

Credit Suisse Sec. (USA) LLC v Feldstein
2014 NY Slip Op 30572(U)
March 3, 2014
Supreme Court, New York County
Docket Number: 100583/13
Judge: Doris Ling-Cohan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: DORIS LING-COHAN
J.S.C.
Justice

PART 36

Credit Suisse Securities (USA) LLC,

INDEX NO. 100583/13

-v-
Ronald Feldstein

MOTION DATE _____

MOTION SEQ. NO. 002

The following papers, numbered 1 to _____, were read on this motion to/for quash
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1, 2, 3
Answering Affidavits — Exhibits (+ MEMO) _____ | No(s). 4
Replying Affidavits (MEMO) _____ | No(s). 5

Upon the foregoing papers, it is ordered that this motion is by non-party Robyn Feldstein to quash two (2) subpoenas
is denied in accordance with the attached memo and a decision.

FILED

MAR 12 2014

NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 3/3/14

[Signature]
DORIS LING-COHAN
J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

----- X
CREDIT SUISSE SECURITIES (USA) LLC.,

Plaintiff,

Index No.

100583/2013

Motion Seq. No.: 002

-against-

RONALD FELDSTEIN,

Defendant.
----- X

LING-COHAN J.:

Non-party Robyn Feldstein ("movant's") motion to quash or modify two (2) subpoenas served by plaintiff is denied, as detailed below.

Background

Plaintiff Credit Suisse obtained a judgment in this action, in the amount of \$1,317,977.46, against defendant Ronald Feldstein (movant's father), after he defaulted on a settlement agreement in which he agreed to pay \$550,000, in monthly installments over a five (5) year period.¹ It is not disputed that defendant made only five payments towards the parties' settlement agreement prior to his default, which led to plaintiff's entry of a money judgment against him.

Prior to the entry of such judgment, three (3) payments were made to plaintiff, by movant (via her personal checks), on defendant's behalf. According to plaintiff, "it seems plausible (and...likely) that Ronald Feldstein has sheltered his assets from seizure by his many creditors by hiding them in the accounts of shell business entities, friends and relatives". Plaintiff's Memo of Law, at 4. Plaintiff maintains that movant's deposition and bank records are necessary, since she may be shielding defendant's assets.

In this motion, movant seeks to quash or modify the two (2) subpoenas served by plaintiff upon movant and the Bank of America, movant's bank, dated May 30, 2013 and July 24, 2013, respectively.

¹ The court thanks volunteer court attorney Joseph Fan for his assistance.

Discussion

At the outset, the court notes that movant failed to comply with the order of this court dated August 16, 2013 (issued upon the signing of the within order to show cause), which required that the parties cite to specific relevant case law, namely, case law, pertaining to the subpoena of bank records of a third party, rather than generic discovery cases.

Moreover, movant failed to supply an affirmation of good faith as required on this discovery related motion. *See* 22 NYCRR §202.7.

Further, movant failed to comply with the proper procedure set forth in CPLR §3122 for objecting to a subpoena. CPLR §3122 provides, in relevant part, as follows:

“(a) [w]ithin twenty days of service of a...subpoena duces tecum...the...person to whom the...subpoena...is directed, if that...person objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection. If objection is made to part of an item or category, the part shall be specified...

(b) [w]henever a person is required pursuant to such...subpoena duces tecum...to produce documents for inspection, and where such person withholds one or more documents that appear to be within the category of the documents required by the...subpoena duces tecum...to be produced, such person shall give notice to the party seeking the production and inspection of the documents that one or more such documents are being withheld. This notice shall indicate the legal ground for withholding each such document, and shall provide the following information as to each such document, unless the party withholding the document states that divulgence of such information would cause disclosure of allegedly privileged information: (1) the type of document; (2) the general subject matter of the document; (3) the date of the document; and (4) such other information as is sufficient to identify the document...

(d)...The reasonable production expenses of a non-party witness shall be defrayed by the party seeking discovery”.

In accordance with such procedure, the recipient of a subpoena is required to provide his or her objections to the discovery sought, in a response to the party seeking such discovery, rather than to the court. *See* Connors, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C3122:1. “If the parties are then still at odds about their rights and obligations, *it is the party who served the...subpoena* who must bring the dispute to the court”. *Id.* (emphasis supplied). Here, the provisions of CPLR §3122 were not complied with, in that it was plaintiff’s

burden to move to compel compliance with the subject subpoenas, rather than movant moving to quash.

Nevertheless, even if this court were to consider movant's request to quash the subject subpoenas, her request to quash would be denied for the following reasons.

CPLR §5223 permits a judgment creditor to serve a subpoena to compel production of "all matter relevant to the satisfaction of the judgment."

Subpoena on Bank of America

New York Courts have held that a bank customer does not have standing to object to the production of financial records that relate to that customer's bank accounts. *See i.e., People v. Crispino*, 298 AD2d 220, 221 (1st Dept 2002)(defendant, a bank customer, has no proprietary interest in a bank's records and therefore has no standing to challenge the bank's production of its own records); *People v. Doe*, 96 AD2d 1018, 1019 (1st Dept 1983)("[b]ank records, although they may reflect transactions between the bank and its customers, belong to the bank...[and an account holder,] cannot preclude their production"; *Norkin v. Hoey*, 181 AD2d 248, 251 (1st Dept 1992); *Shapiro v. Chase Manhattan Bank*, 53 AD2d 542 (1st Dept 1976).

Therefore, as the records that plaintiff is seeking are the property of the Bank of America, and not movant, movant has no standing to challenge the production of such records. The court notes that the Bank of America has not contested the production of the records which are the subject of the subpoena served upon it by plaintiff.

Subpoena on Robyn Feldstein

"A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order to determine whether the judgment debtor concealed any assets or transferred any assets as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment." *Tech. Multi Sources, S.A. v. Stack Global Holdings, Inc.*, 44 A.D.3d 931, 932 (2d Dept 2007)(internal citations omitted); *see also* CPLR §5223. In order to justify quashing a subpoena, a movant must show that the requested documents are "utterly irrelevant". *Id.* An

application to quash a subpoena should only be granted where futility of the process to uncover anything legitimate is inevitable or obvious. *Annheuser-Busch, Inc. v. Abrams*, 71 NY2d 327, 331-332 (1988).

Here, movant failed to establish that the information sought is "utterly irrelevant" to plaintiff's attempt to collect on its over one million dollar judgment against defendant. It is possible that Robyn Feldstein made payments to Credit Suisse out of, *inter alia*, filial loyalty or because she was hiding her father's assets and, thus, plaintiff's attempt at obtaining the requested information is legitimate, and not an "utterly irrelevant," subject of inquiry, under the within circumstances.

Additionally, while the Court has broad discretionary power under CPLR §5240, to control and regulate proceedings to enforce money judgments, to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice" (*Liberty Co. v. Rogene Indus.*, 272 AD2d 382 [2d Dept 2000]), here, given the fact that movant is defendant's daughter, and it is undisputed that she made prior payments, on her father's behalf, from her personal checking account, in partial satisfaction of her father's settlement agreements, it is reasonable that plaintiff/judgment creditor may discover additional facts that may assist in satisfying the outstanding balance of the judgment against defendant. Therefore, movant's motion to quash or modify this subpoena is denied.

Accordingly, it is

ORDERED that the motion to quash by non-party Robyn Feldstein is denied; and it is further

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy of this order upon non-parties Robyn Feldstein and Bank of America, as well as defendant, with notice of entry.

Dated: March 11, 2014

Hon. Doris Ling-Cohan, JSC

Check One: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if Appropriate: DO NOT POST