

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D15129  
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Submitted - April 12, 2007

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
MARK C. DILLON  
EDWARD D. CARNI, JJ.

2006-00154

DECISION & ORDER

Pauline D'Chiutiis-Lattuga, respondent,  
v Sebastian Lattuga, appellant.

(Index No. 200036/05)

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Farber, Pappalardo & Carbonari, White Plains, N.Y. (John A. Pappalardo of counsel),  
for appellant.

Gassman & Keidel, P.C., Garden City, N.Y. (Stephen Gassman of counsel), for  
respondent.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Nassau County (Iannacci, J.), entered November 4, 2005, which granted the plaintiff's motion, inter alia, for a protective order quashing certain subpoenas duces tecum.

ORDERED that the order is modified, on the facts and in the exercise of discretion, by adding a provision thereto granting leave to the defendant, if he be so advised, to serve appropriate subpoenas following the completion of discovery and the evaluation of the parties' business interests by the court-appointed neutral expert; as so modified, the order is affirmed, without costs or disbursements.

Contrary to the defendant's contention, at this juncture, the Supreme Court properly granted the plaintiff's motion, inter alia, for a protective order quashing certain subpoenas duces tecum (*see* CPLR 3103; *Jacobs v Mostow*, 23 AD3d 623, 624). We note that, at the request of the defendant, the Supreme Court appointed a neutral expert to assist in evaluating the parties' business interests. At the time that the defendant served the subject subpoenas duces tecum, this expert was

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in the process of reviewing, inter alia, certain documents and information involving the same entities served with the subject subpoenas duces tecum. Moreover, discovery in this action is still outstanding. Thus, following the completion of the outstanding discovery and the evaluation by the court-appointed neutral expert, the defendant may, if he be so advised, serve appropriate subpoenas (see CPLR 2301 and 3120[2]; *Matter of Ehmer*, 272 AD2d 540, 541).

RIVERA, J.P., FLORIO, DILLON and CARNI, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, sweeping initial "J".

James Edward Pelzer  
Clerk of the Court