

Cohan v Movtady
2012 NY Slip Op 33256(U)
January 24, 2012
Sup Ct, New York County
Docket Number: 2845/11
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

PERRY COHAN and REZVAN LAHIJI,

Petitioners,

- against -

MORDECHAY MOVTADY,

Respondent.

TRIAL/IAS PART 31
NASSAU COUNTY

Index No.: 2845/11
Motion Seq. Nos.: 02, 03
Motion Dates: 12/19/11
12/19/11

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The following papers have been read on these motions:

	Papers Numbered
Notice of Motion (Seq. No. 02), Affirmation and Exhibits	<u>1</u>
Notice of Cross-Motion (Seq. No. 03), Affirmation and Exhibits	<u>2</u>
Reply Affirmation and Exhibit	<u>3</u>

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

Respondent moves, pursuant to CPLR § 5240, for an order quashing four Subpoenas Duces Tecum Ad Testificadum and the corresponding restraining notices served by petitioners on four non-parties and/or issuing a protective order prohibiting petitioners from enforcing the aforementioned subpoenas and corresponding restraining notices. Petitioners oppose the motion and cross-move (Seq. No. 03), pursuant to CPLR §§ 5224 and 5240, for an order directing non-parties Fariba Movtady, Benjamin Movtady, Gisoo Movtady and Sahar Movtady to comply with the Subpoena Duces served upon them. Respondent opposes the cross-motion.

In 2009, petitioners commenced a civil action against respondent in the United States

District Court, Eastern District of New York (the “Federal Action”). On November 2, 2010, the Clerk of the Court in the Federal Action entered a Judgment against respondent in the amount of \$5,374,240.55. Petitioners filed Abstracts of Judgment in the Nassau County Clerk’s Office on December 7, 2010.

Respondent, in his motion, argues that “Mr. Movtady’s deposition was conducted on October 4, 2011 and has not been concluded. In addition to a litany of document requests made during the deposition, Plaintiffs’ counsel improperly sought to questions Mr. Movtady about matters that were not only beyond the proper scope of that deposition - but palpably improper.” Respondent submits that “[t]he Second Department has uniformly held ‘[t]hat the purpose of CPLR 5240 is to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.’ Paz v. Long Island Railroad, 241 A.D.2d 486, 487, 661 N.Y.S.2d 20, 22 (2d Dept. 1997)....The law is also well-settled in the Second Department that ‘[a] motion to quash is, thus properly granted where the party issuing the subpoena has failed to show that the disclosure cannot be obtained from sources other than the nonparty.’ Kooper v. Kooper, 74 A.D.3d 6, 16-17, 901 N.Y.S.2d 312, 322 (2d Dept. 2010)(citations omitted). Thus, where, as here, the party issuing the subpoenas has failed to show that the disclosure cannot be obtained from sources other than the nonparty, the depositions of the nonparties should only be conducted after the deposition of the party (here, Mr. Movtady) is completed.”

Petitioners oppose respondent’s motion and cross-move (Seq. No. 03) for an order directing the subpoenaed non-parties to comply with said subpoenas. Petitioners contend that it is only because respondent has refused to provide documents and information requested of him that petitioners have been required to issues the subject subpoenas to obtain information concerning

respondent's assets. Petitioners submit that they have established that the information and documents they requested from respondent have not been disclosed. They argue that respondent, the judgment debtor, was deposed and refused to provide documents and information concerning joint assets. Petitioners add that the subject subpoenas represent their best chance at discovering information concerning assets owned by respondent, which can be executed upon in order to satisfy, in whole or in part, their judgment against him.

In opposition to petitioners' cross-motion, respondent argues that "[p]laintiffs further erroneously represent that Mr. Movtady only produced 'certain documents' in response to the Subpoena in advance of his deposition....To the contrary, Mr. Movtady's document production was voluminous....in what has now become clear was an attempt to sandbag Mr. Movtady in advance of his deposition, the first and only time that plaintiffs questioned the 'completeness' of the document production made by Mr. Movtady was on October 3, 2011 - the day before his deposition....This despite (*sic*) that Mr. Movtady's voluminous documents production was made weeks before on August 11, 2011."

Respondent further contends that "plaintiffs disingenuously assert that no response to the document requests made during Mr. Movtady's deposition has been received by plaintiffs' counsel....the legal response to those document requests was the filing of the subject motion to quash and/or for a protective order which was necessitated by plaintiffs' service of the four additional Subpoenas on Mr. Movtady's family in violation of fundamental tenets of New York law. Indeed, the unlawful service of the Subpoenas now at issue by plaintiffs' counsel was made by plaintiffs' own admission on October 7th - thus, two business days after Mr. Movtady's deposition. This was no mere 'coincidence' but a knowing and improper attempt to coerce Mr.

Movtady into producing certain documentation whose request was palpably improper under New York law.”

Respondent’s counsel adds that “[f]ollowing the adjudication of this motion...I invite plaintiffs’ counsel to ‘meet and confer’ in good faith to resolve as many of the discovery disputes as possible without the need for judicial intervention.”

The Court notes that both respondent’s motion (Seq. No. 02) and petitioners’ cross-motion (Seq. No. 03) are lacking pertinent information with respect to the issues currently before the Court. For example, nowhere in said motion papers is it detailed what exactly was requested in the numerous demands for documents and information made by petitioners’ counsel at respondent’s deposition. Both respondent and petitioners provide the Court with select pages of the transcript from respondent’s deposition which provide little insight into the alleged document demands and how subpoenaing respondent’s wife and children could result in obtaining evidence that could have be provided in said demanded documents and information. Furthermore, as noted by respondent, petitioners served the subject subpoenas three days after respondent’s deposition which had not even been completed at that point. The Court finds that petitioners were premature in serving said subpoenas as respondent was not even given a week to provide the discovery materials demanded at the deposition. By not permitting respondent to comply with the alleged demands for documents and information, petitioners cannot then argue that said evidence cannot be obtained from other sources.

As previously stated, the Court is unaware of exactly what types of documents and information were demanded from respondent and whether respondent refused to completely comply with the said requests (and upon what grounds) or whether respondent was just not given any time to comply with said requests before petitioners served the subject subpoenas three days

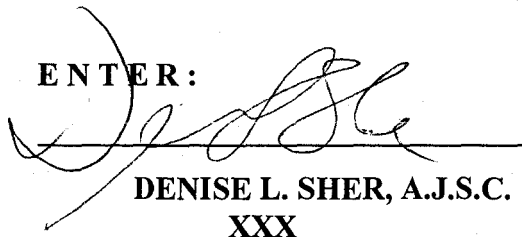
after the demands were made.

Based upon the lack of information provided in the instant motion papers, the Court finds that respondent, the party issuing the subject subpoenas, has failed to show that the disclosure cannot be obtained from sources other than the non-parties whom were subpoenaed.

Accordingly, respondent's motion (Seq. No. 02), pursuant to CPLR § 5240, for an order quashing four Subpoenas Duces Tecum Ad Testificadum and the corresponding restraining notices served by petitioners on four non-parties and/or issuing a protective order prohibiting petitioners from enforcing the aforementioned subpoenas and corresponding restraining notices is hereby **GRANTED**. Consequently, petitioners' cross-motion (Seq. No. 03), pursuant to CPLR §§ 5224 and 5240, for an order directing non-parties Fariba Movtady, Benjamin Movtady, Gisoo Movtady and Sahar Movtady to comply with the Subpoena Duces served upon them is hereby **DENIED**. However, if, after counsel for respondent and petitioners "'meet and confer' in good faith to resolve as many of the discovery disputes as possible without the need for judicial intervention," and the deposition of respondent is completed, the need to issue subpoenas to the subject non-parties is deemed necessary by petitioners, petitioners are permitted to renew their instant motion, providing the Court with all of the necessary information pertinent to said issue.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.
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Dated: Mineola, New York
January 24, 2012

ENTERED
JAN 26 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE