

**Farro v Schochet**

2017 NY Slip Op 32178(U)

October 12, 2017

Supreme Court, Kings County

Docket Number: 518007/2016

Judge: Sylvia G. Ash

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Com 11 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 12<sup>th</sup> of October 2017.

P R E S E N T:

HON. SYLVIA G. ASH,  
Justice.

-----X  
MENACHEM FARRO, individually and derivatively as a shareholder in the right of LM INTERNATIONAL, INC., SELLER1ON1 INCORPORATED, WML COMMUNICATIONS, INC., and as a member in the right of LMEG WIRELESS, LLC,

Plaintiff,

Decision / Order

- against -

Index No. 518007/2016

ZALMAN SCHOCHET a/k/a SCHEUR ZALMAN SCHOCHET, LEVI WILHELM, LM INTERNATIONAL, INC., SELLER1ON1 INCORPORATED, WML COMMUNICATIONS, INC., LMEG WIRELESS, LLC, INTERNATIONAL LLC and LMZT LLC,

Defendants.

-----X

The following papers numbered 1 to 4 read herein:

Papers Numbered

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and  
Affidavits (Affirmations) Annexed \_\_\_\_\_  
Opposing Affidavits (Affirmations) \_\_\_\_\_  
Reply Affidavits (Affirmations) \_\_\_\_\_

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_

Defendants, Zalman Schochet et al., moves pursuant to CPLR §2304 to quash subpoenas dated June 20, 2017, served by Plaintiff, Menachem Farro, et al., upon Citibank N.A. ("Citibank") and J.P. Morgan Chase N.A. ("Chase"). Plaintiff opposes. For the reasons set below, Defendants motion is DENIED. However, Citibank and Chase's production is proscribed in accordance with this order.

### *Background*

Plaintiff commenced this action to prevent a proposed merger of LMEG Wireless LLC (“LMEG”) into LMEG Acquisition LLC (“LMEG Acquisition”). Plaintiff and Defendant Levi Wilhelm (“Wilhelm”) owned LMEG together. During Plaintiff and Wilhelm’s ownership, LMEG required financial assistance. Defendant Zalman Schochet (“Schochet”), a licensed attorney, offered LMEG the required financial assistance. Eventually, Plaintiff and Wilhelm agreed to provide Schochet one-third ownership interest in LMEG as a means, among other things, forgoing repayment of loans.

Subsequently, Schochet became a managing member of LMEG and along with Wilhelm sought to merge LMEG into LMEG Acquisition. The proposed merger, in part, sought to divest Plaintiff of his membership interest in LMEG. Plaintiff balked, arguing that Schochet obtained his interest in LMEG through fraudulent means. Plaintiff alleged that Schochet had assured him that even though the funds that he lent to LMEG came from his attorney IOLA accounts, the funds belonged to him personally. Plaintiff claimed that he later discovered that the funds from the IOLA accounts did not belong to Schochet, but rather belonged to unidentified third-parties.

On June 20, 2017, Plaintiff served subpoenas upon Citibank and Chase to obtain information from Schochet’s IOLA accounts. In the instant motion, Defendants moves to quash the subpoenas and to obtain a protective order in favor of Citibank and Chase. First, Defendants argue that the information sought by Plaintiff through the subpoenas is irrelevant, immaterial and unnecessary to the prosecution of Plaintiff’s case. Defendants claim that the parties do not dispute that the loan funds originated from Schochet’s IOLA accounts. And that because the parties do not dispute the origin of the loans, there is no probative value in examining Schochet’s IOLA account records.

Second, Defendants argue that within Schochet’s IOLA accounts resides the confidential financial information of Schochet’s clients and that such information is not discoverable. Next, Defendants argue that whether the loan funds belonged to third-parties is immaterial to the case because it is undisputed that Plaintiff and LMEG benefited from the funds. Lastly, Defendants argue that the subpoenas are facially deficient.

In opposition, Plaintiff argues that Defendants’ motion should be denied because Schochet lacks standing to challenge the subpoenas. Plaintiff insists that only Citibank and Chase possess standing to challenge the subpoenas. Further, Plaintiff argues that even if Schochet possessed the required standing to challenge the subpoenas, Defendants’ motion should be denied because the information sought by subpoenas is relevant to Plaintiff’s case.

Plaintiff maintains that the information sought by the subpoenas is relevant to proving the following: (i) that Schochet lied about his ownership of the funds in the IOLA accounts; (ii) that Schochet stole all or part of the funds from his IOLA account; and (iii) that Schochet improperly usurped a corporate opportunity or otherwise breached his fiduciary duty to LMEG by pocketing the funds generated by the interest rates on the loan funds.

Further, Plaintiff argues that the determinative issue in the instant motion is not whether the loan funds indisputably came from Schochet's IOLA account. Rather, Plaintiff reiterates that the documents sought by the subpoenas are relevant to establishing that Schochet lied about his ownership of the funds within the IOLA accounts. Lastly, Plaintiff maintains that he is willing to enter into a confidentiality agreement to protect Schochet's clients' confidential information.

In response, Defendants argue that Schochet has standing to challenge the subpoenas because Schochet has an interest in his IOLA accounts. Further, Defendants dispute Plaintiff's contention that Schochet failed to disclose that the loan funds did not belong to him. Defendants concede that from 2008 to 2016, the period in which Schochet loaned LMEG money, Schochet used a small group of lenders who lent him money for his own purposes. The lenders in turn received a return on their investment, while Schochet received a return on the loans to LMEG in the form of higher interest. Defendants insist that Schochet had the absolute right and authority to loan LMEG the funds from the IOLA accounts.

Further, Defendants argue that even if the loan funds did not belong to Schochet, the fact that LMEG benefited from the loans is a determinative issue in the case. Defendants insist that the IOLA accounts' records will not provide Plaintiff the information that Plaintiff claims to be seeking, namely to determine "whose funds were used by Schochet to make the loans, was their use authorized and what was the scope of the authorization?" Additionally, Defendants argue that the subpoenas are temporally overbroad by almost eight years. Defendants point out that Schochet obtained his interest in LMEG in December 7, 2011 and that the subpoenas seek documents going back to 2008.

Also, Defendants argue that the subpoenas will lead to harassment and abuse of Schochet's private clients. If the Court allows Plaintiff unfettered access to Schochet's IOLA account records, Defendants insist, Plaintiff will persist in a concerted effort to harass Schochet law firm's clients by issuing subpoenas upon them. Defendants claim that there are less drastic options for Farro to obtain the disclosure that he seeks, such as depositions and interrogatories.

Further, Defendants argue that if the Court does not quash the subpoenas, it should impose privacy protections on the documents that are produced. Specifically, Defendants request that the Court order Chase and Citibank to produce two copies of the sought-after documents. Defendants propose that one copy of the documents be sent to the Court and the other copy be sent to Defendants. Defendants would then redact the names and transactions of all individual and entities except for those who loaned Schochet money. Thereafter, Defendants would produce the records to Plaintiff in redacted form. Lastly, Defendants argue that if the Court chooses not to quash the subpoenas, it should issue a stay of the Plaintiff's right to enforce the subpoenas for thirty days, to allow Defendants to seek appropriate appellate relief.

### *Discussion*

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]). It is equally well settled that a motion to quash a subpoena duces tecum should be granted only where the materials sought are utterly

irrelevant to any proper inquiry (*see New Hampshire Ins. Co. v Varda, Inc.*, 261 AD2d 135 [1<sup>st</sup> Dept 1999]; *Matter of Reuters Ltd. v Dow Jones Telerate*, 231 AD2d 337, 341 [1<sup>st</sup> Dept 1997]). "Moreover, the burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed" (*Gertz v Richards*, 233 AD2d 366, 366 [2d Dept 1996]).

Here, Defendants fail to demonstrate that the requested documents are utterly irrelevant to any proper inquiry. In seeking production of the contested documents, Plaintiff aims to establish that Schochet did not own the loan funds, as he is alleged to have claimed. Defendants correctly highlight that the parties do not dispute that the loan funds originated from Schochet's IOLA accounts. However, the parties do dispute Schochet's supposed ownership of the funds. Plaintiff's entitlement to the requested documents run from the timeframe in which Schochet loaned the funds to LMEG, 2008 to 2016. However, Plaintiff is only entitled to information concerning the loans, not to information concerning Schochet's private clients.

Accordingly, it is hereby

ORDERED that Defendants' motion to quash and to obtain a protective order is DENIED; it is further

ORDERED that Citibank and Chase are to produce the requested documents to Defendants; it is further

ORDERED Defendants are to provide two sets of the subpoenaed documents to the Court, one with proposed redactions and one unredacted; it is further

ORDERED that Defendants are to submit reasons for the proposed redactions.

This constitutes the Decision and Order of the Court.

ENTER,



Sylvia G. Ash, J.S.C.

HON. SYLVIA G. ASH, JSC