

Village Green Mishawaka Holdings, LLC v Romanoff
2019 NY Slip Op 33178(U)
October 25, 2019
Supreme Court, New York County
Docket Number: 657290/2017
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 3EFM

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VILLAGE GREEN MISHAWAKA HOLDINGS, LLC, VGM HOLDINGS, LLC,

INDEX NO. 657290/2017

Plaintiffs,

MOTION DATE 10/07/2019

- v -

MOTION SEQ. NO. 022

STUART ROMANOFF, MICHAEL WAINSTEIN, PCG MISHAWAKA, LLC, DOUBLE BLACK VENTURES, LLC, DARRYL ROMANOFF,

DECISION + ORDER ON MOTION

Defendants.

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PCG MISHAWAKA, LLC, DOUBLE BLACK VENTURES, LLC, DARRYL ROMANOFF

**Third-Party
Index No. 595728/2018**

Third-Party Plaintiffs,

-against-

VGM HOLDINGS, LLC, DANIEL WAINSTEIN, JENNIFER WAINSTEIN, JENNIFER WAINSTEIN AS GUARDIAN TO SJW AND AJW MINORS, MARISSA WELNER, JONATHAN LEINWAND, HOLLY LEINWAND, MICHAEL SOKOLOFF, KOMAN BUBIS, MADISON CONSULTING SERVICES, LLC, MASTIFF GROUP, LLC, QUARK CONSULTING, INC., CORPORATE STRATEGIES SOLUTIONS AND INTELLIGENCE, LLC, VILLAGE GREEN MISHAWAKA HOLDINGS, LLC

Third-Party Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 022) 603, 604, 605, 606, 607, 608, 620, 621, 622, 623, 624, 625, 634

were read on this motion to QUASH SUBPOENA.

Non-party MVNY Holdings, LLC (“MVNY”) seeks to quash a subpoena duces tecum and a subpoena ad testificandum (together, the “Subpoenas”) served on it by Defendants Stuart Romanoff, Darryl Romanoff, and Double Black Ventures (collectively, the “Romanoff

Defendants”) on July 24, 2019. (NYSCEF Doc. No. 606). The Subpoenas requested, *inter alia*, documents and communications concerning “the ownership interest of the Defendants in the Plaintiffs,” and “the purchase of the Property and the loan related thereto,” as well as deposition testimony regarding “[t]he documents produced pursuant to the subpoena duces tecum.” *See id.*; *see also* Kaploun Aff., ¶¶4-5.

The Romanoff Defendants subpoenaed MVNY because they believe MVNY “has relevant documents concerning the lawsuit” as “a member of plaintiff Village Green Mishawaka Holdings, LLC and has business and other financial records related to the Plaintiffs which information is material and necessary in the prosecution of Defendants/Third Party Plaintiffs’ claims.” (NYSCEF Doc. No. 606). MVNY moved to quash the Subpoenas on August 28, 2019. For the reasons set forth below, MVNY’s motion is denied.

As the Court of Appeals has held, on a motion to quash a subpoena:

[T]he subpoenaing party must first sufficiently state the “circumstances or reasons” underlying the subpoena (either on the face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is “utterly irrelevant” to the action or that the “futility of the process to uncover anything legitimate is inevitable or obvious.” Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought is “material and necessary” to the prosecution or defense of an action, i.e., that it is relevant.

Kapon v. Koch, 23 N.Y.3d 32, 34 (2014).

The subpoenaing party need not demonstrate that it cannot obtain the requested discovery from other sources. *Id.* at 38; *Smile Train, Inc. v Ferris Consulting Corp.*, 117 A.D.3d 629 (1st Dep’t 2014); *United Realty Management Co, Inc. v Capital One Bank, N.A.*, No. 653721/2013, 2016 WL 5672957, at *1 (Sup. Ct. N.Y. Cty. Sep. 29, 2016) (denying non-party’s motion to quash subpoena).

MVNY objects that “the Subpoena fails to satisfy the requirement of CPLR 3101(a)(4), namely, that it provide a ‘notice stating the circumstances or reasons such disclosure is sought or required.’” Kaploun Aff., ¶21 (citing CPLR 3101(a)(4)). But this “minimal obligation,” which is “meant to apprise a stranger to the litigation the ‘circumstances or reasons’ why the disclosure [is] sought or required,” *Kapon*, 23 N.Y.3d at 39, is easily satisfied here. The Subpoenas sufficiently state the Romanoff Defendants’ basic allegations in this case, and the reasons why the Romanoff Defendants believe MVNY may possess relevant information pertaining to those allegations. In this regard, it is worth noting that MVNY is no stranger to this litigation. Indeed, it sought leave to intervene in the case, arguing that it “[has] a real and substantial interest in this [l]itigation.” (NYSCEF Doc. No. 530). In that context, the Court is satisfied that MVNY has received adequate notice of the circumstances and reasons why disclosure is sought.

MVNY fails to carry its burden of showing that the discovery sought by the Subpoenas is “utterly irrelevant to any proper inquiry.” *Encalada v Cps1 Realty LP*, No. 104782/2007, 2014 WL 2623602, at *4 (Sup. Ct. N.Y. Cty. June 10, 2014) (denying motion to quash because movant “ma[de] no showing” that subject matter of subpoena was “irrelevant or not otherwise subject to disclosure”). Indeed, MVNY does not even address this standard, much less meet it. While MVNY does state, in conclusory terms, that the Romanoff Defendants “failed to satisfy the ‘material and necessary’ standard,” Kaploun Reply Aff., ¶25, that argument skips over MVNY’s threshold burden. *See Kapon*, 23 N.Y.3d at 34.

Instead, MVNY’s main argument appears to be that the Subpoenas seek materials already “in the possession of [the] Romanoff [Defendants], the Plaintiffs, or the Third-Party Defendants to this action,” Kaploun Aff., ¶¶9, 37, or that the Romanoff Defendants have “the same access to” the subject materials, *id.*, ¶¶31-32, 46. But as noted above, the CPLR “imposes no

requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty.” *Kapon*, 23 N.Y.3d at 38; *Smile Train, Inc.*, 117 A.D.3d at 630.

The remainder of MVNY’s arguments are similarly without merit. First, MVNY contends that the Subpoenas should be quashed because MVNY, “as a nonparty to this action . . . is merely a shareholder of Plaintiffs and thus a separate entity from Plaintiffs.” *Kaploun Aff.*, ¶30. However, “nonparty status is not a viable ground on which to object to disclosure.” *Polsky v 145 Hudson Street Associates L.P.*, No. 107108/2011, 2015 WL 7439649, at *6 (Sup. Ct. N.Y. Cty. Sep. 14, 2015). Second, MVNY asserts that the Subpoenas were issued “to harass MVNY and delay the resolution of the claims at issue.” *See Kaploun Aff.*, ¶¶43-51. To bolster this accusation, MVNY cites the Romanoff Defendants’ purported failure to utilize party discovery, and the fact that Defendants’ counsel “is currently being sued for malpractice and breach of fiduciary duty by MVNY” in another case. *Id.*, ¶¶45, 47. Neither argument has merit. For one thing, the Romanoff Defendants are engaged in party discovery, and are entitled to seek non-party discovery to supplement those efforts. MVNY’s barbed references to a malpractice suit against the Romanoff Defendants’ counsel, meanwhile, offer no explanation as to why that suit relieves MVNY of its discovery obligations in this case.¹

¹ In addition to its substantive failings, MVNY’s motion is also procedurally improper under this Part’s rules. First, the Court does not allow discovery motions to be filed without a pre-motion conference pursuant to Rule 14 of the Commercial Division Rules. There is no indication that MVNY ever requested such a conference prior to filing this motion. Second, MVNY submitted no memorandum of law with this motion, only affirmations of counsel citing to legal authority. In this Part, “[a]ll motion papers . . . must include a Memorandum of Law,” and “Affidavits or Affirmations of counsel containing legal argument should not be submitted.” *See* Part 3 Practices and Procedures, §V.B(a), *available at* <http://www.nycourts.gov/courts/comdiv/ny/PDFs/Practices-Part-3.pdf>.
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Motion No. 022

Accordingly, it is:

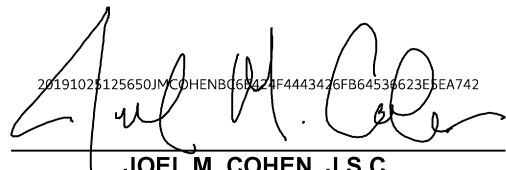
ORDERED that MVNY's motion to quash is DENIED; and it is further

ORDERED that MVNY is to comply with the Subpoenas within thirty (30) days of service of this order together with notice of entry.

This constitutes the Decision and Order of the Court.

10/25/2019

DATE


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JOEL M. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE