

**Allstar Capital, Inc. v Curry**

2010 NY Slip Op 31525(U)

May 25, 2010

Supreme Court, New York County

Docket Number: 111718/2009

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON Justice

PART 55

Index Number : 111718/2009  
**ALLSTAR CAPITAL, INC.**  
 vs.  
**CURRY, EDDY A.**  
 SEQUENCE NUMBER : 008  
 QUASH SUBPOENA, FIX CONDITIONS

INDEX NO. \_\_\_\_\_  
 MOTION DATE 4/30/10  
 MOTION SEQ. NO. \_\_\_\_\_  
 MOTION CAL. NO. \_\_\_\_\_

n this motion to/for \_\_\_\_\_

PAPERS NUMBERED

1-3  
4-5

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 *is decided by the Answered memorandum decision and order*

**FILED**  
 JUN 01 2010  
 NEW YORK  
 COUNTY CLERK'S OFFICE

Dated: 5/25/10

JANE S. SOLOMON J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----x  
ALLSTAR CAPITAL, INC.,

Plaintiff,

-against-

Index No.: 111718/2009  
DECISION and ORDER

EDDY A. CURRY, JR, an individual DOES  
1 through 10; and ROE CORPORATIONS  
through 10, inclusive,

Defendants.

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JANE S. SOLOMON, J.:

Defendant Eddy A. Curry, Jr. (Curry) moves for an order pursuant to CPLR 5240 quashing the information subpoena served by plaintiff Allstar Capital Inc. (Allstar), as Curry's judgment creditor, upon Rothstein Kass, an accounting firm Curry hired in November 2009. Curry also moves to quash the subpoena for oral deposition served by Allstar upon his wife, Patrice Nicole Curry (Patrice). The motion is denied for the following reasons.

FACTS

On August 17, 2009, Allstar domesticated in this court a Nevada judgment against Curry in the amount of \$1,224,522.90 plus interest at 89.36% per annum.

At the February 16, 2010 hearing on Allstar's motion for an installment payment order (Motion Sequence 002), Curry and Patrice testified as to Curry's income and expenses. Patrice testified that, subsequent to the freezing of Curry's bank account, his paychecks were deposited in her personal account

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(Transcript of February 16 Hearing, attached to Motion, Ex. E, p.158). This testimony partially answers a question that she had previously refused to answer on an earlier information subpoena (Motion, Ex. G, question 8) and is inconsistent with her answer to question 25 of that subpoena, which asks "[d]o you hold any property or money in trust for Debtor" and is answered solely by "I have a joint bank account with my husband." (Id., question 25).

Allstar also learned that Rothstein Kass may be in possession of some of Curry's funds (See Affidavit in opposition, ¶ 18-20). Based in part on this information, Allstar served both subpoenas, pursuant to CPLR 5224 on March 16, 2010. This motion followed. Notably, while the subpoena to Rothstein Kass is provided, the questionnaire to which it refers is not.

#### DISCUSSION

Curry argues that both subpoenas seek information already produced and serve no purpose other than to harass the witnesses. Allstar counters that the information sought has not yet been produced and is relevant to determining where Curry's funds are located.

CPLR 5223 governs the scope of disclosure regarding post judgment subpoenas. It provides:

"At any time before a judgment is satisfied . . . the judgment creditor may compel disclosure of all matters relevant to the satisfaction of the judgment, by serving upon any person a subpoena . . . ." (CPLR 5223).

CPLR 5223 "permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property" (*ICD Group v. Israel Foreign Trade Co. [USA] Inc.*, 224 AD2d 293, 294 [1st dept, 1996]). A judgment creditor may serve an information subpoena if there is a "reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment" CPLR 5224(a)(3)(i).

The information subpoena to Rothstein Kass purportedly seeks disclosure of the amount of Curry's assets or funds currently held by that firm. The subpoena was issued after a March 9 conversation between the parties' attorneys regarding allowing Rothstein Kass to pay for certain expenses (such as rent, tuition and groceries) despite the existence of a restraining order blocking all payouts. According to Allstar, this conversation led to a belief that Rothstein Kass was in possession of, or knew the location of, funds belonging to Curry.

Curry claims that Allstar had a chance at the hearing to elicit information regarding Curry's funds from a Rothstein Kass representative, but chose not to cross-examine, and implies that Allstar lost its chance to inquire. This argument is incorrect. The scope of the February 16 hearing was narrowly

tailored and was not an investigation of Curry's assets.

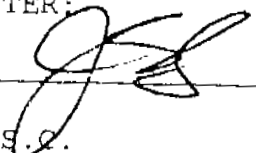
Curry also argues that the information sought already is known to Allstar. In support, he points to prior information subpoenae, the February 16 hearing transcripts, and a Rothstein Kass document that lists Curry's creditors and his income (Motion, Ex. C). None of these establish whether Rothstein Kass possesses any of Curry's assets. Accordingly, the information subpoena addressed to Flynn is founded on a reasonable belief that Flynn or his firm have knowledge of Curry's assets, and the motion to quash that subpoena is denied.

The subpoena to Patrice Curry also is valid. Curry's argument that the subpoena is improper because she already has testified, again ignores the purpose of her earlier testimony. Similarly, Curry's contention that the subpoena is superfluous because Allstar has recovered some property (and now has obtained an installment payment order) is unpersuasive. Moreover, CPLR 5223 permits the issuance of subpoenas "[a]t any time before a judgment is satisfied." Allstar has a reasonable basis to believe that the subpoena to Patrice would disclose a matter relevant to the satisfaction of the judgment.

Accordingly it hereby is

ORDERED that the motion to quash the information subpoena addressed to Rothstein Kass and the deposition subpoena of Patrice Curry is denied.

Dated: May 25, 2010

ENTER:  
  
\_\_\_\_\_  
J.S.O.

**JANE S. SOLOMON**

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