

Skarla v NPSFT LLC
2015 NY Slip Op 30554(U)
March 30, 2015
Sup Ct, Queens County
Docket Number: 90/14
Judge: Allan B. Weiss
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE ALLAN B. WEISS

IA PART 2

HELEN SKARLA

Index

Number: 90/14

Plaintiff,

Motion Date: 10/10/14

-against-

Motion Seq. No. 6,7,8,9

NPSFT LLC, NPSFTI LLC, ELDRIDGE
 PROPERTIES, INC., VISIONS FEDERAL
 CREDIT UNION d/b/a PARAGON FEDERAL
 UNION, KOSTAS GOLFINOPOULOS, ESQ.,
 KOSTAS GOLFINOPOULOS, ESQ., PLLC,

Motion Date: 12/4/14

Motion Seq. No. 12

Defendants.

The following numbered papers read on this motion by defendant Eldridge Properties, Inc. (Eldridge) pursuant to CPLR 2304 and 3103 for a protective order and to quash the subpoenas duces tecum served by plaintiff's counsel on non-party witnesses Citibank, N.A. (Citibank) and Michael Aronow, Esq., to impose sanctions upon plaintiff's counsel, to require plaintiff, her counsel and anyone acting on behalf of plaintiff, to return any documents, received from Citibank or Michael Aronow in response to the subpoenas duces tecum, without first reviewing them, to bar plaintiff's counsel from serving any subpoena duces tecum without further order of the court, and for an award of costs; this motion by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC pursuant to CPLR 2304 to quash the subpoena served by plaintiff upon non-party witness Citibank, to suppress all documents produced by Citibank in response to the subpoena, to impose sanctions upon plaintiff's counsel, and to disqualify plaintiff's counsel from representing plaintiff in this action; this motion by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., LLC pursuant to CPLR 2304 to quash the subpoena served by plaintiff's counsel upon non-party witness JPMorgan Chase Bank, N.A. (Chase), to suppress all documents produced by Chase in response to the subpoena, to impose sanctions upon plaintiff's counsel, and to disqualify plaintiff's counsel from representing plaintiff in this action; this motion by defendants NPSFT LLC (NPSFT) and NPSFT1 (NPSFT1) pursuant to CPLR 2304 and 3103 for a protective order and to quash the subpoena duces tecum served by plaintiff's counsel upon non-party witness Chase, to direct plaintiff, her counsel and agents to return any documents received from Chase without reviewing them, to impose a

sanction upon plaintiff's counsel, to bar plaintiff's counsel from serving any subpoena duces tecum without further order of the court, and for an award of costs; and this motion by plaintiff pursuant to CPLR 5015 to vacate her default in responding to the motions by defendants Eldridge, Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 which seek, among other things, to quash the subpoenas duces tecum served by plaintiff's counsel, and upon vacatur, to accept her late filing of opposition papers to the motions.

	<u>Papers Numbered</u>
Order to Show Cause dated June 23, 2014- Affidavits- Exhibits	1 - 4
Notices of Motion - Affidavits - Exhibits	5 - 15
Order to Show Cause dated October 14, 2014- Affidavits-Exhibits	16 - 19
Answering Affidavits - Exhibits	20 - 28
Reply Affidavits	29 - 30

Upon the foregoing papers it is ordered that the motions with sequence numbers 6, 7, 8, 9 and 12 are determined together as follows:

Plaintiff's counsel served subpoenas duces tecum dated May 23, 2014 upon Citibank, calling for production of certain bank records related to accounts maintained by defendant Eldridge and upon Michael Aronow, Esq., calling for production of his records, regarding the negotiations and closing of the sale of the real property known as 25-27 23rd Street, Astoria, New York. He also served a subpoena duces tecum dated June 13, 2014 upon Chase, calling for production of certain bank records for Fotis Tsohis, Neofitos Stefanides, Eldridge, Kostas Golfinopoulos and Steven Louros, and certain cashier check records. Defendant Eldridge obtained the order to show cause dated June 23, 2014 for a protective order and to quash the subpoenas duces tecum served upon Citibank and Michael Aronow. The order to show cause included a stay of compliance with all served subpoenas duces tecum in the action. Before defendant Eldridge served the June 23, 2014 order to show cause upon Citibank, Citibank complied with the subpoena duces tecum dated May 23, 2014. It does not appear from the submissions that Michael Aronow or Chase complied with the subpoenas duces tecum served upon them.

The motions by defendants Eldridge, Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 were submitted without opposition. Plaintiff separately moves to vacate her default in opposing those motions and upon vacatur, to accept her late

filing of opposition papers. Defendants Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1, and nonparty Steven Louros, Esq. oppose plaintiff's motion.

The motion by plaintiff to vacate her default in opposing the motions by defendants Eldridge, Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 is granted, and the court shall consider her late opposition papers in relation to the motions.

Defendants Eldridge, Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 assert that plaintiff failed to serve a copy of the subpoenas duces tecum served upon Citibank, Michael Aronow and Chase concurrent with the service of the subpoenas duces tecum upon Citibank, Aronow and Chase. Defendant Eldridge also asserts that it is entitled to a protective order because the subpoenas duces tecum served upon Citibank and Michael seek "privileged and confidential" records. Defendant Eldridge further asserts that the subpoena duces tecum served upon Citibank violated the automatic stay pursuant to CPLR 3214 because it was served at a time when Eldridge's motion to dismiss the complaint was pending.

Defendants NPSFT and NPSFT1 contend that the subpoena duces tecum served upon Chase improperly calls for production of records containing confidential and personal information of Fotis Tsolis and Neofitos Stefanides, their principals. Defendants NPSFT and NPSFT1 further contend that the subpoena duces tecum served upon Chase is facially defective because it fails to give notice of the circumstances and reason such disclosure is required. Defendants Eldridge, Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC assert that George M. Gavalas, Esq. should be removed as counsel for plaintiff for his alleged abuse of the discovery process, or alternatively, be barred from serving any further subpoenas duces tecum without court leave, and defendants Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 also assert that (monetary) sanctions be imposed upon plaintiff's counsel for such abuse.

In opposition, plaintiff asserts that the branch of the motions by defendants Eldridge, Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC, to quash the subpoena duces tecum served upon Citibank, is academic insofar as Citibank complied with the subpoena duces tecum on or about June 23, 2014. She also asserts that by stipulation dated August 14, 2014, she agreed to withdraw the subpoenas duces tecum served upon Citibank and Chase, and defendant Eldridge agreed to withdraw its motion to quash the subpoena duces tecum served upon Citibank. Plaintiff further asserts that defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC have no standing to object to the subpoena duces tecum served upon Chase. Lastly, plaintiff contends that sanctions are not warranted here where she offered to withdraw the subpoenas duces tecum on Citibank and Chase in exchange for the withdrawal of the motions to quash.

With respect to that branch of the motion by defendant Eldridge to quash the subpoena duces tecum served upon Citibank, defendant Eldridge withdrew that branch of its motion to quash such subpoena (*see* stipulation between counsel for plaintiff and Eldridge dated August 14, 2014).

With respect to that branch of the motion by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC to quash the subpoena duces tecum served upon Citibank, such relief is unavailable insofar as Citibank has already complied with the subpoena (*see Matter of Brunswick Hosp. Center, Inc. v Hynes*, 52 NY2d 333 [1981]). Therefore, that branch of the motion by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq. to quash the subpoena duces tecum served upon Citibank is denied.

With respect to the subpoena duces tecum served upon Chase, plaintiff withdrew such subpoena (*see* stipulation dated August 14, 2011). Under such circumstances, the branch of the motions by defendants Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT1 to quash the subpoena duces tecum served upon Chase, the branch of the motion by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC to suppress all documents produced by Chase in response to the subpoena duces tecum, and that branch of the motion by defendants NPSFT and NPSFT1 for a protective order with respect to the sought-after Chase records are denied as moot.

With respect to the subpoena duces tecum served upon Michael Aronow, a party issuing a subpoena duces tecum must, at the same time, serve a copy of the subpoena upon all other parties (CPLR 3120[3]). Plaintiff makes no claim that the concurrent service of the copy of the subpoena duces tecum was served upon defendant Eldridge or any other party. Furthermore, the subpoena duces tecum is facially defective insofar as it fails to give notice of the circumstances and reason such disclosure is required (CPLR 3101[a][4]). That branch of the motion by defendant Eldridge to quash the subpoena duces tecum served upon Michael Aronow is granted.

With respect to that branch of the motion by defendant Eldridge for a protective order with respect to the bank records produced by Citibank in response to plaintiff's subpoena duces tecum, pursuant to CPLR 3214(b), the service of a notice of motion under CPLR 3211, 3212, or 3213 stays disclosure until determination of the motion unless the court orders otherwise. Defendant Eldridge has failed to demonstrate that its motion to dismiss the complaint insofar as asserted against it was served, and therefore has not shown the automatic stay pursuant to CPLR 3214(b) was in effect at the time of the service of the subpoena duces tecum upon Citibank.

Defendant Eldridge's mere statement that the records produced by Citibank are privileged is insufficient to warrant a protective order. Defendant Eldridge fails to identify the nature of the privilege and to whom it belongs. To the extent Eldridge claims the Citibank records are confidential, a bank customer has no possessory or proprietary interest in a bank's records of its accounts (*see United States v Miller*, 425 US 435, 440-441 [1976]; *Matter of Cappetta*, 42 NY2d 1066, 1067 [1977]; *Norkin v Hoey*, 181 AD2d 248 [1st Dept 1992]). Nevertheless, it cannot be said there is no expectation of privacy regarding bank records in a civil context, as opposed to a criminal or quasi-criminal context or in relation to governmental investigatory activities (*see Siskin v 221 Sullivan Street Realty Corp.*, 162 AD2d 356 [1st Dept 1990]). In addition, a disclosure request is palpably improper if it seeks information of a confidential and private nature which does not appear to be relevant to the issues in the case (*see Zimmer v Cathedral School of St. Mary & St. Paul*, 204 AD2d 538 [2d Dept 1994]). Plaintiff asserts that the Citibank records are relevant to the issue of whether defendant Eldridge was used as a "conduit" for the layering of the transactions by the other defendants to try to disguise their fraudulent scheme to obtain her properties. Plaintiff, however, has failed to show that the Citibank records are material and necessary to the prosecution of her claims (CPLR 3101).

Under such circumstances, that branch of the motion by defendant Eldridge for a protective order, precluding plaintiff's making use of any of the documents produced by Citibank in response to the May 23, 2014 subpoena duces tecum and that branch of the motions by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., LLC to suppress all information relating to the contents of records produced by Citibank in response to such subpoena, are granted. The branch of the motion by defendant Eldridge to require plaintiff, her counsel and anyone acting on her behalf to return any documents received from Citibank in response to the subpoena duces tecum to Citibank is denied as moot. That branch of the motion by defendant Eldridge to require plaintiff, her counsel and anyone acting on her behalf to return any documents received from Michael Aronow in response to the subpoena duces tecum to Aronow, without reading them, is denied as moot.

That branch of the motions by defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq., PLLC to disqualify plaintiff's counsel is denied. Defendants Kostas Golfinopoulos and Kostas Golfinopoulos, Esq. have failed to establish that such harsh sanction of disqualification is warranted (*cf. Matter of Beiny [Wynyard]*, 129 AD2d 126 [1st Dept 1987]).

That branch of the motions by defendants Eldridge, NPSFT and NPSFT1 to bar plaintiff's counsel from serving any subpoena duces tecum without leave of court is denied.

That branch of the motions by defendants Eldridge, Kostas Golfinopoulos, Kostas Golfinopoulos, Esq., PLLC, NPSFT and NPSFT 1 to impose an award of sanctions upon plaintiff's counsel is denied (22 NYCRR 130-1.1).

Dated: March 30, 2015

J.S.C.