United States District Court
for the
Southern District of Florida

Kenai Batista, Plaintiff	)	
	)	
v.	)	Civil Action No. 14-24728-Civ-Scola
	)	
Nissan North America, Inc., Defendant	)	
	)	

Order on Defendant's Objection to Magistrate Judge's Order

Defendant Nissan North American ("NNA") objects to the Magistrate Judge's Order (ECF No. 43) which granted in part and denied in part Plaintiff Kenai Batista's Motion to Compel (ECF No. 30). (Obj., ECF No. 49.) Batista filed a response under seal (ECF No. 55) and NNA replied (ECF No. 58). After considering the briefing, the relevant law, and for the reasons explained below, the Court **overrules** NNA's Objection (ECF No. 49).

1. Factual Background

Batista claims her 2014 Pathfinder contained a defective continuously variable transmission ("CVT") which caused her car to shake during acceleration. (Am. Compl. ¶ 5, ECF No. 48.) JATCO, Ltd. and JATCO Mexico, NNA's sister companies, designed, manufactured and supplied the CVTs; NNA assembled the 2014 model year Pathfinders and distributed the vehicles to independent Nissan dealers; and Nissan Motor Co., Ltd. ("NML") "had overall design approval responsibility." (Mot. 2, ECF No. 49.) Batista asserts, on behalf of herself and other putative class members, that NNA breached express and implied warranties, violated the Florida Deceptive and Unfair Trade Practices Act, the Magnuson-Moss Warranty Act, and seeks equitable, injunctive, and declaratory relief. (Am. Compl., ECF No. 48.)

In various discovery requests, Batista defined "you" as "any other person or organization who were in any way involved in any manner with the CVT." (Disc. Obj. 1 ¶ 5, ECF No. 30-4; Interrog. Obj. ¶ 5, ECF No. 30-5). NNA objected to this definition as overly broad because it extended to documents outside of NNA's control; NNA revised the definition to include only itself and its subsidiaries. (*Id.*) In response, Batista filed a motion to compel asking the Magistrate Judge to overrule NNA's objections and "order NNA to obtain and produce available and critical evidence from its parent and sister companies." (Mot. Compel 8, ECF No. 30). The Magistrate Judge agreed with Batista, and ordered NNA to "respond to discovery requests for which it must obtain the

documents and/or information from its parent company Nissan Motor Co., or its sister company JATCO." (Order 1–2, ECF No. 43.) Now, NNA objects and argues that it lacks the requisite "control" over the documents that the Magistrate Judge ordered it to produce. (Mot. 2–10, ECF No. 49.)

2. Legal Standard

"When a party objects to a magistrate's non-dispositive order, the district court must consider those 'objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.' " *Traylor v. Howard*, 433 F. App'x 835, 836 (11th Cir. 2011) (quoting Fed. R. Civ. P. 72(a)). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law or rules of procedure." *Summit Towers Condo. Ass'n, Inc. v. QBE Ins. Corp.*, 2012 WL 1440894, at *1 (S.D. Fla. Apr. 4, 2012) (Seitz, J.) (citation omitted). A magistrate judge's ruling is deemed "clearly erroneous" only when the district court "is left with the definite and firm conviction that a mistake has been committed." *See Salazar v. Wells Fargo Bank, N.A.*, 2011 WL 379145, at *3 (S.D. Fla. Feb. 2, 2011) (Lenard, J.) (citation omitted). "Clear error is a highly deferential standard of review." *Holton v. City of Thomasville Sch. Dist.*, 425 F.3d 1325, 1350 (11th Cir. 2005). The district court may not undo the magistrate judge's determination "simply because it is convinced that it would have decided the case differently." *See id.* at 1351. "This standard has been described as 'a very difficult one to meet.' " *Thornton v. Mercantile Stores Co.*, 180 F.R.D. 437, 439 (M.D. Ala. 1998).

3. Legal Analysis

The Magistrate Judge's ruling is neither clearly erroneous nor contrary to law. The thrust of NNA's argument is that it lacks the authority or ability to obtain NML or JATCO documents on demand, and as a result does not control them and cannot produce those documents. (Mot. 2, ECF No. 49.) Federal Rule of Civil Procedure 34(a) requires a party to produce documents responsive to a request for production so long as those documents are in the party's "possession, custody, or control." Whether documents are in a party's control under Rule 34 is broadly construed. *See, e.g., Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir.1984). "Control . . . does not require that a party have legal ownership or actual physical possession of the documents at issue," but merely requires that a party has the "right, authority, or practical ability to obtain the materials sought on demand." *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 471 (S.D. Fla. 2011) (Seltzer, Mag. J.) (citations omitted).

"Significantly, under this principle, discovery can be sought from one corporation regarding materials that are in the physical possession of another,

affiliated corporation." *Id.* at 474 n.1 (citing *Steele Software Systems v. DataQuick,* 237 F.R.D. 561, 564 (D. Md. 2006). Courts look to three factors to determine control: (1) the corporate structure of the party and non-party, (2) the non-party's connection to the transaction at issue, and (3) the degree to which the non-party benefits from the outcome of the litigation. *Id.* at 468. NNA does not argue that the Magistrate Judge's reliance on Magistrate Judge Seltzer's opinion in *Costa* was in error.

As to the first factor, NNA argues that NNA and NML observe all corporate formalities—each maintains separate employees, facilities, records, and directors, and share only one corporate officer—and therefore, NNA cannot control NML's documents. (Mot. 7, ECF No. 49.) While NNA and NML may have observed some corporate formalities, common ownership is the primary focus and here, NML wholly owns NNA. (Resp. 11, ECF No. 55.) Further, "a subsidiary has access to and control over documents held by a foreign parent corporation, particularly when there is a close working relationship on a common transaction and the subsidiary could easily obtain the documents when it is in its interest to do so." *Costa*, 277 F.R.D. at 472. NNA, NML, and JATCO have a close working relationship on the common transaction at issue—they collectively designed, manufactured, and assembled defective CVTs in the vehicles at issue here. Moreover, in the ordinary course of business, NML provides NNA certain documents necessary to assemble and service Nissan vehicles in the United States. (NML Affidavit, ECF No. 35-3.)

At most, this district has recognized there is some uncertainty in other jurisdictions over what is required "for a subsidiary to reach up the corporate ladder and demand documents in its parent's possession." *See Platypus Wear, Inc. v. Clarke Modet & Co.*, No. 06-20976-CIV, 2007 WL 4557158, at *5 (S.D. Fla. Dec. 21, 2007) (Simonton, Mag. J.) (citing *Camden Iron and Metal, Inc. v. Marubeni America Corp.,* 138 F.R.D. 438 (D.N.J.1991)) (explaining that "an intracorporate relationship *and* additional indicia of control (such as an agency or alter-ego relationship)" may be required where a party requests documents from a subsidiary for documents within the control of its parent corporation). However, uncertainty alone is not enough to find the Magistrate Judge's ruling is clearly erroneous or contrary to law.

As to the second factor, the Magistrate Judge concluded that the "transaction at issue is Plaintiff's purchase of a Nissan Pathfinder that was manufactured by NNA with an allegedly defective transmission according to the design and specifications provided by [NML] and JATCO. (Order 2, ECF No. 43.) NNA urges the Court to view the case more narrowly and find the transaction at issue is "not the manufacture of the Nissan Pathfinder" but the "various . . . warranty theories." (Mot. 9, ECF No. 29.) Thus, NNA argues

because liability only attaches if NNA failed to comply with the warranty, "NML nor JATCO were involved in any transaction with Plaintiff." (*Id.*) The Court does not agree.

Instead, the Court agrees with the Magistrate Judge's sound reasoning—while "[w]arranty may be the technical remedy, . . . the genesis of the case is a malfunctioning vehicle." (Lutz Decl., ECF 55-1.) And NML and JATCO were indispensable to the manufacture of the vehicle—NML maintained final design control and JATCO manufactured and supplied the CVT. Further, NML and NNA's exchange of documents in the ordinary course of business demonstrates control. *See Camden*, 138 F.R.D. at 443 (citation omitted) (recognizing that courts have held "that a company's ability to demand and have access to documents in the normal course of business gives rise to the presumption that such documents are in the litigating corporation's control."); *see also Cooper Indus. v. British Aerospace Corp.,* 102 F.R.D. 918, 919 (S.D.N.Y.1984) (finding it was "inconceivable" that subsidiary lacked control over parent's materials relevant to its business of marketing and servicing parent's aircraft).

As to the third factor, the Magistrate Judge's conclusion that NML has a financial interest in the outcome of the litigation is neither clearly erroneous nor contrary to law. NNA admits that its sales "account for a significant portion of [NML's] sales" and does not dispute Batista's contention that the CVT defect has "pinched" or "cut into" NML's profits. (*See* Reply 9, ECF No. 58; Resp. 14, ECF No. 55.) Further, the parties agree that NML may ultimately be responsible for damages to the class, but NNA argues that potential liability alone is not enough. (*Id.*) However, this is the exact type of interest in the litigation that the *Costa* court found demonstrates "control." *Costa*, 277 F.R.D. at 473.

Finally, although NNA directs the Court to case law from other jurisdictions that may require something beyond consideration of the three *Costa* factors (Mot. 6, ECF No. 49), it cannot be said that the Magistrate Judge's failure to implement some heightened standard is clearly erroneous or contrary to law. Moreover, NML's involvement in the transaction giving rise to this lawsuit may have led the Magistrate Judge to find "control" even under the case law that NNA urges the Court to apply. *See Gerling Int'l Ins. Co. v. C.I.R.*, 839 F.2d 131, 141 (3d Cir. 1988) ("The requisite control has been found only where the sister corporation was found to be the alter ego of the litigating entity . . . or where the litigating corporation had acted with its sister in effecting the transaction giving rise to suit and is litigating on its behalf.") (citations omitted). But the Magistrate Judge was under no obligation to apply a heightened standard to determine control. Therefore, the Court finds that the Magistrate Judge's ruling was not clearly erroneous or contrary to law.

4. Conclusion

For the reasons explained above, NNA's Objection to Magistrate Judge's Order (ECF No. 49) is **overruled**.

Done and ordered in Chambers at Miami, Florida on December 7, 2015.

Robert N. Scola, Jr.
United States District Judge