

**Hartley House, Inc. v Henzler**

2013 NY Slip Op 31171(U)

May 28, 2013

Sup Ct, New York County

Docket Number: 027858/92

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS  
*Justice*

PART 58

HARTLEY HOUSES, INC.,

Plaintiff, **FILED**

INDEX No. 027858/92

-against-

JUN 03 2013

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

ROBERT R. HENZLER,

COUNTY CLERK'S OFFICE  
NEW YORK

MOTION SEQ. No. 001

Defendant.

MOTION CAL No. \_\_\_\_\_

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

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits.... 1

Answering Affidavits- Exhibits 2, 3

Replying Affidavits 4

CROSS-MOTION:  YES  NO

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH ATTACHED ORDER.

Dated: 5 / 28 / 13

*Donna M. Mills*  
J.S.C.

**DONNA M. MILLS, J.S.C.**

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

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

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HARTLEY HOUSE, INC.,

Plaintiff,

- against -

ROBERT R. HENZLER,

Defendant.

INDEX NO.

027858/92

**FILED**

JUN 03 2013

COUNTY CLERK'S OFFICE  
NEW YORK

DECISION/ORDER

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Donna M. Mills, J.:

In this action, defendant Robert R. Henzler seeks an order pursuant to CPLR §2304, quashing the subpoena duces tecum served by plaintiff Hartley House, Inc., addressed to five non-parties. Plaintiff opposes the motion and cross moves to compel the production of documents and depositions of the non-parties and to compel the production of responses to interrogatories and production of documents from the defendant. Additionally, plaintiff seeks sanctions against the defendant.

Hartley House operates a number of social service programs, including educational and athletic programs for children and companionship and housekeeping programs for senior citizens. Hartley House owns and runs its organization from property located at 407-413 West 46<sup>th</sup> Street, New York, NY. Until recently, defendant owned the adjacent building located at 412-414 West 47<sup>th</sup> Street, New York, NY. The rear of defendant's property abuts the rear of Hartley House's property.

Plaintiff maintains that in 1986 it began renovations in the alleyway behind a windowless, sealed-door building located on the rear of its property. At that time, plaintiff claims to have become aware that defendant's kitchen extension encroached

onto its property. The parties attempted to settle the dispute for several years but were unsuccessful.

The aforementioned dispute led to the commencement of this action in 1992. Inexplicably, no activity has occurred in this case for more than twenty years. The case sat idle until defendant reached out to Hartley House with a settlement proposal in August 2012. The parties, through their counsel, engaged in settlement discussions, including counteroffers, between September 2012 and January 2013. In January 2013 plaintiff learned through sources that defendant had sold his property, and purportedly the disputed property to Thornton Equities, LLC. On January 7, 2013, counsel for plaintiff requested information about the sale. The parties were unable to agree what records if any would be turned over.

Unable to obtain information about the sale from defendant, plaintiff served non-party subpoenas on Jeffrey D. Buss, Esq., Thornton Equities, LLC, Bryan P. McCrossen, Esq., Christopher J. Plamese, Esq., and Sutton Land Title Agency, all of whom were parties to or participated in the December 18, 2012 property sale transaction according to publicly available records. Plaintiff also served a set of interrogatory and document requests on defendant. In response, defendant filed a notice of motion to quash the subpoenas, but did not seek a protective order as to the discovery served on him. The non-parties have ignored the subpoenas served on them.

CPLR 3101 (a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof.” The phrase “material and necessary” should be interpreted liberally, and the test is one of “usefulness and reason” (Kooper v Kooper, 74 AD3d 6, 10 [2010]). Unlimited

disclosure, however, is not required (see Spohn-Konen v Town of Brookhaven, 74 AD3d 1049 [2010]), and the rules provide that the court may issue a protective order “denying, limiting, conditioning or regulating the use of any disclosure device” to “prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts” (CPLR 3103 [a]).

It is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding (see Matter of Terry D., 81 NY2d 1042, 1044 [1993]). Subpoenas, like the ones at issue here, may be challenged by a motion to quash on the ground that the materials sought are irrelevant ( Virag v. Hynes, 54 N.Y.2d 437, 441–42 [1981] ). Upon the motion to quash, the issuer of the subpoena must come forward with a “factual basis” establishing the relevancy of the materials sought before the witness will be compelled to comply with the subpoena ( *id.* at 442). This is not a heavy burden. The issuer must simply show that the materials sought “have a reasonable relation to the subject matter under investigation and to the public purpose to be achieved” ( *id.*; see also A'Hearn v. Committee on the Unlawful Practice of Law of the New York County Lawyer's Assn., 30 A.D.2d 47, 54 [3d Dept 1968], *affd* 23 N.Y.2d 916, *cert denied* 395 U.S. 959 [1969] ).

Here, I find that plaintiff has met its burden in establishing that the interrogatories, document requests, and subpoenas at issue in this motion are relevant and necessary in light of defendant’s recent sale of the property. Plaintiff has the right to determine, *inter alia*, who really owns the property, what disclosure and terms were made and entered into concerning defendant’s encroachment and whether the property

was sold in violation of plaintiff's rights.

In support of its motion to quash, defendant raises several procedural issues that this court finds unavailing. Defendant has failed to show that the documents sought by plaintiff are utterly irrelevant to this action.

In light of this court's finding that the material sought by plaintiff is material and necessary, plaintiff's cross-motion to compel compliance with the outstanding discovery sought shall be granted.

Part 130 of the Rules of the Chief Administrator of the Courts (22 NYCRR) authorizes Supreme Court, as well as other courts, to impose costs and sanctions upon an attorney or party who has engaged in frivolous conduct. Insofar as is relevant hereto, 22 NYCRR § 130-1.1 ( c ) provides that "conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; [or] (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another." This Court does not find that defendants conduct in this action merits sanctions.

Accordingly it is

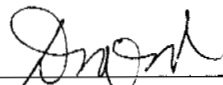
ORDERED that defendant's motion to quash the non-party subpoenas is denied, and the non parties are directed to comply with the subpoenas within twenty days of receiving a copy of this order with notice of entry; and it is further

ORDERED that plaintiff's cross motion to compel is granted to the extent that the defendant is directed to respond to plaintiff's document requests and interrogatories within twenty days of receiving a copy of this order with notice of entry; and it is further

ORDERED that plaintiff's cross motion for sanctions is denied.

Dated: 5 / 28 / 13

So Ordered

  
\_\_\_\_\_  
Donna M. Mills, J.S.C.

**DONNA M. MILLS, J.S.C.**

**FILED**

JUN 03 2013

COUNTY CLERK'S OFFICE  
NEW YORK