

**First Women's Bank v Court Living Corporation**

2005 NY Slip Op 30142(U)

September 27, 2005

Supreme Court, New York County

Docket Number: 0004736/1989

Judge: Judith J. Gische

Republished from New York State Unified Court  
System's E-Courts Service.

Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT: \_\_\_\_\_

PART 10

0004736/1989

FIRST WOMEN'S BANK  
VS  
COURT LIVING

INDEX NO. \_\_\_\_\_

MOTION DATE

7 | 28 | 05

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

SEQ 4

PUNISH FOR CONTEMPT

\_\_\_\_\_ motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this ~~motion~~

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

**FILED**

**OCT - 4 2005**

NEW YORK  
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: SEP 27 2005

\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----X

THE FIRST WOMEN'S BANK,

Plaintiff,

-against-

COURT LIVING CORPORATION and  
LOUIS V. GRECO, JR.,

Defendant.

-----X

**DECISION/ORDER**

Index No.: 004736/89

Seq. #: 004, 005

Present:

Hon. Judith J. Gische  
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

<b>Papers</b> .....	<b>Numbered</b>
<u>SEQ. NO. 4</u>	
Plf's Motion (contempt) w/SV affirm, exhs .....	1
Non Party LG Cross Motion QS w/MDM affirm, exhs	2
Reply w/SV affirm, exhs .....	3
Non party reply w/MDM affirm, exhs .....	4
<u>SEQ. NO. 5</u>	
Non-Party HSR motion QS w/MDM affirm, exhs . . .	5
Pltff opp w/SV affirm, exhs .....	6
Judge Beeler's recusal order, 6/13/05 .....	7

-----

*Upon the foregoing papers, the decision and order of the court is as follows:*

This case, and motions sequence numbers 4 and 5, have been randomly reassigned to this court upon Hon. Harold Beeler's recusal, as per his Order dated June 13, 2005.

Before the court is The Cadle Company's ["Cadle"] motion to enforce a post-judgment subpoena duces tecum with restraining order. The subpoena, dated January 24, 2005, directs Linda Greco to provide certain documents relevant to a money

judgment Cadle now holds has against defendant Louis V. Greco Jr. Louis and Linda Greco are husband and wife. Mrs. Greco has cross moved to quash the subpoena, and also asks the court to impose sanctions on Cadle.

There is also a separate motion brought by Hicks Street Residences LLC ["HSR"] to quash a subpoena duces tecum dated May 5, 2005 that Cadle served on Doral Money Inc. ["Doral"]. Doral holds a mortgage on real property located at 324 Hicks Street owned by HSR. Cadle opposes that motion and seeks enforcement of the subpoena it served.

Although Mrs. Greco and HSR have separately moved, they present similar arguments as to why Cadle's subpoenas are improper. They are also represented by the same lawyer. Both motions (sequence numbers 4 and 5) will be jointly considered and decided together in this single decision/order, given the similarity of the issues presented, the further interest of judicial economy, and to avoid inconsistent decisions.

### **Discussion**

Plaintiff First Women's Bank obtained and entered a money judgment against Mr. Greco in the amount of \$291,822.80 on May 22, 1990, pursuant to a stipulation of settlement between them dated May 22, 1989 ["the judgment"]. In 1994, FDIC as receiver for First New York Bank for Business f/k/a The First Women's Bank, assigned the judgment to Cadle. The assignment included the right to "recovery of the money due or to become due on said judgment . . ." The assignment was recorded in New York County under this index number on July 14, 1994. CPLR § 5019 [c].

Although Mrs. Greco claims she was not personally served with the subpoena, she has not provided her own affidavit to support that claim. By failing to do so, she has waived her jurisdictional claim. Moreover, there is proof she was served and that the applicable fee was tendered to her. Contrary to her lawyer's claims, the affidavit of service is properly notarized.

Mrs. Greco claims that Cadle's subpoenas must be quashed because she had no direct personal involvement in the underlying proceeding between the bank and her husband. She contends the information demanded is personal, and it will be humiliating for her to reveal it. None of these claims are made by her personally, but by her lawyer.

Cadle has broad latitude in trying to obtain information that will lead to the satisfaction of the judgment it has. Moreover, Cadle has requested any documents "in which Louis V. Greco [Debtor] had any interest." Mrs. Greco's wholesale refusal to provide any documents because they are "confidential," does not defeat Cadle's right to information about the judgment debtor. While some information demanded may overlap with information Mrs. Greco considers private to her, she has failed to make any distinctions that would lead the court to modify the subpoena in any way. Therefore her unparticularized claims of confidentiality do not defeat Cadle's motion to enforce the subpoena.

HSR claims that Mr. Greco has no connection with HSR, and therefore Cadle is not entitled to the information it has demanded. Since this claim is not made by a person with personal knowledge of the facts, but by its lawyer, it does not defeat Cadle's entitlement to the information demanded. There is evidence that Mr. Greco

signed a mortgage held by Doral relating to HSR, directly contradicting claims by Mr. Greco at a post judgment EBT that he had no interest in HSR.

Both nonparties claim that Cadle has no legal standing to serve these subpoenas in the first place. They also argue that Cadle cannot litigate under this index number because this case is completed and it will, therefore, have to start a new action. Both arguments are rejected. Though Cadle has improperly self styled the caption to reflect the assignment of the judgment to it ("The Cadle Company *as assignee of The First Women's Bank*"), this is of no moment to the issues at hand. Regardless of how the caption reads, Cadle stands in the legal shoes of First Women's Bank<sup>1</sup> with the same right to enforce the judgment against Mr. Greco that First Women's Bank would have had.

Since Cadle is not bringing a new lawsuit against Mr. Greco, but only trying to enforce and satisfy the judgment that already exists against him, Cadle does not have to start a new action. CPLR § 5225 Gabor v. Renaissance Associates, 170 AD2d 390 (1<sup>st</sup> dept. 1991). There is nothing wrong with their using the same index number.

The nonparties also claim that Cadle bought the bank's judgment only so it could maintain this lawsuit. They claim that this is in violation of Judiciary Law § 489 which provides that:

"[n]o person . . . engaged directly or indirectly in the business of collection and adjustment of claims . . . shall solicit, buy, or take an assignment of, or be in any manner interest in buying or taking an assignment of a bond, promissory note, bill of exchange, book debt, other thing in action, or any claim or demand, with the intent

---

<sup>1</sup>Or for that fact, First New York Bank for Savings.

and for the purpose of bringing an action or proceeding thereon. . . ."

In considering whether Cadle's action of enforcing the judgment is in violation of this statute, more commonly known as the "champerty statute," we look first to its plain language and interpret it by its ordinary, common meaning. Elliot Associates L.P. v. Republic of Peru, 12 F Supp 2d *rev'd* 194 F3rd 363 *on remand* 194 FRD 116 (SDNY 2000). Guided thereby, it is clear that this statute proscribes something narrower than just "maintaining a suit in return for a financial interest in the outcome." Elliot Associates L.P. v. Republic of Peru, *supra*. Judiciary Law § 489 is not violated when the primary goal of a legal action is simply satisfaction of a valid debt. *Id.* Since Cadle already has a judgment against Mr. Greco, and its present efforts are related to enforcement, it has not violated the judiciary law.

Mrs. Greco and HSR each contend that Cadle is a foreign corporation "doing business" in this state without the proper authorizations. BCL § 1312 requires that a foreign business corporation be authorized to do business in New York before it can "maintain any action or special proceeding in this state." The nonparties contends this is a regular practice by Cadle, and that they are notorious for bringing lawsuits in this state, simply to collect judgments, but without the proper authorization.

The court need not reach the broader issue of whether Cadle is authorized to do business in this state to conclude from the facts of this particular case, that Cadle is not instituting or "maintaining an action," in violation of the BCL. Cadle is enforcing a valid money judgment, not starting a new lawsuit. Cadle has the legal and statutory right to obtain information about Mr. Greco's finances, if such information will aid it in the

recovery of the money it is due. Gabor v. Renaissance Associates, *supra.*; *See also: Skylake State Bank v. Solar Heat and Insulation*, 148 Misc2d 559 (Sup Ct., N.Y. Co. 1990).

Further allegations, that Cadle generally engages in unfair collection practices in other states, therefore it is doing the same now, cannot be properly evaluated by the court in the context of the limited issues presented here. Movants are free to raise these claims to any proper administrative agency having the authority to adjudicate them, if they believe there are improper practices. They are not apparent in the limited record developed here.

Turning to the information demanded in the subpoenas, Mrs. Greco and HSR each contend that Cadle must show "special circumstances" before it is entitled to discovery from them. This argument is incorrect for two reasons. At one time, "special circumstances" had to be shown before non-party disclosure could be obtained from a non-party. That standard was applied, however, only in the context of pre-judgment discovery. CPLR §§ 3101 [a] [4]; Schroder v. Consolidated Edison Company of New York, Inc., 249 AD2d 69 (1<sup>st</sup> dept. 1998). In any event, the First Department has retreated from the "special circumstances" standard, and all that need be shown for a party to obtain non-party disclosure is that such information is not otherwise available.

The dispute at bar does not involve pre-judgment discovery, but post-judgment discovery. Moreover, Mr. Greco himself testified at a post judgment deposition his financial dependence on Mrs. Greco and that she manages all his financial affairs. The financial relationship between Mr. Greco and Mrs. Greco is material and relevant to

Cadle's collection efforts. CPLR § 5223. Likewise, although Mr. Greco has represented that he has no involvement with HSR, Cadle has documentary evidence that this may be inaccurate (Exh. D). It is therefore reasonable for Cadle to obtain the information it has asked for about HSR directly from Doral.

The failure to comply with a subpoena issued by an "officer of the court shall be punishable as a contempt of court." CPLR § 2308 [a]. The mere act of disobedience is sufficient to sustain a finding of civil contempt if such disobedience defeats, impairs, impedes or prejudices the rights of a party. Jud Law § 753 [a]; Great Neck Pennysaver v. Central Nassau Publications, 65 AD2d 616 (2<sup>nd</sup> dept. 1978).

Cadle has proved that it served the subpoena on Mrs. Greco, but she failed to comply with it. Metropolitan Life v. Young, 157 Misc2d 452 (Sup Ct., N.Y. Co. 1993); Minzer v. Heffner Agency Inc., 214 AD2d 547 (2<sup>nd</sup> dept. 1994). Cadle has not, however, proved why an order compelling Mrs. Greco to comply with the subpoena would be ineffective at this point. Mrs. Greco has not indicated that if she loses her cross motion to quash the subpoena, she will not comply with it. Contempt is a harsh remedy to be used only when other means of enforcement cannot be relied upon.

The court grants Cadle's motion to enforce the subpoena it served on Mrs. Greco and denies Mrs. Greco's cross motion to quash it. Mrs. Greco shall comply with the January 24, 2005 subpoena. She must appear **on October 17, 2005 at 10:00 a.m.** at the office of Vlock & Associates P.C. to testify and produce all the information (books, records, etc.) demanded in the subpoena that Cadle served. If Mrs. Greco

fails to comply, Cadle may seek appropriate relief, including renewal of its motion for contempt.

HSR's motion, to quash the subpoena Cadle served on Doral Money Inc. is also denied. The subpoena shall be enforced and Doral Money Inc. shall comply with the subpoena. It shall appear on **October 17, 2005 at 11:00 a.m.** at the office of Vlock & Associates P.C. to testify and produce all the information (books, records, etc.) demanded in the subpoena that Cadle served.

Mrs. Greco's cross motion for the imposition of sanctions against Cadle is denied. There is no basis for such sanctions. 22 NYCRR § 130-1.1.

**Conclusion**

Cadle's motion to enforce its subpoena served on Linda Greco, a non-party is granted to the extent provided in this decision. Linda Greco's cross motion to quash the subpoena is denied as is her cross motion for sanctions. Hicks Street Residence LLC's motion to quash the subpoena served by Cadle on Doral Money Inc. is denied, and Doral Money Inc. shall comply with the subpoena that Cadle served in accordance with this decision.

Any relief not expressly addressed herein has nonetheless considered by the court and is denied.

This shall constitute the Decision and Order of the Court.

Dated: New York, New York  
September 27, 2005

So Ordered

  
\_\_\_\_\_  
HON. JUDITH J. GISCHE, J.S.C.

**FILED**  
**OCT - 4 2005**  
NEW YORK  
COUNTY CLERK'S OFFICE