

Matter of Cambridge Packing Co., Inc. v Lajaunie
2019 NY Slip Op 33060(U)
October 8, 2019
Supreme Court, New York County
Docket Number: 158128/2016
Judge: John J. Kelley
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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: HON. JOHN J. KELLEY****PART****IAS MOTION 56EFM***Justice*

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INDEX NO.158128/2016

In the Matter of

MOTION DATE05/05/2019

CAMBRIDGE PACKING COMPANY, INC.

MOTION SEQ. NO.007

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

PHILIPPE LAJAUNIE,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102

were read on this motion to/for

SUBPOENA DUCES TECUM

In this contempt proceeding, the respondent/judgment debtor moves for the issuance of subpoenas duces tecum, directed to several banks and investment houses, so that he can obtain documents responsive to an information subpoena that the petitioner served upon him. The petitioner opposes the motion, arguing that this motion is simply another delaying tactic preventing it from securing information necessary to collect on the money judgment that it obtained against the respondent. The motion is granted to the extent of that the court will issue so-ordered subpoenas to HSBC Bank, a New York corporation, to Wells Fargo Bank, N.A., in Oregon, and to Aronson, LLC, in Maryland, and the motion is otherwise denied.

On May 16, 2016, the petitioner secured a judgment by confession against the respondent in the sum of \$117,788.99. It thereafter served an information subpoena upon him, with which he did not comply. The petitioner thereafter commenced this proceeding (SEQ 001) seeking to hold the respondent in contempt. By stipulation dated May 10, 2017, the parties agreed that the petitioner would specify which documents it sought, and the respondent would appear for a deposition. By interim order also dated May 10, 2017, the court (Bannon, J.)

adjourned the matter to permit the parties to abide by the stipulation. The matter was thereafter transferred to this part. The respondent then moved to compel the petitioner "to show how it switched the action" from one index number and caption to another index number and caption (SEQ 002). By order dated April 25, 2018, this court denied the contempt petition (SEQ 001) and marked the proceeding disposed, although it did not enter judgment formally dismissing the proceeding, thus permitting any party to this proceeding to move to enforce the stipulation of settlement, rather than be compelled to commence a plenary action (*see Teitelbaum Holdings, Ltd. v Gold*, 48 NY2d 51 [1979]). By order also dated April 25, 2018, the court resolved SEQ 002 in accordance with a so-ordered stipulation dated April 17, 2018. In that stipulation, the respondent agreed to produce numerous documents and to appear for a post-judgment deposition on July 19, 2018. In a third order also dated April 25, 2018, the court denied the respondent's motion (SEQ 003) to dismiss the petition, as that request had been rendered academic by the disposition of SEQ 001 and 002.

The petitioner moved (SEQ 004) to compel the respondent to comply with the April 17, 2018 so-ordered stipulation. By order dated March 18, 2019, this court granted the petitioner's motion to compel. The respondent then moved (SEQ 005) to dismiss the petition. By order also dated March 18, 2019, this court denied the motion. The respondent thereafter moved for leave to reargue his motion to dismiss (SEQ 006). By order dated April 18, 2019, this court denied the reargument motion.

The respondent now requests the court to issue several so-ordered subpoenas, contending that he is unable to secure his own banking records, and needs such court intervention to be able to obtain those records without excessive search and production fees being imposed upon him. The respondent is a pro se litigant and judgment debtor who has done all that he can do to obstruct and thwart the petitioner from learning where he has assets. The judgment itself was entered almost three years ago, and the respondent has been given numerous opportunities to provide necessary information that was compliant with the

information subpoena. There is no reason further to delay enforcement of the so-ordered stipulation. The excuses that the respondent had provided for the delay are not reasonable.

Nonetheless, to the extent that the respondent is truly having difficulty securing his own bank records, the issuance of so-ordered subpoenas to expedite the production of records from banks and other financial entities is warranted.

HSBC Bank is a New York bank and, thus, is amenable to a subpoena issued by this court (see CPLR 2302).

With respect to the other banks and investment funds for whom subpoenas are sought, the respondent indicates that they are respectively located in Oregon, Maryland, Maine, and Texas. Service of a subpoena in a New York action directly upon a person or corporation located outside of New York is not permitted, and any such service is void, unauthorized, and ineffective, since the subpoena power of a New York court is limited to its territorial jurisdiction (see Judiciary Law § 2-b; *Wiseman v American Motors Sales Corp.*, 103 AD2d 230 [2d Dept 1984]; *Siemens & Halske, GmbH v Gres*, 37 AD2d 768 [1st Dept 1971]). Nonetheless, several states, including New York, have enacted the Uniform Interstate Depositions and Discovery Act (UIDDA). That statute permits a court or court clerk in the “target” state to issue its own subpoena upon the filing of an out-of-state subpoena. Oregon and Maryland have adopted the UIDDA, while Maine and Texas have not. Thus, the issuance of so-ordered subpoenas to Wells Fargo Bank, N.A., in Oregon and Aronson, LLC, in Maryland, is warranted, as the respondent may simply and expeditiously file them with the appropriate court clerks in those states and secure the issuance of subpoenas that must be obeyed by those companies in those states.

As to TD Bank in Maine and Citibank in Texas, however, the proper procedure would be for the respondent to request this court to issue an open commission or letters rogatory to a person in those states, who would then be authorized to secure a subpoena from the courts of those states pursuant to the specific procedures that those states have enacted (see CPLR 3108; 16 Me. Rev. Stat. §§ 101, 163; Me. R. Civ. P. Rules 30[h], 45; Tex. R. Civ. P. Rules 176,

205; Tex. Civ. Prac. & Rem. Code §§ 20.002, 30.011; *Matter of Bennett*, 502 SW3d 373 [Tex App 2016] [granting petition to effectuate letters rogatory issued by a Wyoming court, requesting that Texas courts issue subpoenas to four Texas residents to appear, in Texas, for depositions in aid of the Wyoming action]; cf. Tex. R. Civ. P. Rule 201.2 [authorizing Texas courts to issue letters rogatory for out-of-state depositions]).

The respondent however, must comply with the UIDDA in Oregon (see Or. R. Civ. P. Rule 38[c][2]; Or. Unif. Trial Ct. R. Rule 5.140) and Maryland (see Md. Courts & Jud. Proc. Code Ann. §§ 9-402[a][1]) by making the necessary filings in those states within 15 days of the entry of this order, and must provide the petitioner with the documents he has thus obtained immediately upon his acquisition thereof.

The deposition of the respondent should not be delayed any further and, at the very least, the respondent must forthwith provide the petitioner with the account numbers of his HSBC and out-of-state accounts.

Accordingly, it is

ORDERED that the respondent's motion is granted to the extent that the court shall issue and electronically upload so-ordered subpoenas directed to HSBC Bank, Wells Fargo Bank, N.A., and Aronson, LLC, in the form annexed to the respondent's moving papers, and the motion is otherwise denied; and it is further,

ORDERED that the respondent shall, within 15 days of the entry of this order, serve the so-ordered subpoena upon HSBC Bank; and it is further,

ORDERED that the respondent shall, within 15 days of the entry of this order, file the so-ordered subpoena issued to Aronson, LLC, with the Clerk of the Circuit Court, Montgomery County, Maryland, pay any required filing fees, secure an appropriate Maryland subpoena, and cause it to be served upon Aronson, LLC, within 45 days of the entry of this order; and it is further,

ORDERED that the respondent shall, within 15 days of the entry of this order, file the so-ordered subpoena issued to Wells Fargo Bank, N.A., with the Clerk of the Circuit Court, Multnomah County, 4th Judicial District, Oregon, pay any required filing fees, secure an appropriate Oregon subpoena, and cause it to be served upon Wells Fargo Bank, N.A., within 45 days of the entry of this order; and it is further,

ORDERED that the respondent shall forthwith provide the petitioner with the account numbers for all of his or his companies' accounts at HSBC Bank, Aronson, LLC, Wells Fargo Bank, N.A., TD Bank, and CitiBank; and it is further,

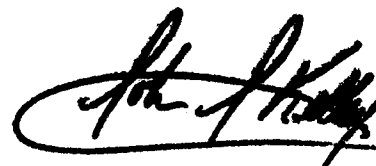
ORDERED that the respondent shall provide the petitioner with all documentation that he secures through the subpoenas described herein immediately upon his acquisition thereof; and it is further,

ORDERED that the respondent shall appear for a post-judgment deposition within 60 days of the entry of this order; and it is further,

ORDERED that the respondent's failure to comply with any of these directives shall result in the respondent being held in contempt of court, upon the filing by the petitioner of proof that the respondent has not so complied with any of these directives.

This constitutes the Decision and Order of the court.

10/8/2019
DATE



JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE:

☒	CASE DISPOSED		
☐	GRANTED	☐	DENIED
☐	SETTLE ORDER		
☐	INCLUDES TRANSFER/REASSIGN		

☐	NON-FINAL DISPOSITION		
☒	GRANTED IN PART	☐	OTHER
☐	SUBMIT ORDER		
☐	FIDUCIARY APPOINTMENT	☐	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: