UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Securities and Exchange Commission v. Prakash

Case No. 23-cv-03300-BLF (SVK) (N.D. Cal. Mar. 7, 2025) · No. 23-cv-03300-BLF (SVK) · Decided March 7, 2025

SUMMARY

The court addresses a discovery dispute in which Defendant Vidul Prakash sought interview notes prepared by the Securities and Exchange Commission during its pre-suit investigation. The court held that the notes were protected work product but found that Defendant demonstrated substantial need for potentially relevant fact work product concerning a key issue in the case. The court ordered the SEC to submit three sets of notes for in camera review and denied the request for similar interview memoranda.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan van Keulen
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 7, 2025
DOCKET	23-cv-03300-BLF (SVK)
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to compel production of interview notes from the Securities and Exchange Commission. The court ordered the Commission to submit the notes for in camera review before ruling on production of portions concerning a key issue in the case, and denied the request for similar interview memoranda.
STANDARD OF REVIEW	The court evaluated the applicability of work-product protection and Defendant's entitlement to fact work product under Federal Rule of Civil Procedure 26(b)(3)(A), based on the current discovery record and the parties' submission.
PRECEDENTIAL VALUE	Unpublished, nonprecedential district court discovery order

TOPICS

work product doctrine · discovery dispute · commercial litigation · civil procedure

PRACTICE AREAS

civil procedure securities litigation discovery

QUESTIONS PRESENTED

1. Whether notes prepared by the Commission during its pre-suit investigation were protected work product.
2. Whether Defendant established substantial need for the factual contents of the interview notes and could not obtain their substantial equivalent without undue hardship.
3. Whether Defendant was entitled to production of similar interview memoranda from the Commission's pre-suit investigation.

HOLDINGS

1. The Commission's notes from the February 2022 pre-suit interview were protected work product because they were prepared in anticipation of litigation.
2. Defendant demonstrated substantial need for the factual portions of the interview notes and could not, without undue hardship, obtain their substantial equivalent by other means.
3. Defendant was not entitled at that stage to production of similar interview memoranda prepared during the Commission's pre-suit investigation.

KEY QUOTATIONS

> *"As documents prepared by the Commission in connection with its pre-suit investigation, the notes constitute protectable work product."* (at 1)

> *"To obtain fact work product, a party must show "that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.""* (at 2)

> *"The Court will determine whether Defendant is entitled to production of any portion of the notes after completing its in camera review."* (at 3)

FACTUAL BACKGROUND

View, Inc. allegedly made false or misleading statements concerning liabilities for shipping and installing replacement windows after defects were discovered. A central issue was whether Prakash, View's former CFO, knew that View would pay those costs for all customers or only on a case-by-case basis. Defendant sought notes from the Commission's February 2022 interview of Daniel Purdy because Purdy had testified before the Commission about that issue but later could not remember what he discussed during the interview.

PROCEDURAL HISTORY

In a federal securities enforcement action, Defendant Vidul Prakash sought discovery of Commission notes from a February 2022 interview of a former View, Inc. executive. The Commission asserted work-product protection. The magistrate judge concluded that the notes were protected work product, found that Defendant had shown substantial need and inability to obtain the substantial equivalent by other means as to fact work product, ordered in camera submission of the three sets of notes, and denied discovery of unspecified similar interview memoranda.

DISPOSITION

other

CASES CITED

- United States v. Richey, 632 F.3d 559, 567-68 (9th Cir. 2011)
- SEC v. Thrasher, No. 92-cv-06987-JFK, 1995 WL 46681 (S.D.N.Y. Feb. 7, 1995)
- SEC v. Stratton Oakmont, Inc., No. 92-cv-01993-JES, 1992 WL 226924 (S.D.N.Y. June 22, 1992)
- Shenwick v. Twitter, Inc., No. 16-cv-05314-JST, 2019 WL 3815719, at *4 (N.D. Cal. Apr. 19, 2019)
- Tremblay v. OpenAI, Inc., No. 23-cv-03223-AMO, 2024 WL 3159292, at *2 (N.D. Cal. June 24, 2024)

OPINION

Securities And Exchange Commission v. Prakash
PER CURIAM.
1 2 3
4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 7 SECURITIES AND EXCHANGE Case No. 23-cv-03300-BLF (SVK)
COMMISSION,
8 Plaintiff, ORDER DIRECTING SUBMISSION
9 OF DOCUMENTS FOR
v. IN CAMERA REVIEW
10 VIDUL PRAKASH, Re: Dkt. No. 63 11 Defendant. 12 Before the Court is the Parties' joint discovery submission in which Defendant Vidul 13 Prakash seeks to compel the production of interview notes from Plaintiff Securities and Exchange 14 Commission (the "Commission"). See Dkt. 63 (the "Submission"). For the reasons set forth 15 below, the Court will review the documents in question in camera before ruling on Defendant's 16 request. 17 Relevant Factual Background. Non-party View, Inc. ("View"), a manufacturer and 18 seller of "smart" windows, allegedly disseminated false and misleading statements in its filings 19 with the Commission. The statements concerned View's accrual of liabilities reflecting costs 20 incurred to ship and install replacement windows after the company discovered defects in many of 21 its sold windows. One of the central issues in the case concerns whether Defendant, View's 22 former CFO, had been told that View would cover shipping and installation costs for all customers 23 of defective windows, or whether he understood View's coverage of these costs to be on a case- 24 by-case basis. The Commission understands that View's management decided to pay these costs 25 for all customers, and according to Defendant, the Commission bases that understanding on 26 testimony

provided by Daniel Purdy, View’s former Vice President of Field Operations, in June 27 2022 during the Commission’s pre-suit investigation. But about a year before Mr. Purdy provided 1 that testimony, he stated in an interview conducted by View’s audit committee during an internal 2 investigation that the company would pay shipping and installation costs on a case-by-case basis.1 3 Defendant, therefore, seeks to probe this inconsistency in Mr. Purdy’s statements, as the all 4 costs/case-by-case issue underlies the Commission’s theory of liability against him. 5 At issue in the instant discovery dispute is an interview of Mr. Purdy conducted by the 6 Commission in February 2022, a few months before Mr. Purdy testified before the Commission. 7 Based on an email produced in discovery, Defendant determined that the Commission likely 8 discussed the all costs/case-by-case issue with Mr. Purdy during his February 2022 interview. 9 Defendant questioned Mr. Purdy about the interview at his deposition, but Mr. Purdy testified that 10 he does not remember what he discussed in the interview. The interview is otherwise “unrecorded 11 but for memoranda and notes prepared by three individuals on the [Commission’s] staff”: an 12 attorney, a paralegal and an accountant. See id. at 2 & n.3; see also id. at 7 (the Commission 13 describing its recordings as notes prepared by three staff members). Defendant accordingly 14 requests that the Court compel the Commission to produce its notes from the interview, and the 15 Commission resists production on the basis of the work-product doctrine. 16 The Notes Are Work Product. As documents prepared by the Commission in connection 17 with its pre-suit investigation, the notes constitute protectable work product. See United States v. 18 Richey, 632 F.3d 559, 567 (9th Cir. 2011) (discussing two-part test to “qualify for work-product 19 protection”). The Court rejects Defendant’s arguments on this point. 20 First, Defendant relies on inapposite authorities in arguing that the protection does not 21 apply. See Submission at 4. In SEC v. Thrasher, No. 92-cv-06987-JFK, 1995 WL 46681 22 (S.D.N.Y. Feb. 7, 1995), the Commission “ma[de] no effort to meet its burden of proffering 23 competent evidence establishing the basis of its work-product claim” such that it was “at least 24 arguable that some or all of the interview notes were not prepared principally or exclusively to 25 26 1 This statement from Mr. Purdy comes from a memorandum prepared by Cooley, LLP, the firm that conducted the audit committee’s internal investigation. See Submission at 2, 6-7. In a recent 27 deposition, Mr. Purdy testified that the memorandum in question “did not accurately reflect his 1 assist in anticipated litigation.” See id. *3-4. Here, the Court is satisfied on the current record that 2 the Commission prepared the notes because it anticipated litigation. See also Richey, 632 F.3d at 3 567-68 (where document created for multiple purposes, work-product determination hinges on 4 “whether the document was created because of anticipated litigation, and would not have been 5 created in substantially similar form but for the prospect of litigation” (quotation marks omitted)). 6 SEC v. Stratton Oakmont, Inc., No. 92-cv-01993-JES, 1992 WL 226924 (S.D.N.Y. June 22, 7 1992), also does not assist Defendant, as the court there issued a short order without providing any 8 analysis. 9 Second, Defendant points to narrow disclosures by the Commission in arguing that the 10 Commission waived the protection. See Submission at 4. But disclosure of questions asked by 11 the Commission outside of the interview are irrelevant, and disclosure of the subjects potentially discussed in the interview is far different than selectively disclosing portions of the notes memorializing the interview. Cf. Shenwick v. Twitter, Inc., No. 16-cv-05314-JST, 2019 WL 3815719, at *4 (N.D. Cal. Apr. 19, 2019) (“Once Plaintiffs waived the protection of the attorney work product doctrine for a confidential witness’s conversation with Plaintiffs’ representatives, the waiver extended to the entire conversation.”). Defendant May Be Entitled To A Narrow Production. Courts classify work product into two categories: (1) fact work product; and (2) opinion work product. See Tremblay v. OpenAI, Inc., No. 23-cv-03223-AMO, 2024 WL 3159292, at *2 (N.D. Cal. June 24, 2024). Because Defendant seeks to discover only the fact of what Mr. Purdy said during the February 2022 interview, the Court will construe his request as concerning only the fact work product (if any) contained within the notes. To obtain fact work product, a party must show “that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.” See Fed. R. Civ. P. 26(b)(3)(A); Tremblay, 2024 WL 3159292, at *2. Defendant satisfies these showings. He has a substantial need for the notes because Mr. Purdy appears to have discussed a key issue in the case during his interview, and what he said may significantly bolster Defendant’s position. Likewise, Defendant cannot obtain] and Mr. Purdy does not remember what he discussed in the interview. The Court rejects the |} Commission’s counterarguments which rely almost entirely on out-of-circuit, nonbinding authorities, and which impose an overly narrow conception of “substantial need.” See Submission |} at 9-10. ok Accordingly, for good cause shown, the Court ORDERS the Commission to submit the || three sets of notes to the Court via email for in camera review by March 13, 2025. For those || notes that are handwritten, the Commission shall submit a handwritten copy and a transcribed || copy, if a transcription already exists. The notes shall contain highlighting for those portions || concerning what (if anything) Mr. Purdy said about the all costs/case-by-case issue. The Court will determine whether Defendant is entitled to production of any portion of the notes after || completing its in camera review. To the extent that Defendant requests the production of “similar interview memos” prepared during the Commission’s pre-suit investigation (see id. at 5-6), the || Court DENIES that request; Defendant offers no explanation of the relevance of or substantial 3 || need for those documents, and the Submission focuses almost exclusively on Defendant’s request || for the notes memorializing the February 2022 interview of Mr. Purdy. i SO ORDERED. ||

Dated: March 7, 2025 Syston yout

SUSAN VAN KEULEN

United States Magistrate Judge