the parties are entitled to any of the relief they seek at the present juncture in this litigation.

The relevant background to the Court's decision is as follows. The Petitioner commenced the instant special proceeding pursuant to Executive Law 63(12) seeking an Order,

(1) enjoining Respondents from violating Executive Law 63(12), General Business Law sections 349 and 350, Education Law sections 224 and 5001 through 5010 and 16 CFR section 429 and from engaging in specific fraudulent, deceptive and illegal acts;

(2) Directing Respondents to provide Petitioner the name and address of each former customer of the Respondents and the amount of money received from each former customer;

(3) Directing Respondents to make full monetary

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2 restitution and pay damages to all injured persons or
3 entities;

4 (4) Directing Respondents to produce an accounting
5 of profits and to disgorge all profits resulting from the
6 alleged fraudulent and illegal practices;

7 (5) Directing Respondents to pay a civil penalty to
8 the State of New York of up to \$5,000 for each violation of
9 GBL Article 22-A, pursuant to GBL section 350-d; and

10 (6) Awarding Petitioner additional costs of \$2000
11 against each Respondent pursuant to CPLR 8303(a)(6).

12 In or around October 2013, the Trump Respondents
13 and Mr. Sexton separately moved for an Order dismissing the
14 petition or, in the alternative, for leave to serve and file
15 answers in opposition to the petition.

16 In a decision dated January 30th, 2014, this Court
17 granted in part and denied in part the Trump Respondents'
18 and Mr. Sexton's motions to dismiss, and granted them leave
19 to file answers as to those portions of the petition the
20 Court did not dismiss. The Petitioner has since re-noticed
21 the petition and sought a summary determination against Mr.
22 Sexton and the Trump Respondents on the petition's remaining
23 causes of action for

- 24 (1) Violation of Executive Law 63(12);
25 (2) The violation of GBL section 349; and
26 (3) Violation of GBL section 350;

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2 (4) Violation of Education Law 5001 through 5010;
3 And, (5) Violation of 16 CFR section 429, along
4 with a permanent injunction enjoining all Respondents "from
00:28:36 5 engaging in the fraudulent, deceptive, and illegal acts and
6 practices alleged in the Verified Petition."

7 The Trump Respondents moved for an Order,

8 (1) Pursuant to CPLR 1039(c) converting this
9 special proceeding into a plenary action; or, in the
00:28:51 10 alternative,

11 (2) Pursuant to CPLR section 408, 3101 and 3102(a)
12 and (f) granting them leave to conduct discovery.

13 Mr. Sexton moves separately for relief identical
14 to the other Trump Respondents.

00:29:05 15 Finally, Petitioner moved separately for an Order
16 striking

17 (1) The Trump Respondents' counterclaim alleging
18 malicious prosecution; and

19 (2) All the affirmative defenses raised by the
00:29:14 20 Trump Respondents and Mr. Sexton in their respective
21 answers.

22 This Court then issued a 36 page decision and Order
23 deciding the various motions before it. In that decision,
24 the Court denied the Respondents' motion for an Order
25 converting this special proceeding into a plenary action;
26 granted Petitioner's request for a summary determination

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against Respondent the Trump Entrepreneur Initiative LLC,
 f/k/a The Trump University LLC only as to Petitioner's fifth
 cause of action for violation of Education Law section 5001
 through 5010; granted Respondents a summary determination
 dismissing Petitioner's first cause of action for a
 violation of Executive law 63(12); granted Respondents a
 summary determination dismissing Petitioner's sixth cause of
 action for a violation of 16 CFR section 429; partially
 granted Respondents' motion for leave to conduct discovery;
 partially granted Petitioner's motion for an Order striking
 the affirmative defenses asserted in Respondents' answers;
 and granted Petitioner's motion for an Order dismissing the
 Trump Respondents' counterclaim for malicious prosecution;
 and ORDERED that a hearing shall be conducted pursuant to
 CPLR 410 to resolve Petitioner's remaining claims; and
 ORDERED that a determination as to what relief Petitioner is
 entitled to, both equitable and monetary, is stayed pending
 the final disposition of the instant proceeding.

Initially, this Court finds that the Trump
 Respondents and Sexton are not entitled to bring a motion
 for summary judgement pursuant to CPLR section 409 at this
 stage of this special proceeding.

CPLR section 409(b) provides that after providing
 Respondent an opportunity to answer the petition, quote,
 "the Court shall make a summary determination upon the

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2 pleadings, papers and admissions to the extent that no
3 triable issues of fact are raised. The Court may make any
4 Orders permitted on a motion for summary judgement. If the
00:31:19 5 Court finds a triable issue of fact exists with regard to
6 any claim asserted in the petition, a hearing shall be
7 conducted in order that such issue may "be tried forthwith
8 and the Court shall make a final determination thereon."
9 CPLR section 410.

00:31:37 10 The Court has followed the procedure mandated by
11 CPLR sections 409 and 410 when it issued its extensive
12 decision addressing all parties' requests for summary
13 determination of any claims in the petition and ordering
14 that all claims which were not summarily disposed were to be
00:31:59 15 resolved at a hearing.

16 When the Petitioner brought its previous motion
17 requesting a summary determination of its entitlement to the
18 relief sought in the petition, Respondents had every right
19 to also seek relief from this Court requesting a summary
00:32:13 20 determination as to any of the claims asserted in the
21 petition and the Court did, in fact, grant Respondents a
22 summary determination dismissing Petitioner's first cause of
23 action for a violation of Executive Law 63(12) and granted
24 the Respondents a summary determination dismissing
00:32:32 25 Petitioner's sixth cause of action for a violation of 16 CFR
26 section 429.

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However, the Respondents did not seek any summary determination with respect to the second or third cause of action and did not seek any ruling limiting the class of consumers entitled to relief with respect to the second, third or fifth causes of action and the Court expressly held in its prior decision that all remaining claims in the petition which were not dismissed would be resolved at a hearing and the Court would determine at the hearing what relief Petitioner would be entitled to.

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This Court finds that it would be inappropriate, at this stage in the litigation, to entertain a second request for a summary determination by the Respondents when the Court has already issued an extensive decision addressing any requests for summary determination of any claims.

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There is absolutely no reason why the Trump Respondents and Sexton should now be given a second bite of apple, as the Court has already issued its determination ordering that these causes of action be resolved at a hearing and that any determination as to the scope of relief Petitioner is entitled to would be resolved at the hearing.

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This Court also finds that Petitioner is not entitled to any further disclosure at this time or a determination at this time as to whether certain documents, which have been already turned over, are privileged. Just as the Respondents had a previous opportunity to request

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PROCEEDINGS

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2 that this Court make a summary determination as to the
3 second and third cause of action, Petitioner had ample
4 opportunity to request that this Court grant it an Order
00:34:19 5 requiring Respondents to produce post May 31, 2010
6 advertisements, seminar transcripts and compliance reviews
7 in conjunction with the previous motion practice before this
8 Court, particularly when Respondents were specifically
9 seeking discovery that they wished to have at that time.

00:34:39 10 Not only did Petitioner not make any previous
11 requests for discovery in the special proceeding, it opposed
12 the Respondents' motion to convert this action into a
13 plenary proceeding on the ground that there was no need for
14 discovery in this action.

00:34:53 15 Pursuant to CPLR section 408, in special
16 proceeding, quote, "leave of Court shall be required for
17 disclosure..." "This requirement was intended to preserve
18 the summary nature of a special proceeding." Matter of
19 Shore, 109 AD2d, 842, 843 (Second Department 1985.) In a
00:35:15 20 proceeding where disclosure is only available by leave of
21 Court, the Supreme Court has broad discretion in granting or
22 denying disclosure, although it must balance the needs of
23 the party seeking discovery against such opposing interests
24 as expedition and confidentiality. See Grossman versus
00:35:32 25 McMahan, 261 AD2d 54, (Third Department 1999.) Generally,
26 leave of Court will be granted upon a showing of special or

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2 unusual circumstances. See People versus Bestline Products,
3 Inc., 41 N.Y.2d 887 (1997); see also Lefkowitz versus
4 Raymond Lee Org., 94 Misc.2d 875, (Supreme Court New York
5 County 1978), affirmed 66 AD2d 656 (First Department 1978.)

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6 What constitutes special circumstances is a fact
7 specific inquiry and is left to the sound discretion of the
8 trial Court. See Bestline, 41 N.Y.2d at 888. Based on the
9 particular circumstances of this special proceeding, the
10 Court finds that there is no special or unusual
11 circumstances which would warrant this Court ordering that
12 any further discovery take place.

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13 The Court also declines to make any ruling at the
14 present time as to whether the compliance reviews which have
15 already been turned over by Respondents are privileged or
16 not. When the parties are ready to proceed with the hearing
17 of this special proceeding, the Court will make any required
18 rulings as to the admissibility of any evidence which any
19 party seeks to introduce. However, there is no need for the
20 Court to make a determination on this issue at the present
21 time.

00:36:35
22 Based on the foregoing, all of the relief requested
23 in the motions and cross motion are denied. This
24 constitutes the decision and Order of the Court.

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25 I will fill out a gray sheet and ask that both
26 parties order a copy of the transcript and supply it to the

NK

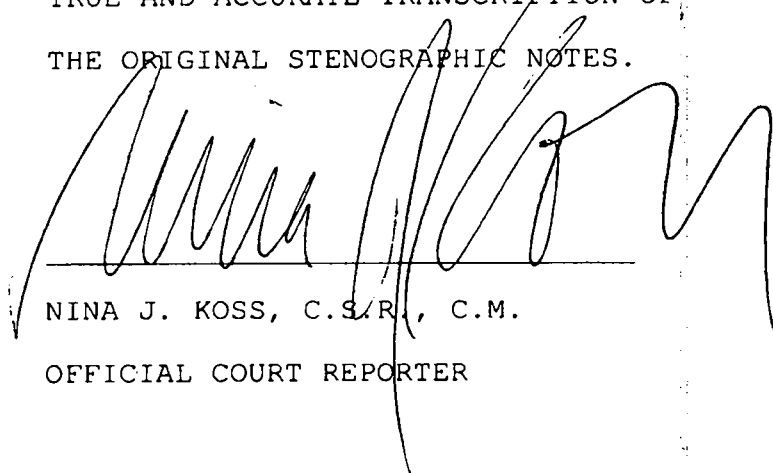
Part Clerk so it can be attached to the gray sheet and be officially part of the official decision so you will have it as part of the record for your appeal.

MR. GOLDMAN: Thank you.

MR. GOLDBERG: Thank you, your Honor.

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THE FOREGOING IS CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION OF THE ORIGINAL STENOGRAPHIC NOTES.



NINA J. KOSS, C.S./R., C.M.

OFFICIAL COURT REPORTER

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