

<b>National Steel Supply, Inc. v Ideal Steel Supply, Inc.</b>
2015 NY Slip Op 30176(U)
February 6, 2015
Supreme Court, Kings County
Docket Number: 501154/11
Judge: Karen B. Rothenberg
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FILED

2015 FEB -5 AM 7: 17

At an IAS Term, Part 35 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 21<sup>st</sup> day of January, 2015.

PRESENT: KINGS COUNTY CLERK

HON. KAREN B. ROTHENBERG,  
Justice.

-----X  
NATIONAL STEEL SUPPLY, INC.,

Plaintiff,

- against -

IDEAL STEEL SUPPLY, INC.,  
GIACOMO BRANCATO, a/k/a JACK BRANCATO,  
and VINCENT BRANCATO,

Defendants.  
-----X

The following e-filed papers read herein:

Notice of Motion and Affidavits (Affirmations) Annexed \_\_\_\_\_  
Supporting Memorandum of Law \_\_\_\_\_  
Opposing Affidavits (Affirmations) Annexed \_\_\_\_\_

**SHORT-FORM ORDER**

Index No. 501154/11

Mot. Seq. #10

NYSCEF No.

84-88  
134-136  
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In this action for breach of contract, plaintiff National Steel Supply Inc. (National) moves for a protective order under CPLR 3103 (a) and 2304, quashing non-party subpoenas served by defendants Ideal Steel Supply, Inc. (Ideal), Giacomo Brancato, and Vincent Brancato (collectively with Ideal, defendants) on non-parties (1) William Brodsky, Esq. (Attorney Brodsky), (2) Citibank, N.A. (Citibank), and (3) Bushwick Metals LLC (Bushwick). Defendants oppose.

### *Background*

The amended complaint, to the extent not dismissed by the Court's contemporaneously issued decision and order, alleges a single cause of action arising out of defendants' alleged breach of a non-interference agreement, dated January 14, 1997, which required that the parties' respective businesses "stay away from and otherwise not interfere with each other's]s business activities, other than through legitimate and proper competition" (Amended Complaint, ¶ 10). The alleged misconduct consists of (1) illegally stalking and harassing National's employees and customers, (2) Ideal's refusal to sell to entities which purchased products from National, (3) physically blocking National's truck deliveries, and (4) inducing National's former employee to breach his written non-compete agreement with National and otherwise disclose confidential business information to defendants.

Three nonparty subpoenas are the subject of this motion. The first subpoena is to Attorney Brodsky, National's former counsel, requesting:

(1) Subject to redaction of descriptions or references of the contents of the work performed, all documents constituting, reflecting, or referencing all balances or sums billed to, or paid by or on behalf of, either National, nonparty Omni Steel Supply, Inc. (Omni), or any employee, owner, or other agent of National or Omni, for work related to either (a) any aspect of the business or litigation of either National or Omni, or (b) any tax investigation or proceeding.

(2) All documents constituting, reflecting, or referencing (a) the fact or amount of any overdue or past due balance owed by either National, Omni, or any owner of National or Omni, or (b) lien(s) or litigation (actual or prospective) Attorney Brodsky had or planned against National, Omni, or any owner of National or Omni.

(3) All video- or audio-recorded statements or testimony by any owner, officer, or agent of either National or Omni that pertain, in whole or in part, to Ideal.

The second subpoena is to Citibank, National's former lender, requesting:

(1) All correspondence with, or submission by, National and the Anza family about any credit line or loan (or any due or past due amounts owed thereon) National had, sought, or lost, for the period from 2004 to the present.

(2) All correspondence with, or submissions by, National and the Anza family about the creditworthiness of National, for the period from 2004 to the present.

The third and final subpoena is to Bushwick, the purchaser of National's business, requesting:

(1) All documents constituting, reflecting, or referencing any purchase, sale, or offer of steel, steel supplies, real estate, a business, or any other asset, from or to either National, Omni, or any employee, owner, attorney, or other agent of National or Omni.

(2) For any of the assets listed in the preceding paragraph, all (a) photographs or descriptions of such assets, (b) bills of lading, or other receiving or shipping records, for such assets, (c) mill certificates for such assets, or (d) receipts or other records of the resale of any such assets purchased.

(3) All letters, emails, text messages, or other correspondence about any lawsuit involving Ideal or Citibank either from National, from Omni, or from any employee, owner, attorney, or other agent of National or Omni.

Defendants' justification for these subpoenas is that National claims that defendants caused its failure, and that the nonparty witnesses may have relevant evidence in their possession showing that there were different and other causes for National's failure. Defendants posit that National's failure may have been caused by a combination of one or more of the following: (1) tax fraud by an Anza family member which owned National and a payment of the resulting several million-dollar tax judgment, (2) litigation necessitated to

defend tax fraud charges, (2) other legal matters relating to National's business, (3) Citibank's termination of National's line of credit, and (4) the Anza family's sale of National's inventory to Bushwick and reopening a similar Anza steel business under Omni's name.

In seeking to quash the subpoenas, National argues that:

“It is up to [National] to establish, at trial, the nexus between the Defendants' acts and [National's] damages. The fact that [National] might have incurred *other* damages from other sources has nothing whatsoever to do with the inquiry as to the damages which flowed from the specific acts alleged against the Defendants here.”

(Reply Affirmation in Support, dated April 6, 2014, ¶ 15).

#### *Discussion*

CPLR 3103 (a) provides that “[t]he court may . . . on motion of any party . . . make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” CPLR 2304 provides, in relevant part, that “[a] motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable. . . . Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify.”

The real issue here is not whether, as a general proposition, National lost its business as a result of the various adverse events ticked off by defendants. It does not appear that National disputes that some tax fraud occurred, that its principal was required to pay a multi-

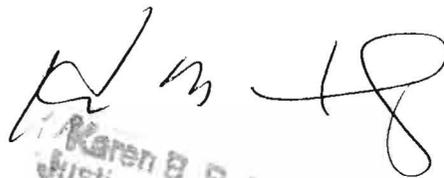
million-dollar judgment, that Citibank terminated its credit line, and that it sold its assets to Bushwick. Rather, the real issue is whether defendants' alleged intimidation of National's employees and customers, together with their alleged receipt of confidential information from a former National employee, proximately caused National's alleged losses. None of the subpoenas seek information on that issue. The subpoenas, therefore, are quashed as seeking irrelevant material (*see Humphrey v Kulbaski*, 78 AD3d 786, 787-788 [2d Dept 2010]; *Mendelovitz v Cohen*, 49 AD3d 612 [2d Dept 2008]).

Accordingly, it is

ORDERED that plaintiff's motion for a protective order quashing the Amended Subpoenas & Subpoenas Duces Tecum, dated March 19, 2014, issued by defense counsel to William Brodsky, Esq.; Citibank, N.A.; and Bushwick Metals LLC is granted, and such subpoenas are quashed.

This constitutes an order of the Court.

ENTER,

  
Karen B. Rothenberg  
Justice, Supreme Court  
J. S. C.