

**Springfield Norse Realty, LLC v Spiegel & Utrera,  
P.C.**

2019 NY Slip Op 30561(U)

March 6, 2019

Supreme Court, New York County

Docket Number: 150434/2019

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 6

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SPRINGFIELD NORSE REALTY, LLC,

Index No.  
150434/2019

Petitioner,

- v -

**DECISION  
and ORDER**

SPIEGEL & UTRERA, P.C.,

Mot. Seq. #001

Respondent.

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HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Springfield Norse Realty, LLC (“Petitioner”) moves for an Order pursuant to CPLR §§ 403, 506, 2308(b) and 3124, and Judiciary Law §§ 753(A)(5), 756, and 773, holding Respondent Spiegel & Utrera, P.C. (“Respondent”) in contempt because of its failure to appear for a deposition. Petitioner also seeks damages as a result of Respondent’s alleged failure to appear and an Order compelling Respondent’s deposition. Respondent opposes.

*Relevant Background*

On November 21, 2016, Petitioner commenced a nonpayment proceeding for unpaid rent/use and occupancy against nonparty Big Deal International, Inc. (“Tenant”) and co-occupant/non-lessee FDQ in Civil Court, Queens County, Index No. LT-078631-16/QU, resulting in a possessory judgment against Tenant on default. Petitioner came to learn that Tenant was dissolved as a corporate entity during the term of its Lease on March 26, 2003. Petitioner also obtained a possessory judgment against FDQ and a money judgment for use and occupancy for the period of September 1, 2013 through November 30, 2016,

On June 29, 2017, Plaintiff commenced a Supreme Court action for additional rent and damages against the following parties: (a) FDQ, as non-lessee occupant and Tenant’s alter ego; (b) Amazing Furniture, as Tenant’s and FDQ’s alter ego; (c) Joseph Mann, as principal and alter ego of Tenant, FDQ, and Amazing Furniture, and as Tenant’s guarantor; and (d) Ezra Mann, as principal and alter ego of Tenant, FDQ and Amazing Furniture. Only Ezra Mann appeared in the action. Petitioner

obtained a default judgment on liability against Joseph Mann, FDQ and Amazing Furniture. During discovery, Petitioner learned that Ezra Mann and Joseph Mann were also principals or owners of not only Tenant, FDQ, and Amazing Furniture, but Additional Entities. Respondent formed Tenant, FDQ, Amazing Furniture and all of the Additional Entities and serves as the entities' registered agent.

### *Subpoena*

Petitioner served Respondent, a nonparty in the Queens County Action, a Subpoena Duces Tecum ("Subpoena") for discovery related to the Queens County Action. Respondent was served with the Subpoena on November 5, 2018.

The Subpoena required Respondent to appear at the offices of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., 377 Broadway, New York, NY 10013, on December 3, 2018 at 10:00 AM and to produce documents. The documents requested include copies of all documents relating to the formation of any of the Entities, communications with any of the individuals or any of the Entities; and maintenance or dissolution of any of the Entities.

Respondent failed to appear on October 25, 2018 for the deposition. On November 21, 2018, Respondent sent a letter to Petitioner stating that its compliance with the Subpoena is conditioned on the payment of \$1,454.00. On December 4, 2018, Petitioner's counsel objected to Respondent's demand and offered to pay an amount reflective of the actual out of pocket expenses that Respondent would incur in responding to the Subpoena.

Respondent argues that the parties attempted to resolve the current matter through a Stipulation Resolving the Proceeding ("Stipulation") which was signed on February 4, 2019. Respondent contends that the Stipulation provided the documents requested in the Subpoena and Petitioner paid \$116.50 to Respondent. Respondent stated that "[i]n order to maintain the privilege and client confidences, the Respondent had to redact information on the order detail forms, and other written communications or attorney notes, which include confidential communication made between the attorneys employed with the Respondent as named above in the course of their professional engagement with the representatives of each business entity that was incorporated." Respondents stated that "other documents that were not confidential and part of such communications between the attorneys employed with the Respondent in the course of their professional engagement with representatives of each business entity were provided to the Petitioner without any redactions".

On February 8, 2019, Petitioner's counsel requested "unredacted production and [stated] that only the redaction of the social security numbers and credit card numbers is acceptable." Petitioner argues that Respondent has not provided a sufficient explanation for why the requested information is privileged. Petitioner contends that Respondent has not demonstrated how legal advice was involved in obtaining the names of the individuals ordering corporate kits and the corporations' addresses.

Respondent has submitted unredacted copies of the order detail sheets and other written communications in camera for the Court's review.

### *Legal Standards*

CPLR § 4503(a), states in relevant part:

Confidential communication privileged. Unless the client waives the privilege, an attorney or his or her employee, or any person who obtains without the knowledge of the client evidence of a confidential communication made between the attorney or his or her employee and the client in the course of professional employment, shall not disclose, or be allowed to disclose such communication, nor shall the client be compelled to disclose such communication, in any action, disciplinary trial or hearing, or administrative action, proceeding or hearing conducted by or on behalf of any state, municipal or local governmental agency or by the legislature or any committee or body thereof.

The essence of the attorney-client privilege is that "evidence of a confidential communication made between the attorney or his employee and the client in the course of professional employment shall not be disclosed without the client's permission." *Matter of Bekins Record Storage Co., Inc.*, 62 N.Y.2d 324, 329 [N.Y. 1984]. Only the client may waive the privilege. CPLR § 4503(a). The attorney-client privilege encourages "full and frank communication between attorneys and their clients and thereby promote[s] broader public interests in the observance of law and administration of justice." *Tekni-Plex, Inc. v. Meyner & Landis*, 89 N.Y.2d 123, 138-39 [N.Y. 1996] (citations omitted).

For a document to be privileged as an attorney-client communication pursuant to CPLR § 4503(a), the document must be primarily or predominantly a communication of a legal character, for the purpose of obtaining or rendering legal advice or services, and intended to be confidential. *Spectrum Sys. Intern. Corp. v. Chemical Bank*, 78 N.Y.2d 371, 379 [N.Y. 1991].

The burden of proving each element of the privilege rests upon the party asserting it. *People v. Osorio*, 75 N.Y.2d 80, 84 [1989]. The party asserting the privilege must establish: (1) that an attorney-client relationship existed, that is, that he contacted the attorney in his capacity as an attorney to obtain legal advice or services; and (2) that the information sought to be protected was a confidential communication made to the attorney for the purpose of obtaining legal advice or services. (*Deutsch*, 164 Misc. 2d at 184). Even where the technical requirements of the privilege are satisfied, it may, nonetheless, yield in a proper case, where strong public policy requires disclosure. *People v. Mitchell*, 58 N.Y.2d 368, 373 [N.Y. 1983] (citations omitted).

Whether a particular document is or is not protected by a privilege is necessarily a fact-specific determination, usually requiring an in-camera review. *Spectrum Sys.*, 78 N.Y.2d at 378.

The attorney-client privilege...may not be used to protect communications that are business oriented or are of a personal nature.” *Aetna Cas. and Sur. Co. v. Certain Underwriters at Lloyd’s London*, 176 Misc.2d 605, 612 [N.Y. Sup. Ct. 1998]. To qualify for the attorney-client privilege, “the advice given must be predominantly legal, as opposed to business, in nature.” *Stenovich v. Wachtell, Lipton, Rosen & Katz*, 195 Misc.2d 99, 107 [N.Y. Sup. Ct 2003]. “With respect to the attorney work product exception, the case law makes clear that such exception is very narrowly construed including only materials prepared by an attorney, acting as an attorney, which contain his analysis and trial strategy.” *Salzer ex. rel. Salzer v. Farm Family Life Ins. Co.*, 280 A.D.2d 844, 846 [3d Dep’t 2001].

#### *Decision*

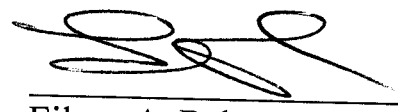
After oral argument on February 19, 2018, the Court reviewed the unredacted documents submitted by Respondent for in-camera inspection. After inspection, the Court concludes that the documents are not protected by attorney-client privilege. Therefore, Respondent is required to provide the documents in unredacted form, except for social security numbers and credit card numbers can be redacted.

Wherefore, it is hereby

ORDERED that Respondent Spiegel & Utrera, P.C. is directed to disclose documents submitted to the Court for *in camera* review, with only the social security numbers and credit card numbers redacted.

This constitutes the decision and order of the Court. All other relief requested is denied.

Dated: MARCH 6, 2019



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Eileen A. Rakower, J.S.C.