

**Dunn v Knightsbridge Props.**

2020 NY Slip Op 35599(U)

February 7, 2020

Supreme Court, Queens County

Docket Number: Index No. 711872/19

Judge: Robert I. Caloras

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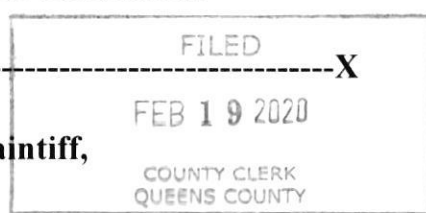
Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. ROBERT I. CALORAS

PART 36

Justice



RANA DUNN,

Plaintiff,

-against-

KNIGHTSBRIDGE PROPERTIES,

Defendant.

Index No. 711872/19

Motion Date: 12/5/19

Motion Cal. No. 13, 14, 15

Seq. No. 12, 13, 14

The following papers numbered E11-E15, E18-E32, E34-E120 read on the motion (Seq. 12) filed by non-party Virginia Simmons for an order pursuant to CPLR § 2304 and §3214(b) quashing the subpoena ad testificandum (the "Subpoena") served by plaintiff, on non-party Virginia Simmons; and for a protective order pursuant to CPLR § 3103 precluding plaintiff from further efforts to seek deposition testimony of Virginia Simmons; the cross-motion filed by the plaintiff for an order compelling the non-party deposition of Virginia Simmons; the motion (Seq. 13) filed by defendant for an order granting leave to reargue plaintiff's cross-motion to compel; the cross-motion filed by the plaintiff for an order compelling discovery; and the motion by non-party Bridgestone Capital Assets LLC for an order granting a protective order with respect to the Order of the Court, dated August 22, 2019.

PAPERS NUMBERED

Table listing papers and their numbers: Notice of Motion(Seq. 12)-Affirmation-Affidavit-Exhibits-Memorandum of Law... E11-E15; Affirmation in Opposition-Exhibits... E34-E48; Notice of Cross-Motion-Affirmation-Exhibits... E49-E64; Affirmation in further support of the Motion and in Opposition to the Cross-Motion... E91; Reply Affirmation-Exhibits... E106-E120; Notice of Motion(Seq. 13)-Memorandum of Law-Affirmation-Exhibits... E18-E27; Notice of Cross-Motion-Affirmations-Exhibits... E65-E78, E89; Memorandum in Opposition to Cross-Motion-Affirmation-Exhibits... E92-E96; Memorandum of Law in Reply-Exhibit... E101-E102; Notice of Motion(Seq. 14)-Memorandum of Law-Affirmation- Exhibits... E28-E32; Affirmation in Opposition-Exhibits... E79-E88, E90; Memorandum of Law in Opposition to the Cross-Motion-Affirmation-Exhibits... E97-E100; Memorandum of Law in Reply-Exhibits... E103-E105

Upon the foregoing papers, it is ordered that the motions filed by the non-party Virginia Simmons, the defendant, and the nonparty Bridgestone Capital Assets LLC (hereinafter "Bridgestone"), and the cross-motions filed by the plaintiff are determined as follows:

On October 20, 2017, the Court issued a judgment in favor of the plaintiff, against the defendant, in the amount of \$1,275,316.44.

Virginia Simmons, a non-party, moves for an order to quash the subpoena ad testificandum plaintiff served upon her pursuant to CPLR 2304 and 3214(b), and for a protective order. Ms. Simmons asserts that she is a named defendant in an action entitled *RANA DUNN v DR. EUGENE KRAUSS, JOURDAN KRAUSS, GAIA KRAUSS a/k/a GAIA MOLCO, NICOLE STRAUSS, CARMEL KRAUSS, DANIELLE KRAUSS, BRIDGESTONE FILED CAPITAL ASSETS LLC, 361 BROADWAY ASSOCIATES HOLDINGS, LLC, VIRGINIA SIMMONS and JOHN GEIDA, ESQ*, under Index Number 708383/18. Ms. Simmons argues that the plaintiff is barred from deposing her, because there are pending motions to dismiss pursuant to CPLR 3211(a)(5) and (7) in that action. Even if a discovery stay pursuant to CPLR 3214(b) was not applicable, Ms. Simmons argues that the subpoena should be quashed, because any testimony she would provide would be speculative, and not relevant, material or necessary to plaintiff's efforts to collect a judgment against the defendant. In her affidavit, Ms. Simmons claims that was employed as the an executive assistant to Jourdan Krauss, President at Knightsbridge Properties Corp. (hereinafter "KPC"), and "was not responsible for KPC's accounting and financial strategy, as those operations were handled by other people".

In the cross-motion, the plaintiff seeks an order compelling Ms. Simons to appear for a non-party deposition. Plaintiff claims that "[a] deposition of Virginia Simmons will provide valuable information to Plaintiff because Virginia Simmons's job position places her in a unique position where she possesses knowledge about Defendant's business practice".

CPLR 5223 compels disclosure of "all matter relevant to the satisfaction of the judgment". "A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order 'to determine whether the judgment debtor[ ] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment' " (Technology Multi Sources, S.A. v Stack Global Holdings, Inc., 44 AD3d 931, 932 [2d Dept. 2007], quoting Young v Torelli, 135 AD2d 813, 815 [2d Dept. 1987]).

Initially the Court notes that according to the E-filing system Hon. Janice A. Taylor issued a decision on January 7, 2020 in the action filed under Index Number 708383/18 granting the motion to dismiss. Accordingly, Ms. Simmons' claim that the plaintiff is barred from deposing her pursuant to CPLR 3214(a) is without merit.

CPLR 5240 provides the court with broad discretionary power to control and regulate the enforcement of a money judgment under CPLR article 52 to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice" (Paz v Long Is. R.R., 241 AD2d 486, 487 [2d Dept. 1997]). "Nonetheless, an application to quash a subpoena should be granted only where 'the futility of the process to uncover anything legitimate is inevitable or obvious', or where the information sought is 'utterly irrelevant to any proper



inquiry. It is the burden of the party seeking to quash a subpoena to conclusively establish that it lacks information to assist the judgment creditor in obtaining satisfaction of the judgment” (George v Victoria Albi, Inc., 148 AD3d 1119 [2d Dept. 2017]).

Here, the Court finds that Ms. Simmons has established her burden of demonstrating that she lacks information that would assist the plaintiff in satisfying the judgment. Moreover, the Court finds that the plaintiff’s claims regarding Ms. Simmons’ testimony are speculative. Accordingly, Ms. Simmons motion is granted, and the cross-motion is denied.

Defendant’s motion seeking leave to reargue this Court’s decision issued on August 22, 2019 is denied. It is well settled that a motion to reargue is "addressed to the sound discretion of the court [and] is designed to afford a party an opportunity to establish that the Court overlooked or misapplied the controlling principles of law. It's purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided" (Foley v Roche, 68 AD2d 558, 567-568 [1st Dept. 1979]; see also, Rubenstein v Goldman, 225 AD2d 328 [1st Dept. 1996]).

Here, the defendant asks this Court to reconsider facts and law that were proffered in the original motions and reviewed by the Court when it considered the original motions. The Court finds that the defendant has failed to demonstrate that the Court overlooked or misapprehended the relevant facts or misapplied any controlling principle of law in making its decision (McGill v Goldman, 261 AD2d 593 [2d Dept. 1999]). Accordingly, the motion is denied.

In the cross-motion, the plaintiff requests that this Court issue an order compelling discovery. Specifically, the plaintiff requests that the Court hold an in camera hearing with respect to any documents Joseph Hocking, Esq. received in a separate action filed in New York County Supreme Court, concerning emails and financial documents related to Defendant and 361 Broadway Associates Holdings LLC (361 Broadway). The plaintiff did not submit an affidavit of service demonstrating that the cross-motion was served upon Mr. Hocking. Accordingly, the cross-motion is denied.

Non-party Bridgestone’s motion for a protective order, with respect to this Court’s decision issued on August 22, 2019, is granted. Bridgestone argues that discovery regarding its assets, property, or income are improper, because it is not the judgment debtor. Moreover, Bridgestone claims, that it was not served with the underlying cross-motion. Therefore, Bridgestone argues that the Court should grant a protective order or, in the alternative, vacate the branch of the August 22, 2019 order that directed Bridgestone to respond to the plaintiff’s non-party subpoena.

In opposition, the plaintiff states, among other things, that “[t]his Cross motion is to oppose Motion Seq. 14 and to affirm this Court’s order dated August 22, 2019”. However, the plaintiff E-filed these papers as an affirmation in opposition, and did not submit a Notice of cross-motion. Notwithstanding this, the plaintiff claims that the underlying cross-motion was served upon defendant’s counsel, who is also counsel for Bridgestone. Therefore, the

plaintiff argues that Bridgestone’s claims that it was not served with the underlying cross-motion are without merit. Plaintiff also argues that Bridgestone has failed to set forth any basis to reargue this Court’s prior decision.

In reply, Bridgestone asserts, among other things, that both the plaintiff’s opposition and cross-motion were not timely served. In addition, Bridgestone asserts that the plaintiff failed to submit proof of service of the underlying cross-motion upon Bridgestone at its place of business, nor did the plaintiff submit proof of consent by Bridgestone’s attorney to receive process and service on behalf of Bridgestone in this action. Bridgestone also argues that the plaintiff’s claim that service of the underlying cross-motion was sufficient, because Bridgestone and the defendant have the same attorney, are without merit.

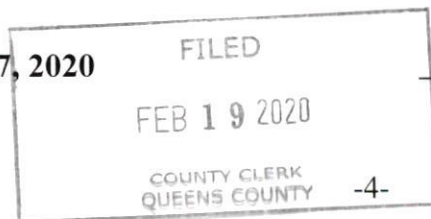
Initially, the Court finds that even though the plaintiff served and filed her opposition the day before the return date of Bridgestone’s motion, the Court will still consider it in determining the motion. On October 24, 2019, the return date, the Court adjourned the motion to December 5, 2019. Thereafter, Bridgestone served and filed a memorandum of law in reply. Accordingly, the Court finds that Bridgestone had sufficient time to reply to the plaintiff’s opposition papers.

As to Bridgestone’s motion, the Court finds that Bridgestone was not served with the underlying cross-motion. “If a subpoena is served on a corporation, it must be personally served on one of the people listed in CPLR 311(a)(1)” (Patrick M. Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C2303:1, 2016 Pocket Part, citing Siegel, New York Practice, § 70 [“Service on a Corporation”]). Here, plaintiff acknowledges that he only served Bridgestone’s attorney with the underlying cross-motion, because both the defendant and Bridgestone have the same attorney. CPLR 2103(b) provides, in pertinent part, that “[w]here the same attorney appears for two or more parties, only one copy need be served upon the attorney”. However, here Bridgestone is a nonparty, and its attorney did not consent to accept papers on its behalf. Consequently, CPLR 2103(b) is not applicable as to Bridgestone’s counsel. As such, the plaintiff was obligated to serve Bridgestone with the cross-motion. Under these circumstances, Bridgestone’s motion is granted. Accordingly, this Court’s order issued on August 22, 2019 is modified solely to the extent that the branch of the decision directing Bridgestone to respond to the plaintiff’s non-party subpoena is vacated.

The Court also finds that to the extent that the plaintiff claims to have filed a cross-motion, said application is defective, because it did not include a Notice of Cross-Motion pursuant to CPLR 2214(a), and was improperly E-filed as an affirmation in opposition.

Based upon the foregoing, the motion (Seq. 12) is granted and the cross-motion is denied, the motion (Seq. 13) and cross-motion are denied, and the motion (Seq. 14) is granted and cross-motion is denied.

**Dated: February 7, 2020**



**ROBERT I. CALORAS, J.S.C.**