

**Gottesman Co. v Keystone Enters., Inc.**

2011 NY Slip Op 31195(U)

April 20, 2011

Sup Ct, NY County

Docket Number: 603352/03

Judge: Judith J. Gische

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

HON. JUDITH J. GISCKE

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

PART 10

Go Hesman Co.

INDEX NO. 603352/03

- v -

MOTION DATE \_\_\_\_\_

Keystone

MOTION SEQ. NO. 10

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

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

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

PAPERS NUMBERED

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

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

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

TO BE ACCOMPANIED BY A MEMORANDUM DECISION.

**FILED**

APR 21 2011

NEW YORK  
COUNTY CLERK'S OFFICE

APR 20 2011

Dated: \_\_\_\_\_

[Signature]  
HON. JUDITH J. GISCKE <sup>J.S.C.</sup>

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

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

-----X

GOTTESMAN COMPANY,

Plaintiff,

-against-

KEYSTONE ENTERPRISES, INC. and  
KEYSTONE HOLDINGS, LLC,

Defendants.

-----X

Decision and Order  
Index No. 603352/03  
Seq No.: 010

Present:  
Hon. Judith J. Gische

JSC

**FILED**

APR 21 2011

NEW YORK  
COUNTY CLERK'S OFFICE

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

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<b>Papers</b>	<b>Numbered</b>
Non-Party Bruderman OSC (quash) w/MJB affid, MA affirm, exhs	. 1
Gottesman opp w/ADH affirm, exhs	. . . . . 2
Non-Party Bruderman reply w/MJB affid, exhs	. . . . . 3
Non-Pary Bruderman reply w/MA affirm, exhs	. . . . . 4
Dragon's supporting papers w/EAH affid, exhs	. . . . . 5
Gottesman sur-reply w/ADH affirm	. . . . . 6

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Gische J.:

This case was randomly reassigned to this part. In the  
underlying action, which was tried before a jury, plaintiff  
obtained a money judgment against defendant Keystone Holdings,  
LLC (Keystone). The judgment has not been satisfied.

In motion sequence 010, nonparties Matthew J. Bruderman,  
Alpha 6 Distributions, LLC, Drift Boardwear, LLC, Treadstone  
Group, Inc., Vanadium, Inc., and Wilshire Properties LLC  
(collectively, the Account Holders), by order to show cause, seek  
a protective order, pursuant to CPLR 5240, denying post-judgment

discovery, which seeks disclosure of the Account Holders' bank account information by the State Bank of Long Island (SBLI) in response to a subpoena, dated August 26, 2010, served on SBLI by counsel for the plaintiff (the August 2010 Subpoena). The court notes that plaintiff has withdrawn the August 2010 Subpoena as to movant Treadstone Group, Inc. See Himmel's Affirmation in Opposition, n 1.

### **Background**

Keystone was founded by movant Matthew Bruderman as a holding company created for the purpose of acquiring interests in apparel companies. In 2003, plaintiff introduced Keystone to an acquisition opportunity involving a company named Royce Hosiery Mills, Inc. (Royce Inc). In July 2003, Dragon Coeur LLC II-D (Dragon), owned by Edward Arnold, agreed to make a bridge loan to Keystone in the amount of \$10 million. This bridge loan allowed Keystone to fund a new subsidiary, Royce Hosiery, LLC (Royce Hosiery), to purchase the assets of Royce Inc. Arnold stated "at that time" that he owned 12.5% of the membership interest in Keystone. Affidavit of Edward H. Arnold, ¶ 4. However, it is not clear if Arnold owned this percentage as a result of making the bridge loan, or if he already had an interest in Keystone when Dragon made the loan. As an inducement to make this bridge loan, Keystone allegedly granted Dragon a security interest in 100% of Keystone's interest in Royce Hosiery. The security

interest was allegedly to remain in force as long as the bridge loan remained unpaid. This security interest gave Dragon the right to foreclose on Keystone's interest in Royce Hosiery in the event Keystone could not obtain refinancing, or if it went into default with its lenders.

In early 2004, Arnold was allegedly informed by Keystone that Royce Hosiery was not meeting its financial projections and was in default under its credit agreement with General Electric Capital Corporation (GECC). In order to prevent foreclosure, Arnold allegedly made an additional capital contribution to Keystone, which was invested in Royce Hosiery to pay down its line of credit with GECC. In exchange for this investment, Arnold gained a membership interest in Keystone of approximately 91%. In March 2004, as a result of Keystone's inability to refinance to pay off the bridge loan, Dragon allegedly sent a notice of default indicating its intent to foreclose on Keystone's ownership of Royce Hosiery. Thereafter, Arnold allegedly negotiated a settlement with Keystone whereby Dragon agree to exchange the bridge loan for 100% of Keystone's interest in Royce Hosiery. However, due to the fact GECC still had a lien on Royce Hosiery's membership units, Dragon was allegedly not able to become the record holder of Royce Hosiery's membership interests until GECC was repaid. On December 3, 2004, Royce Hosiery allegedly sold the assets it had purchased in Royce Inc

back to its original owners, and Dragon became 100% owner of Royce Hosiery.

Plaintiff commenced this action to recover a finder's fee against defendants for plaintiff's services in introducing them to the Royce Inc acquisition opportunity. At trial, plaintiff prevailed and on September 25, 2007, a judgment was entered in favor of plaintiff against defendants in the amount of \$1,182,231.23. In its ongoing attempt to enforce this judgment against the allegedly inactive Keystone, plaintiff now seeks discovery, pursuant to CPLR Article 52, relating to bank accounts held by the Account Holders, which are owned or managed by Keystone's former owner Matthew Bruderman<sup>1</sup>.

Specifically, the August 2010 Subpoena seeks documents evidencing transfers of monies into and out of the Account Holders' bank accounts from the period of December 3, 2004 to the present, including copies of cancelled or paid checks, copies of check deposited, copies of bank statements, copies of documents relating to any wire transfers into and out of the accounts, copies of documents relating to cash withdrawals or deposits, and copies of documents relating to any transfers of monies into and out of the accounts, including the documents that identify the recipient or source of any of the transfers.

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<sup>1</sup> Treadstone Group, Inc. is owned by Matthew Bruderman's brother. As previously stated, the August 2010 Subpoena is withdrawn as to Treadstone Group.

[\* 6]

## Analysis

Prior to the satisfaction of a judgment, a judgment creditor may compel disclosure of all matters relevant to the satisfaction of the judgment. CPLR 5223. This standard not only permits discovery through the judgment debtor, but also any 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) (internal quotation and citation omitted).

While the court has

"broad discretionary power to control and regulate the enforcement of a money judgment under article 52 to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice, ... 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."

*Technology Multi Sources, S.A. v Stack Global Holdings, Inc.*, 44 AD3d at 932 (internal quotations and citations omitted).

The Account Holders argue that the information sought is irrelevant to enforcing a judgment against Keystone, because the transactions between Royce Hosiery and the Account Holders all occurred after Keystone's interest in Royce Hosiery terminated. Thus, the Account Holders argue that since Royce Hosiery is not the judgment debtor, any transfers made by Royce Hosiery to these

third parties are not relevant in collecting the judgment against Keystone. The court disagrees.

There is enough evidence presented warranting disclosure of the Account Holders' bank accounts in order to determine whether Keystone, through transactions between Royce Hosiery and the Account Holders, concealed any assets or transferred any assets so as to defraud plaintiff or to prevent collection of the judgment. Here Royce Hosiery, an inactive company, which has not filed tax returns since 2003, transferred millions of dollars to accounts associated with Bruderman, the former owner of the company Royce Hosiery allegedly took full control over. Royce Hosiery's alleged new owner Dragon is owned by Arnold, who had various percentages of interest in Keystone. Plaintiff's allegation of an elaborate corporate shell game between Keystone, Royce Hosiery, and the Account Holders is not far-fetched based on the evidence presented, and plaintiff should be entitled to discovery which may reveal such. Further, this court does not find the August 2010 Subpoena patently overbroad and duplicative as to the Account Holders.

Accordingly, it is

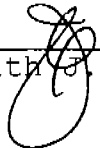
ORDERED that nonparties Matthew J. Bruderman, Alpha 6 Distributions, LLC, Drift Boardwear, LLC, Vanadium, Inc., and Wilshire Properties LLC's motion seeking a protective order, pursuant to CPLR 5240, denying plaintiff post-judgment discovery,

which seeks disclosure of the Account Holders' bank account information by the State Bank of Long Island is denied; and it is further

ORDERED that the State Bank of Long Island shall comply with the August 2010 Subpoena within 30 days after service of a copy of this order with notice of entry.

Dated: New York, New York  
April 20, 2011

So Ordered:

  
\_\_\_\_\_  
Hon. Judith J. Gische

**FILED**

**APR 21 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**