

Major, Lindsey & Affrica, LLC v Mahn

2019 NY Slip Op 31769(U)

June 14, 2019

Supreme Court, New York County

Docket Number: 653048/2014

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

MAJOR, LINDSEY & AFFRICA, LLC,
Plaintiff

INDEX NO. 653048 /2014

- Against -

MOTION DATE 05-24-2019

SHARON MAHN,

MOTION SEQ. NO. 002

Defendant.

MOTION CAL. NO.

The following papers, numbered 1 to 4 were read on this motion to, quash subpoena, for a protective order and sanctions.

	<u>PAPERS NUMBERED</u>
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	<u>1-2</u>
Answering Affidavits — Exhibits _____	<u>3-4</u>
Replying Affidavits _____	

Cross-Motion: Yes no

Upon a reading of the foregoing cited papers, it is ordered that this motion by judgment debtor Sharon Mahn (hereinafter "MAHN") to Quash the subpoena dated February 20, 2019, issued by Judgment Creditor Major, Lindsey & Africa, LLC (hereinafter "MLA") to obtain information in aid of satisfying a judgment against MAHN is denied as to items 1, 2, 3, 4, 5, 6, 9, 10, 14, 16, 18, 32 and 33. The motion is granted as to subpoena requests 11, 19, 20, 34 and 35.

MAHN, a former employee of MLA was fired by MLA in 2009 for allegedly disclosing MLA's proprietary information to a competitor firm in violation of a 2005 employment agreement between MLA and MAHN. In accordance with the employment agreement, any claims or controversies arising from the agreement between the parties had to be arbitrated. The parties arbitrated the controversy that arose from MAHN's firing. The arbitrator ruled in favor of MLA on July 9, 2014. MAHN brought a Petition to vacate the arbitrator's award and MLA cross-Petitioned to confirm. On May 26, 2015 this court denied and dismissed MAHN's Petition and granted MLA's cross-Petition. MLA was granted a judgment against MAHN, inclusive of costs and attorney's fees, in the sum of \$2,863,760.67 dollars. This court's judgment was appealed to the Appellate Division First Department who on March 20, 2018 affirmed.

Thereafter MLA served MAHN with an information subpoena, dated February 20, 2019, to aid it in satisfying the judgment. MAHN now moves this

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

court for an order Quashing MLA's subpoena pursuant to CPLR §2304, claiming it was not properly served, is overbroad and burdensome.

After submission of the motion, at the court's insistence, the parties met and conferred with a view towards resolving any objections to any subpoena requests. On June 7, 2019 the parties stipulated that MAHN will waive her objections and produce responsive documents to requests numbers 7,8, 12, 13, 15, 17, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 37 and 38. Therefore there is no need for this court to address those subpoena requests. The stipulation asks that the court make a ruling with respect to request numbers 1, 2, 3, 4, 5, 6, 9, 10, 11, 14, 16, 18, 19, 20, 32, 33, 34 and 35.

Request number 1 asks MAHN to produce all federal, state and local income tax returns, filed by [her], whether individually or jointly, for the years 2009 through the present;

Request number 2 asks MAHN to produce all federal, state and local income tax returns, filed by Mahn Consulting for the years 2009 through the present;

Request number 3 asks MAHN to produce all financial statements for Mahn Consulting, LLC, including but not limited to income, profit and loss, general ledger, cash flow, balance sheet, changes in equity, earnings, depreciation, asset and debt, and any note schedules or work papers for any financial statement, for the years 2009 through the present;

Request number 4 asks MAHN to produce all W-2, IT-2104, and 1099 received by [her] for the years 2009 through the present;

Request number 5 asks MAHN to produce documents showing any and all income received by her from any source since 2009;

Request number 6 asks MAHN to produce all documents showing any and all income received by Mahn Consulting, LLC from any source since 2009;

Request number 9 asks MAHN to produce all documents for the period from 2009 to the present pertaining to all bank, credit union, trust, investment, and other financial accounts of any type for which [she was] the sole or joint owner, had deposit or withdraw rights, or had any beneficial interest;

Request number 10 asks MAHN to produce all documents for the period 2009 to the present pertaining to all bank, credit union, trust, investment, and other financial accounts of any type for which Mahn Consulting, LLC was the sole or joint owner, had deposit or withdraw rights or had any beneficial interest;

Request number 11 asks MAHN to produce all documents for the period from 2009 to the present pertaining to all credit cards either in [her] name, used by [her], or paid by [her] at any time during such period;

Request number 14 asks MAHN to produce all agreements, communications or other documents between [her] and any individual or entity relating in any way to compensation paid or to be paid to [her] by such individual or entity for any period beginning on or after October 1, 2005. This request includes, but is not limited to, documents showing compensation from employment, consulting and speaking engagements, and any other income generating activity;

Request number 16 asks MAHN to produce all documents relating to any gifts or transfers for less than full consideration exceeding \$1000 in fair market value received by [her] from 2009 to the present;

Request number 18 asks MAHN to produce documents sufficient to show all tangible or intangible personal property owned, in whole or in part, by [her] exceeding \$1000 in fair market value and any encumbrances on the same;

Request number 19 asks MAHN to produce documents sufficient to show all expenditures made by [her] from 2009 to the present;

Request number 20 asks MAHN to produce all documents sufficient to show all expenditures made by Mahn Consulting, LLC from 2009 to the present;

Request number 32 asks MAHN to produce documents pertaining to all pensions, profit-sharing plans, IRAs, Roth IRAs, or other similar retirement accounts in which [she] has an interest;

Request number 33 asks MAHN to produce all documents pertaining to any loans owed by [her] payable to [her] or in which she has a beneficial interest;

Request number 34 asks MAHN to produce any and all documents pertaining to [her] financial status and condition from 2009 to the present;

Request number 35 asks MAHN to produce any and all documents pertaining to [her] ability or inability to pay all or any portion of the judgment obtained by MLA against [her].

MAHN objected to requests 1, 2 and 4 claiming tax returns, W-2, IT-2104 and 1099s are privileged and protected from disclosure. She objected to requests 3,5, 6, 9, 10, 14, 16, 32 and 33 on the grounds of relevancy but agreed to produce documents responsive to these requests from 2017 to the present. She objected to requests 11,18, 19,20,34 and 35 claiming these requests are overly broad, vague and burdensome.

“An application to quash a subpoena should be granted in a proceeding to enforce a money judgment only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant. 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 so as to defraud the judgment creditor or improperly prevent the collection of the underlying judgment” (see *Technology Multisources, S.A., v. Stack Global Holdings, Inc.*, 44 A.D.3d 931, 845 N.Y.S.2d 357 [2nd. Dept. 2007]; *George v. Victoria Albi, Inc.*, 148 A.D.3d 1119, 50 N.Y.S.3d 466 [2nd. Dept. 2017]).

CPLR§5223 compels disclosure of all matter relevant to the satisfaction of the judgment and sets forth a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property(*ICD Group, Inc., v. Israel Foreign Trade Co., (USA)*, 224 A.D.2d 293, 638 N.Y.S.2d 430 [1st. Dept. 1996]; *Gryphon Domestic VI, LLC, v. GBR International Services, Inc.*, 29 A.D.3d 392, 815 N.Y.S.2d 65 [1st. Dept. 2006]).

A judgment creditor is entitled to broad discovery to assist in satisfying the judgment, particularly since the evidence is largely within the possession of the judgment debtor (*Clement v. Petrocelli Electric Co., Inc.*, 121 A.D.3d 596, 995 N.Y.S.2d 552 [1st.Dept. 2014]). Although disclosure of tax returns is generally disfavored due to their confidential and private nature (*Pinnacle Sports Media & Entertainment, LLC, v. Greene*, 154 A.D.3d 601, 63 N.Y.S.3d 343 [1st. Dept. 2017]), “a judgment debtor may be required by court order to produce copies of such returns in the debtor’s possession because no public policy is violated by requiring their disclosure by a judgment debtor. Public policy seems to be the other way, to put no obstacle in the path of one seeking to secure the enforcement of a judgment of a court of competent jurisdiction, and income tax returns have a status no different from other items of evidence” (*Leonard v. Wargon*, 55 N.Y.S.2d 626 [1945]).

Tax returns, W-2 wage statements, IT-2104 and 1099 are relevant and discoverable to aid in satisfaction of a judgment (*Carver Federal Savings Bank v. Shaker Gardens, Inc.*, 167 A.D.3d 1337, 90 N.Y.S.3d 653 [3rd. Dept. 2018]), even from a third party (*Aaron v. McIntyre*, 15 A.D.3d 475, 790 N.Y.S.2d 187 [2nd. 2005] ordering disclosure of copies of joint individual tax returns, W-2 and 1099 and wife’s business tax returns where judgment debtor may have been using his wife and her business to conceal income and assets).

It is alleged by MLA that MAHN is attempting to conceal and transferred assets to Mahn Consulting, LLC, to prevent satisfaction of the judgment. The judgment creditor is entitled to discovery of documents, tax returns, W-2s, IT-2104s and 1099s for the period commencing at least one year prior to the transaction which gave rise to the judgment (*Gorea v. Pinsky*, 50 A.D.2d 713, 374 N.Y.S.2d 879 [4th Dept. 1975]) from the individual and her business, to enquire whether MAHN concealed any assets or transferred any assets to her business, Mahn Consulting, LLC, so as to defraud the judgment creditor (MLA), or to improperly prevent the satisfaction of the underlying judgment (*Young v. Torelli*, 135 A.D.2d 813, 522 N.Y.S.2d 918 [2nd.Dept. 1987]).

The subpoena request items 1, 2, 4, 3, 5, 6, 9, 10, 14, 16, 18, 32 and 33 are relevant, specific and not privileged. It is information the judgment creditor is entitled to receive from MAHN and/or Mahn Consulting, LLC, to determine whether any assets were concealed or transferred to defraud MLA or improperly prevent the satisfaction of the underlying judgment. MLA is entitled to responses to these requests from 2009 to the present. The Subpoena request items 11, 19, 20, 34 and 35 are overly broad, vague and/or burdensome. As to these items the subpoena is quashed.

Accordingly, the information sought by the issuance of the subpoena for requests 1, 2, 3, 4, 5, 6, 9, 10, 14, 16, 18, 32 and 33 is material and relevant to aid in the satisfaction of the judgment, and is information to which judgment creditor would be entitled (see Robinson v. Robinson, 308 A.D.2d 332, 764 N.Y.S.2d 93 [1st. Dept. 2003]).

Accordingly, it is ORDERED that the motion to Quash the subpoena dated February 20, 2019 is denied with respect to subpoena requests 1, 2, 3, 4, 5, 6, 9, 10, 14, 16, 18, 32 and 33, and it is further

ORDERED that judgment debtor Sharon Mahn and Mahn Consulting, LLC, are to provide responses to subpoena requests 1, 2, 3, 4, 5, 6, 9, 10, 14, 18, 32 and 33 for the period 2009 to the present within 60 days from the date of service on Mahn's attorneys of a copy of this order with notice of entry, and it is further


ORDERED that Sharon Mahn and Mahn Consulting, LLC are to provide true copies of the requested tax returns, W-2 statements, IT-2104 statements and 1099 statements or, if they do not have such statements, an appropriate authorization to the Internal Revenue Service to transmit to Major Lindsey & Africa (MLA) and their attorneys a certified copy of each such return for the period 2009 to the present, and it is further

ORDERED that the motion to Quash subpoena requests 11, 19, 20, 34 and 35 is granted, and it is further

ORDERED that subpoena requests 11, 19, 20, 34 and 35 are quashed as overly broad, vague and/or burdensome.

ENTER:

Dated: June 14, 2019


Manuel J. Mendez
J.S.C. **MANUEL J. MENDEZ**
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE