

**Gillies Coffee Co. v 54 Second Ave Bean LLC**

2019 NY Slip Op 32551(U)

August 5, 2019

Supreme Court, Kings County

Docket Number: 505577/17

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8  
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GILLIES COFFEE COMPANY,  
Plaintiff, Decision and order  
- against - Index No. 505577/17

54 SECOND AVE BEAN LLC, THE BEAN COFFEE  
& TEA LTD, THE BROADWAY BEAN LLC, 101  
BEDFORD AVE BEAN, LLC. 147 FIRST AVE  
BEAN LLC, SAMUEL COHEN AND ISAAC ESCAVA,  
Defendants, August 5, 2019

MS # 2

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PRESENT: HON. LEON RUCHELSMAN

The plaintiff has moved seeking to quash subpoenas served upon third parties pursuant to CPLR §2304 and for a protective order. The defendants oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order this lawsuit concerns the defendants alleged refusal to pay bills submitted by the plaintiff for various coffee products and equipment. The court granted the plaintiff's motion seeking summary judgement regarding invoices related to goods but held there were questions of fact whether the equipment owned by the plaintiff became the property of the defendants pursuant to terms of the contract. Specifically, the court held there were questions of fact whether the defendants purchased coffee products from other vendors in violation of the contracts.

The parties proceeded with litigation and the defendants have served third party subpoenas upon four vendors, namely

Fairway Group Holdings LLC, Connecticut Muffin, The River Cafe and Liemco Ltd., entities that are not parties to this action but are customers or former customers of the plaintiff. The defendants have asserted that a fourth subpoena served upon a fourth entity, Whole Foods Market Group Inc., has been withdrawn. The plaintiff has now moved seeking to quash those subpoenas and for a protective order and sanctions. The motion is opposed.

#### Conclusions of Law

In Kapon v. Koch, 23 NY3d 32, 988 NYS2d 559 [2d Dept., 2014] the court held that third party subpoenas may be served whenever the information sought is 'material and necessary' "of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (id). The court noted that "so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty" (id).

First, the plaintiff maintains standing to quash third party subpoenas and for a protective order (see, Bianchi v. Galster Management Corp., 131 AD3d 558, 15 NYS3d 189 [2d Dept., 2015], CPLR §3103(a)). The subpoenas sought fall into two categories, the first are those sought from Liemco which serviced equipment owned by some of the defendants. The remaining

entities are customers or former customers of the plaintiff. The defendants assert the subpoenas sought from Liemco are necessary "to determine whether Plaintiff breached any oral or written agreements with the Bean Defendants, by failing to continue Plaintiff's service contracts with Liemco Ltd. for service to the Bean Defendants' espresso machines located at the Defendants' retail coffee shops" (see, Memorandum of Law in Opposition, page 9). Thus, defendants assert that plaintiff hired Liemco to service the equipment of the defendants and that such service "is relevant to the claims and defenses in this Action and in particular the breakdown of the parties' business relationship in 2016" (see, Memorandum of Law in Opposition, page 5). However, there is no service contract between the parties regarding any of the espresso equipment. To the extent the plaintiff maintained a service contract as an accommodation, they were not contractually obligated to do so. Further, even if a contract did exist, and whether the plaintiff breached such contract is an issue in this case, there has been no evidence presented how the plaintiff's relationship with Liemco will inform the parties about any breach with the defendants. The plaintiff's ability to terminate any relationship with Liemco has no bearing upon whether that termination necessarily constituted a breach with the defendants. Indeed, the relationship between plaintiff and Liemco is irrelevant to determining whether the plaintiff

breached any contract with the defendants. In any event, as noted, no such service contract exists between the parties and thus any contract with Liemco is utterly irrelevant. Consequently, the motion seeking to quash all Liemco subpoenas and for a protective order is granted.

Concerning the subpoenas served upon customers of the plaintiff the defendants argue such subpoenas are relevant to discern "the Customer's negotiation and knowledge of the terms of the equipment loan agreement(s) with Plaintiff, if any...to establish a pattern of procedural unconscionability" (see, Memorandum of Law in Opposition, pages 9,10). In Phoenix Life Insurance Company v. Irwin Levinson Insurance Trust II, 70 AD3d 476, 895 NYS2d 366 [1<sup>st</sup> Dept., 2010]) the court held that where information is sought that does not directly bear upon the contract in the case but rather serves to establish a pattern of conduct in other cases then such subpoenas were properly quashed. Specifically, the court noted that other insurance policies, the subject matter of that case, had no bearing concerning any required intent in the case at hand. Likewise, any procedures undertaken with other customers has no bearing upon whether any improper procedures were undertaken in this case. Therefore, the motion seeking to quash all the customer subpoenas served is granted. Likewise, the motion seeking protective orders is granted.


[\* 5]

The motion seeking sanctions is denied.

So ordered.

ENTER:

DATED: August 5, 2019  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC



KINGS COUNTY CLERK  
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