

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MARGARET A. CHAN
Justice

PART 33

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IRIS MEDIAWORKS, LTD, IRIS MEDIAWORKS, USA, INC.,
Plaintiff,

INDEX NO. 652143/2014

MOTION DATE 03/08/2017

MOTION SEQ. NO. 009

- v -

MANISH VASISHT, MANINDER SINGH, HARWINDER SINGH,
PARDES NEWS MEDIA, INC., IKK ONKAR MEDIA US INC,
SOUTH ASIAN MEDIA, INC, HOFFMAN, POLLAND, &
FURMAN PLLC

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193

were read on this application to/for Strike Answer of Manish Vasisht.

Upon the foregoing documents, it is decided as follows:

The instant motion, motion sequence 9, is plaintiffs’ renewed motion of motion sequence 8, made by order to show cause, to strike defendant Manish Vasisht’s Answer based on allegations that Vasisht stole privileged and confidential e-mails. The court “decline[d] to sign the order to show cause, without prejudice to renewal upon legally sufficient papers, which shall include an affidavit from an expert in computer science explaining the information in the headers and emails and specifically identifying the sources of information and how it was forwarded and to whom” (Order of Hon. Joan A. Madden dated January 11, 2017). Plaintiffs complied with the court’s request in this motion.

Plaintiffs allege that on October 26, 2016, the Chairman and Managing Director of plaintiff Mediaworks, Ltd., Rajendra Karnik, discovered that all the emails in his account, raj@channelguide.net.in (Karnik Account), were forwarded to anonymous331100@gmail.com (Anonymous Account) without his knowledge or consent (Pltf’s mot, Bogart aff, exh 1 – Karnik aff). Plaintiffs subpoenaed Google requesting information on the Anonymous Account. Google’s information revealed

that the Anonymous Account was created on July 10, 2014 (*id.*, exh 3). This litigation commenced on July 14, 2014 (*id.*, Bogart aff at ¶7).

Plaintiffs submitted an affidavit of a computer forensics consultant, Tino Kyprianou, the Director of Digital Forensics & Electronic Discovery with Digital4nx Group, Ltd, that offers digital forensics services in civil and criminal matters (*id.*, Kyprianou aff). Kyprianou reviewed the subpoenaed documents from Google and Karnik's affidavit with the attached screenshot. Kyprianou explained the documents he reviewed in 3 groups under Document A, B, and C.

On Document A – Karnik's affidavit with attached screenshot – Kyprianou explained that the screenshot showed that the auto-forward function was enabled and the email account was set to forward emails to anonymous331100@gmail.com, which gave the Anonymous Account owner access to all the emails in the Karnik account (*id.* at ¶10). Karnik averred that the auto-forward function was activated without his consent, knowledge, or authorization (Bogart aff, exh 1 - Karnik aff).

On Document B – the Anonymous Account emails – Kyprianou stated that the Anonymous Account received the first Karnik Account emails on July 10, 2014, and the last on October 27, 2016. In the interim, the Anonymous account sent 317 emails to its only recipient, manish@a2zmediausa.com, between July 16, 2014 and May 22, 2015. References to plaintiffs' attorney, Russell Bogart's 3 email accounts to the Karnik Account appeared over 2000 times. These emails from plaintiffs' attorney to the Karnik Account were forwarded to the Anonymous Account, which, from February 11 to March 25, 2015, sent 96 emails to manish@a2zmediausa.com (*id.* at ¶11).

On Document C – the sameer.voral1982@gmail.com account emails (Sameer Account) – Kyprianou got 80 hits or 80 emails sent to manish@a2zmediausa.com: 77 were sent between June 28 and August 12, 2014; 27 from July 3 to July 17, 2014; and 3 on November 7, 2016. No emails were sent from the latter email address to the former one. Additionally, 3 emails were sent to sohelahmed2210@gmail.com, 2 to sohel.barmare@gmail.com, and 1 to rahul@ikkonkar.com (*id.* at ¶12). Plaintiffs proffer that Mr. Barmare, its former employee in the IT department, worked with Vasisht, and another former graphic designer employee secretly worked for defendant IKK ONKAR (Bogart aff at ¶¶17-18).

Kyprianou states that the Sameer Account was created on July 10, 2014 and is the recovery email for the Anonymous Account. The Sameer Account's recovery email is shahie@gmail.com that was created on July 7, 2011. It has the same IP address as the Anonymous Account, both located in Mumbai, India (*id.*, Kyprianou aff at ¶13).

Plaintiffs' attorney avers that the emails between him and Mr. Karnik were privileged attorney-client communication related to this case that included litigation strategies and attorney work product. The privileged communications were apparently shared with defendants Maninder Singh and Harwinder Singh as shown in their discovery response material which included privileged work product and other documents between him and Mr. Karnik (*id.*, Bogart aff at ¶24).

In opposition, Vasisht submitted an affidavit generally denying knowledge of the Anonymous Account and the Sameer Account, that are plaintiffs' evidence of his hacking. He states that if he had received those emails, they would be in his junk folder, which is deleted monthly (Vasisht aff). Vasisht claims that Mr. Karnik and his attorney are alleging the email account hacking to, yet again, mislead this court. He opines that Kyprianou's affidavit offers nothing new than what was in plaintiffs' prior order to show cause in motion sequence 8 seeking the same relief. Indeed, Vasisht points out that the affidavit "clearly mentions, that [Vasisht] never sent any email to the two specific accounts - anonymous and Sameer, which means that there is a high probability that [Vasisht] never took these emails seriously and moved them to junk . . ." (Memo of Law in Opp at p 3).

Discussion

Plaintiffs have alleged Vasisht's taking of protected materials – privileged communication between plaintiffs' principal and their attorney and materials prepared for litigation that are the attorney's work product (CPLR 3101[b], [c], and [d]) – without their knowledge, consent, or authorization. Vasisht's denial is half-hearted – he did not know about the Anonymous and Sameer accounts, and if he did receive the hacked emails, there was a high probability he did not care about them and sent it to the junk file.

Vasisht does not dispute or contradict any of plaintiffs' computer forensics expert's findings. His defense that there was no evidence of him sending emails to the Anonymous or Sameer accounts does not speak to his receipt of the emails from the Karnik account. And his suggestion that there is a high probability that he never took the Karnik account emails seriously offers no comfort nor is it a defense as to how the emails were obtained or what the emails contained. In sum, while Vasisht's affidavit contains a general denial of knowing about the Anonymous and Sameer accounts, the denial is self-serving, as is his affidavit.

Unlike plaintiffs' prior unsuccessful motion to strike Vasisht's Answer on the same grounds in motion sequence 1, plaintiffs' computer forensics expert showed that Vasisht received emails from the Karnik account through two other email accounts that were set up specifically to forward the Karnik account emails to Vasisht. This was done without Karnik's consent, authorization or knowledge. The timing of this hacking – at the commencement of this case – cannot be overlooked.

There are no issues raised or counterarguments made as to whether the 2000-plus hacked emails were indeed protected material. However, even if there were an issue, the hacking of plaintiffs' email during litigation can only be seen as an attempt to undermine plaintiffs' case. It is also indicative of Vasisht's disregard for the judicial process. While striking a defendant's answer is an extreme sanction, it is warranted here as hacking plaintiffs' email to obtain information during litigation without going through proper discovery channels is an egregious act and sidesteps discovery procedures (see *Lipin v Bender*, 84 NY2d 562, 572-573 [1994]; *Roberts v Corwin*, 118 AD3d 571,753 [1st Dept 2014]; *CDR Creances S.A. v Cohen*, 104 AD3d 17, 24 [1st Dept 2012], aff'd as mod sub nom. *CDR Creances S.A.S. v Cohen*, 23 NY3d 307 [2014]; cf., *Quiceno v 101 Park Ave. Associates*, 272 AD2d 107 [1st Dept 2000][matter remanded to consider sanctions for "defendant's fortuitous discovery of the information through other avenues"])). Therefore, Vasisht's Answer is stricken.

Accordingly, it is

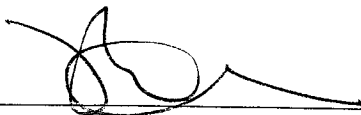
ORDERED that the branch of plaintiffs' motion to strike defendant Manish Vasisht's Answer is granted; and it is further

ORDERED that the branch of plaintiffs' motion for costs is denied; and it is further

ORDERED that the branches of plaintiffs' motion to compel the Corporate Defendants' prior counsel, Sher, Tremonte, LLP to comply with a subpoena and the motion stay discovery are granted to the extent that the parties are to appear for a conference in Part 33, 71 Thomas Street, Room 103 on June 14, 2017 at 9:30 am.

This constitutes the decision and order of the court.

5/26/2017
DATE


MARGARET A. CHAN, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT

CHECK IF APPROPRIATE: DO NOT POST REFERENCE