

**Board of Mgrs. of Parc Vendome Condominium v  
Cambourakis**

2011 NY Slip Op 34232(U)

March 1, 2011

Supreme Court, New York County

Docket Number: 109008/2010

Judge: Marcy Friedman

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 57

PRESENT: Hon. Marcy S. Friedman, JSC

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THE BOARD OF MANAGERS OF PARC  
VENDOME CONDOMINIUM,

*Petitioner,*

- against -

GEORGE CAMBOURAKIS, STRUCTURAL  
ENGINEERING TECHNOLOGIES, P.C. and  
BRIGHT HORIZONS FAMILY SOLUTIONS  
LLC.,

*Respondents.*

Index No.: 109008/2010

DECISION/ORDER

Proceeding No. 1

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CAROL A. SIGMOND,  
for an Order Pursuant to CPLR 2304,

*Petitioner,*

- against -

THE BOARD OF MANAGERS OF PARC  
VENDOME CONDOMINIUM,

*Respondents.*

Index No.: 107757/2010

Proceeding No. 2

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These two proceedings arise out of a protracted ongoing arbitration between The Board of Managers of Parc Vendome Condominium (Parc Vendome) and Parc Vendome HClub Investors, LLC (HClub) (or its successor), and owners of properties adjoining Parc Vendome’s premises.<sup>1</sup>

<sup>1</sup> The arbitration was originally commenced as a plenary action in Supreme Court, New York County, entitled Parc Vendome HClub Investors, LLC v The Board of Managers of Parc Vendome Condominium et al., Index No. 650216/07. By stipulation dated March 24, 2008, the parties agreed to submit their disputes to arbitration. The arbitration proceeding is entitled Parc Vendome HClub Investors, LLC v The Board of Managers of Parc Vendome Condominium, The Board of Managers of

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Both proceedings concern discovery sought by Parc Vendome from non-parties to the underlying arbitration.

In Proceeding No. 1, Parc Vendome seeks depositions and documents in aid of arbitration from respondents Bright Horizons Family Solutions LLC (Bright Horizons), and George Cambourakis and Structural Engineering Technologies, P.C. (Structural). Bright Horizons moves to dismiss the petition or, in the alternative, seeks a protective order pursuant to CPLR 3103. In Proceeding No. 2, petitioner Carol A. Sigmond, Bright Horizons' attorney, seeks an order, pursuant to CPLR 2304 and 3103, quashing subpoenas ad testificandum and duces tecum served upon her by Parc Vendome. Parc Vendome moves to dismiss the petition and to compel discovery in aid of arbitration pursuant 3102(c).

The following material facts are undisputed: HClub was the owner of a commercial unit at Parc Vendome's premises. The arbitration concerns HClub's alleged damages arising from Bright Horizons' termination of its lease with HClub for a portion of the commercial unit. Bright Horizon allegedly terminated the lease as a result of property damage from water infiltration into the unit allegedly caused by Parc Vendome and the adjoining property owners. (See Parc Vendome Motion, Schrero Aff., ¶9.) HClub hired Structural Engineering Technologies, P.C. (Structural), respondent in Proceeding No. 1, as its structural engineers for work at the premises. Respondent Cambourakis is Structural's principal. In Proceeding No. 2, petitioner Sigmond was Bright Horizons' counsel at the time of its termination of its lease.

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the 322 West 57<sup>th</sup> Street Condominium, and 322 West 57<sup>th</sup> Street Owner LLC (JAMS Reference No. 1420018530) [underlying arbitration or arbitration].) The remaining parties in the arbitration, 322 West 57<sup>th</sup> Street Condominium and 322 West 57<sup>th</sup> Street Owner LLC, are owners of properties located on either side of Parc Vendome's premises. (See Parc Vendome Petition, ¶ 6.)

Parc Vendome seeks identical discovery in both proceedings – namely, testimony and documents concerning communications between Bright Horizons and HClub regarding the construction work, property damage, and ultimate termination of Bright Horizons’ lease. Parc Vendome seeks the identical set of documents from Bright Horizons (Parc Vendome Petition, Ex. I), respondent Structural in Proceeding No. 1 (see id., Ex. D), and petitioner Sigmond in Proceeding No. 2. (Id., Ex. C.) For example, Question 3 of Parc Vendome’s demand for documents seeks “[a]ll Documents concerning, relating to or reflecting all Communications with \* \* \* any other party acting for or on behalf of HClub Investors, or otherwise relating to the Health Club Unit, or relating to the lease between HClub Investors and Bright Horizons, or relating to the termination of said lease, or relating to the alterations proposed to be made in the Health Club Unit by HClub Investors, LLC and by Bright Horizons, respectively, or relating to water infiltration remediation work to be performed in the Health Club Unit. . . .” (Id.)

It is well settled in New York that “[w]hile a court may order disclosure “to aid in arbitration” pursuant to CPLR 3102 (subd. [c]), it is a measure of the different place occupied by discovery in arbitration that courts will not order disclosure except under extraordinary circumstances.” (De Sapio v Kohlmeyer, 35 NY2d 402, 406 [1974] [internal quotation marks and citation omitted].)<sup>2</sup> Thus, “disclosure devices will be sparingly used in arbitration procedures. . . . The test is necessity rather than convenience.” (International Components Corp. v Klaiber, 54 AD2d 550 [1<sup>st</sup> Dept 1976]; Matter of Katz [Burkin], 3 AD2d 238 [1<sup>st</sup> Dept 1957]; Travelers Indem. Co. v United Diagnostic Imaging, P.C., 73 AD3d 791, 792 [2d Dept 2010]; Hendler v

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<sup>2</sup> CPLR 3102[c] provides in pertinent part that “[b]efore action is commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order.”

Murray, 127 AD2d 820 [2d Dept 1987].)

The rationale for the “extraordinary circumstances” standard is that “[t]he courtroom may not be used as a convenient vestibule to the arbitration hall so as to allow a party to create his own unique structure combining litigation and arbitration.” (De Sapia, 35 NY2d at 406.) But that is precisely the result that Parc Vendome and the Arbitrator are seeking to create here. It is undisputed that the JAMS Rules authorize discovery in the form of document exchanges and depositions and authorize the Arbitrator to determine whether there is “reasonable need” for more than one party deposition. (JAMS Comprehensive Arbitration Rules & Procedures, Rule 17 [Bright Horizons’ Motion, Ex. Q].) It is also undisputed that the Arbitrator has been supervising discovery in the underlying arbitration and that she issued an order on February 2, 2010 (id., Ex. B), authorizing each party to take up to three depositions, and on April 22, 2010 (id., Ex. C), providing that disputes about depositions shall be decided by the Arbitrator. Only after the dispute over the Bright Horizons subpoenas arose did the Arbitrator issue an order on July 7, 2010, providing that “whether the depositions in question are necessary or appropriate is a matter of the Court, not the Arbitrator.” (Id., Ex. A.) This order impermissibly creates a hybrid litigation/arbitration structure. In so holding, the court recognizes that the Arbitrator does not have the authorization to issue subpoenas to compel the depositions of non-parties. However, it is for the Arbitrator in the first instance to decide whether the depositions should be authorized pursuant to JAMS Rule 17. If she concludes that the depositions are warranted, Parc Vendome may apply to this court for a subpoena to enforce the Arbitrator’s order.

Even if the court were to decide Parc Vendome’s request for non-party discovery on the merits, it would deny such discovery on this record. As a threshold matter, the court rejects Parc

Vendome's argument, based on Textron, Inc. v Unisys Corp. (138 Misc2d 124 [Sup Ct New York County 1987]) and its progeny (see Matter of Ace Am. Ins. Co., 6 Misc3d 1005(a) [Sup Ct New York County 2004]; Imclone Sys. Inc. v Waksal, 2005 WL 5351321 [Sup Ct New York County 2005], affd on other grounds 22 AD2d 387 [1<sup>st</sup> Dept]), that the extraordinary circumstances standard should not be applied. These cases found that the extraordinary circumstances standard need not be met where the parties to the arbitration, "by stipulation and joint application" (Textron, Inc., 138 Misc2d at 126), sought the non-party discovery.

Here, in contrast, although it is undisputed that the parties to the arbitration opted to issue deposition subpoenas to third parties (see Arbitrator's July 7, 2010 order), they did not agree to non-party discovery of Bright Horizons. Indeed, their interests are adverse on this issue. Parc Vendome seeks discovery of Bright Horizons to develop its defense that Bright Horizons terminated its lease because of HClub's conduct. (Parc Vendome Supplemental Memo in Opp. at 2-3), whereas HClub's interest is in avoiding such discovery, as it claims that Bright Horizons terminated its lease due to the conduct of Parc Vendome.

The court further finds that Parc Vendome fails to satisfy the exceptional circumstances standard.<sup>3</sup> As discussed above, Parc Vendome's subpoenas request documents from Structural, Bright Horizons, and Sigmond relating to the termination of Bright Horizons' lease with HClub and to alterations of or conditions in HClub's unit. Parc Vendome claims that it needs these documents from the non-parties because HClub's document production was incomplete or was not organized in a manner that permitted efficient review. (Parc Vendome Pet. ¶¶ 25-27.)

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<sup>3</sup> Bright Horizons claims that the Federal Arbitration Act (9 USC § 7), rather than New York law, governs the instant dispute. The court does not reach the issue, as even accepting Parc Vendome's contention that New York law should apply, Parc Vendome fails to demonstrate its entitlement to the requested non-party discovery.

However, Parc Vendome fails to make any showing that it cannot obtain the documents it needs from HClub. (See ImClone Sys., Inc., 22 AD3d at 388.) It is undisputed that Parc Vendome has continued to receive documents from HClub during the pendency of these proceedings. (Parc Vendome Motion, Schrero Aff., ¶ 28.) Parc Vendome makes no showing as to the specific respects in which these productions fail to include all relevant documents. Significantly, Parc Vendome does not claim that it has sought a ruling from the Arbitrator on the sufficiency of the documents or on HClub's claims of privilege. As the Arbitrator has heard testimony on liability and has been supervising discovery over the extended period of the arbitration, any claimed need for additional documents should be addressed to her. Under these circumstances, Parc Vendome fails to show that the non-party production it seeks is a "necessity" as opposed to [a] 'convenience,'" and therefore that extraordinary circumstances justify court-ordered disclosure in aid of arbitration. (See Matter of Travelers Indem. Co., 73 AD3d at 792.)

It is accordingly hereby ORDERED and ADJUDGED that the petition in Proceeding No. 1 is dismissed, and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the motion of respondent Bright Horizons in Proceeding No. 1 is denied as moot; and it is further

ORDERED and ADJUDGED that the petition in Proceeding No. 2 is granted to the extent that the subpoena ad testificandum dated May 14, 2010, and the amended subpoena duces tecum dated May 21, 2010, served upon petitioner Carol Sigmond, are hereby quashed; and it is further

ORDERED that the motion of respondent Parc Vendome in Proceeding No. 2 is denied in its entirety.

This constitutes the decision, order, and judgment of the court.

Dated: New York, New York  
March 1, 2011

**FILED**  
APR 11 2011  
COUNTY CLERK'S OFFICE  
NEW YORK

*Marcy Friedman*  
MARCY FRIEDMAN, J.S.C.

*[Signature]*  
CLERK