

Alba Inv. LLC v GCM Serv. Corp.
2012 NY Slip Op 31096(U)
April 11, 2012
Sup Ct, Nassau County
Docket Number: 9166/11
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

ALBA INVESTMENTS, LLC,

Plaintiff,

- against -

TRIAL/IAS PART 31
NASSAU COUNTY

Index No.: 9166/11
Motion Seq. No.: 02
Motion Date: 03/19/12

GCM SERVICES CORP., ALEXANDROS DEMETRIADES,
GERALD CANINO A/K/A GERARD CANINO,
PEOPLE OF THE STATE OF NEW YORK,
"JOHN DOE" #1 through "JOHN DOE" #10, the last 10
names being fictitious and unknown to Plaintiff and intended
to be persons or entities, if any, being possible tenants or
occupants of said premises, and/or persons or entities having
or claiming to have a lien upon the property described in the
complaint subordinate to the lien of Plaintiff,

Defendants.

The following papers have been read on this motion:

	Papers Numbered
Order to Show Cause, Affirmation, Affidavit and Exhibit	1
Affirmation in Opposition and Exhibits	2

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Non-party movant Evelyn Gonzalez ("Gonzalez") moves, pursuant to CPLR §§ 3103 and 3122, for an order quashing plaintiff's Subpoena Duces Tecum dated December 28, 2011 and plaintiff's Amended Subpoena Duces Tecum dated January 30, 2012 and/or preventing the disclosure of documents from JPMorgan Chase Bank, N.A. of non-party witness Gonzalez.

Plaintiff opposes the motion.

On or about June 25, 2010, plaintiff loaned defendant GCM Services Corp. ("GCM") \$750,000.00 and defendant GCM, by its President, defendant Alexandros Demetriades ("Demetriades"), through his purported attorney-in-fact, James Kalpakis, and by its purported Vice President, defendant Gerald Canino a/k/a Gerard Canino ("Canino"), executed a Mortgage Note and gave plaintiff a Mortgage against real property known as 169 Middle Neck Road, Sands Point, New York to secure repayment thereof. Defendant Canino executed an absolute and unconditional guaranty whereby he agreed to personally guarantee repayment of the loan. As a result of defendants' failure to repay the subject loan pursuant to the terms of the Note and Guaranty, plaintiff commenced the instant action to foreclose the Mortgage with the filing of a Summons and Verified Complaint on or about June 21, 2011.

On December 29, 2011, plaintiff served a Subpoena Duces Tecum upon JPMorgan Chase Bank, N.A. *See* Plaintiff's Affirmation in Opposition Exhibit 1. Plaintiff subsequently amended said Subpoena Duces Tecum to reflect non-party movant Gonzalez's correct social security number. *See* Plaintiff's Affirmation in Opposition Exhibit 2. Said Subpoena Duces Tecum seeks documents related to the circumstances surrounding non-party movant Gonzalez's notarization of a Power of Attorney purportedly executed by defendant Demetriades, in favor of James Kalpakis on June 23, 2010, which was used to obtain the loan secured by the mortgage that plaintiff now seeks to foreclose.

Non-party movant Gonzalez argues that the items requested in the subject Subpoena Duces Tecum are "broad, overreaching, bear no relevance to the issue at hand (notary signature) and contain privileged information." Non-party movant Gonzalez contends that she has already

voluntarily appeared for a deposition pursuant to a non-judicial subpoena and has given testimony relating to her notary. Non-party movant Gonzalez states that she testified at the EBT answering in the affirmative that it was in fact her signature on the subject Power of Attorney. Non-party movant Gonzalez adds that her deposition has not yet been completed. Non-party movant Gonzalez further submits that she was not employed with JPMorgan Chase Bank, N.A. at the time of the subject notary signature which is “even more reason that the Court should issue an Order quashing this subpoena.” She also contends that “neither party has produced any evidence challenging her signature or the Power of Attorney.”

Non-party movant Gonzalez argues that items numbered one through four (1-4) of the subject Subpoena Duces Tecum are overreaching and bear no relevance to the instant matter as they ask for:

- “1. All documents relating to the beginning and ending dates of employment of Evelyn González f/k/a Evelyn Torres...by JPMorgan Chase Bank, N.A.
2. All documents relating to the beginning and ending dates of employment of Ms. Gonzalez while employed by the JPMorgan Chase branch located at 201 Post Avenue, Westbury, New York 11590.
3. All documents relating to the position(s) held by, or job title(s) of, Ms. Gonzalez while employed by JPMorgan Chase during the period January 1, 2009 through December 31, 2011 (the ‘Relevant Period’).
4. All employee handbooks, policies, procedures, and/or manuals relating to Ms. Gonzalez’s duties and responsibilities as an employee of JPMorgan Chase during the Relevant Period.”

With respect to item number five (5) in the subject subpoena duces tecum, which requests “[a]ll documents setting forth the standards, rules and regulations in effect during the Relevant Period governing the notarization of documents by employees of JPMorgan Chase within the state of New York,” non-party movant Gonzalez argues that “[i]tem 5 relates to the rules governing a Notary by Chase, assuming Chase even has such a rule or regulation, during her

employment. The parties are well aware that when Ms. Gonzalez notarized the Defendant Demetriades' signature she was NOT an employee of Chase. More important is that those rules are governed by New York State and not Chase. Thus, the entire Amended Subpoena is of no relevance and asks for many items that are also privileged and confidential."

In opposition to non-party movant Gonzalez's motion, plaintiff argues that the subject Subpoena Duces Tecum is limited in scope and seeks documents relevant to non-party movant Gonzalez's notarization of the Power of Attorney. Plaintiff contends that "[a]s Gonzalez and Demetriades have given conflicting testimony as to the validity of the Power, the documents demanded in the Subpoena may contain information that is material and necessary to the claims asserted in this action."

Plaintiff adds that "[w]ith the Subpoena pending, Gonzalez was deposed on February 3, 2010 pursuant to a subpoena. She testified that she signed and notarized the Power...and was unemployed when she did so....Gonzalez, however, did not recall the exact date when she stopped working for JPMorgan Chase and did not provide any documents relating to her last day of employment by JPMorgan Chase. At his deposition held the same day, Demetriades testified that he did not sign the Power and that he had never seen Gonzalez prior to his deposition.... Because Demetriades challenges the validity of the Power, which Plaintiff relied upon in giving the Loan secured by the Mortgage, the documents and information demanded in the Subpoena may cast light upon the circumstances surrounding Gonzalez's notarization of the Power. Accordingly, this Court should deny Gonzalez's motion in its entirety. Notwithstanding the foregoing, Plaintiff is not opposed to further limiting the scope of the Subpoena to request only that JPMorgan confirm the end date of Gonzalez's employment and, in the event that Gonzalez was still employed by JPMorgan on June 23, 2010, that JPMorgan Chase provide any handbooks,

manuals, or other internal policies governing notarizations by bank employees during the relevant period.”

The Court notes that non-party movant Gonzalez served a Reply Affirmation upon the Court and parties in the instant matter on April 2, 2012. However, the instant motion was marked submitted for decision by the Court on March 20, 2012. Accordingly, non-party movant Gonzalez’s Reply Affirmation was not timely and will not be considered by the Court in rendering its decision.

Based upon the facts and arguments set before it, the Court finds that the information requested in plaintiff’s Subpoena Duces Tecum is indeed over broad and overreaching. Non-party movant Gonzalez gave sworn testimony at her EBT that she was not employed by JPMorgan Chase Bank, N.A. at the time she notarized the subject Power of Attorney. Therefore, requesting all documents pertaining to the period of time that she was employed at JPMorgan Chase Bank, N.A. is clearly irrelevant to the instant action. However, according to the selected pages of non-party movant Gonzalez’s EBT testimony provided as Exhibit 7 to plaintiff’s Affirmation in Opposition, Ms. Gonzalez could not specifically recall the date when she stopped working for JPMorgan Chase Bank, N.A., stating, “I know that is was – I don’t know if it was January or February in 2010, I not clear in that, but I know that it was in 2010.” *See* Plaintiff’s Affirmation in Opposition Exhibit 7 p. 8 lines 12-14. Based upon said answer, there is some uncertainty as to when, in fact, plaintiff left her employment with JPMorgan Chase Bank, N.A..

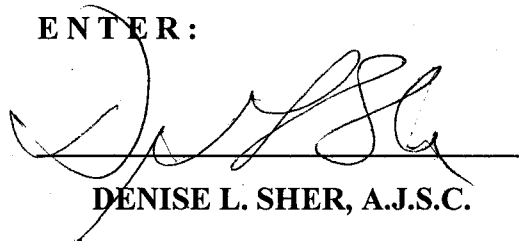
Accordingly, non-party movant Evelyn Gonzalez (“Gonzalez”) motion, pursuant to CPLR §§ 3103 and 3122, for an order quashing plaintiff’s Subpoena Duces Tecum dated December 28, 2011 and plaintiff’s Amended Subpoena Duces Tecum dated January 30, 2012 and/or preventing the disclosure of documents from JPMorgan Chase Bank, N.A. of non-party witness Gonzalez is

hereby **GRANTED**. However, the Court further orders that JPMorgan Chase Bank, N.A. confirm, by letter to plaintiff's counsel, the end date of non-party movant Gonzalez's employment with JPMorgan Chase Bank, N.A. and, in the event that non-party movant Gonzalez was still employed by JPMorgan Chase Bank, N.A. on June 23, 2010, that JPMorgan Chase Bank, N.A. provide any handbooks, manuals, or other internal policies governing notarizations by JPMorgan Chase Bank, N.A. employees during the relevant period."

It is further ordered that the parties shall appear for a Certification Conference on April 24, 2012, at 9:30 a.m., in IAS Part 31 of the Nassau County Supreme Court, located at 100 Supreme Court Drive, Mineola, New York.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
April 11, 2012

ENTERED

APR 17 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**