Freidman v Yakov
2015 NY Slip Op 30398(U)
February 10, 2015
Sup Ct, Queens County
Docket Number: 700021/2011
Judge: Rudolph E. Greco
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Hon. Rudolph E. Greco, Jr.
Justice

IAS Part 32

NAUM FREIDMAN,

Plaintiff,

- against -

YAKOV a/k/a JACOB FAYENSON,

Defendant.

x

YAKOV a/k/a JACOB FAYENSON,

Counterclaim Plaintiff,

- against -

NAUM FREIDMAN and EVGENY FREIDMAN,

Counterclaim Defendants.

x

Index Number: 700021/2011
Motion Date: December 4, 2014
Motion Seq. Nos. 4 & 5
Motion Cal. Nos. 67 & 68

FILED
FEB 17 2015
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 12 read on this motion by defendant/counterclaim plaintiff, ("Fayenson") to compel a third party to comply with a subpoena (*seq. 4*), and plaintiff/counter-claim defendants ("the Freidmans") to renew their motion to quash and for a protective order (*seq. 5*).

	Papers Numbered
Notice of Motion, Affidavit, Exhibits (*seq. 4*)	1-3
Opposition, Exhibits	4-5
Reply	6
Notice of Motion, Affirmation, Exhibits (*seq. 5*)	7-9
Opposition, Exhibits	10-11
Reply	12

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

The Court has before it two motions essentially addressing an outstanding subpoena dated June 13, 2013 and served by Fayenson upon JP Morgan Chase Bank. This subpoena was the subject of a prior motion to quash, the motion sought to be renewed herein that was decided

following a conference with counsel for all parties. The motion was "denied without prejudice to renew upon consolidation with" a related case pending in the Commercial Division of the Supreme Court, New York County, (*Order, Jan. 6, 2014, J. Greco.*)

Part of the basis for these present motions is the confusion regarding this previous decision. In making the motion to compel Fayenson argues that the Court expressly denied the Freidmans' request to quash, i.e. decided the motion on its merits, and *sua sponte* transferred and consolidated this action with those pending in the New York County Supreme Court[1]. The Freidmans counter that the motion was not decided on its merits as articulated by the leave to renew language, and that consolidation *sua sponte* was improper. The Court takes up the latter position and clarifies that denial of the underlying motion to quash was not on the merits of same. Furthermore, although ambiguous the Court did not intend to *sua sponte* order consolidation, but rather meant to leave open the possibility of doing so considering the other two proceedings involving these parties venued in New York County.[2] Nevertheless, this entails denying Fayenson's motion to compel as it presumes the subpoena was not quashed, but to the contrary this issue remains open.

Accordingly, the Court has no alternative than to revisit Freidman's motion to quash the subpoena.[3] Freidman argues to quash for the following reasons: (1) its issuance and service violated a so-order stipulation dated July 18, 2012; (2) it is premature and an improper attempt to gain information that is currently the subject of a pending motion in related litigation; and (3) it is overly broad, highly intrusive and an improper fishing expedition. As to the first, upon reviewing the so-order stipulation the Court finds no language expressly precluding service of the subpoena in question. The action itself, as well as applications and motion practice were stayed pending the completion of the discovery contemplated in the stipulation. Such discovery included responses to outstanding demands as well as depositions that were to be completed on or before October 31, 2012, a date indicated as final. The stipulation also provided that further demands for disclosure were permitted following the parties depositions. The mention of subpoenas was glaringly absent. To the extent they are included within "further demands for disclosure" their service presumably had to wait until the depositions were completed. It seems counsel for the

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[1]It seems the Judge presiding over such action denied the removal and consolidation motion made orally on the record hence, the matter's continuation in this Court.

[2]There are currently five actions pending between these parties; two of which involve a Long Island City property owned by a corporation in which Naum Freidman and Yakov Fayenson are each 50% shareholders that are venued in New York County, and three including this partition action involving a Queens County property that is owned by Friedman and Fayenson as tenants in common that are venued in Queens County.

[3]While procedurally unsupported the Court refuses to engage in the procedural acuteness that the parties' attorneys appear to be undertaking seemingly to frustrate the litigation of this and related actions. Gamesmanship supported by each of their arguments as to who violated a so-order stipulation dated July 18, 2012 first; the party who served the subpoena or the party who moved to quash it. This Court prefers to get to the merits of the matter.

parties took it upon themselves to extend this date[4] however, there is no implication they likewise extended the supposed stay date. Accordingly, and given the absence of express language precluding service of the subpoena the Court dismisses this argument.

Secondly, Fayenson argues that the subpoena is premature and improper based on a pending motion before the New York County Supreme Court. The motion concerns whether Freidman must disclose information about his personal bank accounts. Given what is before this Court it is impossible to access the validity of this contention. The Court is not aware of the circumstances surrounding the New York County action, and whether the request for personal account information is appropriate therein. In any event, the propriety of disclosure of such information in that action has no bearing on whether the same information can be discoverable in this action; they are two wholly separate actions presumably involving two different properties as well as concerning a company versus individuals, and thus, this argument is without merit.

Finally, it is Fayenson's assertion that the subpoena is overly broad, highly intrusive and an improper fishing expedition. Schedule A to the subpoena indicates a request for copies of all documents relative to the opening and maintenance of any account(s) or safety deposit box(es) held by Naum Freidman, individually or jointly with another. At first glance this may appear as asserted however, the request for these bank records stems directly from Freidman's testimony. Essentially, Freidman admitted accepting cash rent payments totaling approximately $60,000.00 from Taxopark, Inc., a company owned and operated by Naum's son, Evgeny (co-counterclaim defendant), and depositing same into a safe deposit box at Chase Manhattan Bank before spending it all on his own life. Taxopark, Inc. was a tenant in the building owned by Naum Freidman and Fayenson that is the subject of this partition action and that was rented by Grom Realty, Inc. a company owned equally by Naum and Fayenson. Accordingly, it would seem that Naum admitted to misappropriating funds from Grom Realty, Inc. and the subpoena is meant to delve into the extent of same. It is of no consequence that Naum acknowledges that Fayenson may be entitled to half of those funds, as this does not cover other possible instances of misappropriation that were not readily admitted to.[5]

In light of the above, the Court finds that movant on the quash motion has not met his initial burden of establishing "that the discovery sought is "utterly irrelevant" to the action or that "the futility of the process to uncover anything legitimate is inevitable or obvious" (*see* Kapon v Koch, 23 NY3d 32, 38-39 [2014]; *see also* Anheuser-Busch, Inc. v Abrams, 71 NY2d 327, 331-32 [1988] *citing* Matter of Edge Ho Holding Corp., 256 NY 374, 382 [1931] *and* La Belle Creole Intl. S.A. v Attorney-General of the State of New York, 10 NY2d 192, 196 [1961]

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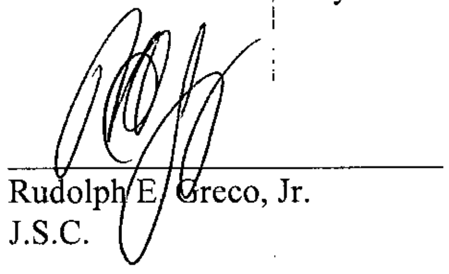
[4]Further complicating this issue is that the deposition of Naum Freidman was taken jointly in this action and one of the related matters in New York County and only completed in August 2014. It is unclear how these actions actually relate to each other aside from a commonality of parties.

[5] The Court notes that counsel for both parties often rely on and reference events in the seemingly related and prior matters. To the extent these five matters remain wholly separate this is improper, and what occurs or is found in one other action may not necessarily influence the Court in this action.

quoting Matter of Dairymen's League Coop. Assn. v Murtagh, 274 AD2d 591, 595 [1st Dept. 1948], Ferolito v Arizona Beverages USA, LLC, 119 AD3d 642 [2nd Dept. 2014]), and the motion must be denied.

The motion to compel (*seq. 4*) is denied and the motion to renew and quash (*seq.5*) is granted to the extent of renewal, and denied as to the request to quash the subpoena served upon JP Morgan Chase which is hereby directed to comply with same.

A copy of this order with notice of entry shall be served upon all parties hereto, and upon the subpoenaed party within twenty (20) days of the date of such entry hereof.



Dated: February 10, 2015

Rudolph E. Greco, Jr.
J.S.C.

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