

Capacity Group of NY LLC v Duni
2019 NY Slip Op 34078(U)
June 10, 2019
Supreme Court, Nassau County
Docket Number: 601202/2017
Judge: Anna Anzalone
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SUPREME COURT OF THE STATE OF NEW YORK

**PRESENT: Honorable Anna R. Anzalone
Justice of the Supreme Court**

_____ X

CAPACITY GROUP OF NY LLC,

TRIAL/IAS, PART 18

NASSAU COUNTY

Plaintiff,

- against -

Motion Seq# 10,11,12

MICHAEL A. DUNI AND CHRISTOPHER DUNI,

Index No. 601202/2017

Defendants.

_____ X

**MICHAEL A. DUNI AND CHRISTOPHER DUNI,
Defendants and Third-**

-against-

**EDGEWOOD PARTNERS INSURANCE CENTER,
INC. d/b/a EPIC INSURANCE BROKERS &
CONUSLTANTS,**

Third-Party Defendant.

_____ X

The following papers read on this motion:

Defendant’s Notice of Motion for a Protective Order and to Quash Subpoenas.....1

Plaintiff’s Affidavit in Opposition to Defendant’s Motion to Quash.....2

Non-party Bradley & Parker Affirmation in Support of Defendant’s Motion to Quash
Subpoena.....3

Defendant’s Reply Memorandum of Law..... 4

Defendant’s Notice of Motion for a Protective Order and to Quash Subpoenas.....5

Plaintiff’s Opposition to Defendant’s Motion to Quash.....6

Defendant’s Reply Memorandum of Law.....7
 Defendant’s Notice of Motion for a Protective Order and to Quash Subpoenas.....8
 Plaintiff’s Opposition to Defendant’s Motion to Quash.....9
 Defendant’s Reply Memorandum of Law.....10

Defendant’s Michael A. Duni and Christopher Duni move (Sequence number 10) for an Order quashing or vacating non-party subpoenas duces tecum and deposition subpoenas served by the plaintiff upon Bradly & Parker, Inc, Wynne Nowland, James Latham, Loyal Building Services, Inc., Network Technology Solutions Inc., Helen Ferro, Northgate Electric Corp and Dina Dunn, (collectively referred to as “non-parties) pursuant to CPLR§2304; and for a protective Order pursuant to CPLR §3103.

Plaintiff, Capacity Group of NY LLC (“CGNY”) has alleged in its second amended complaint that the Defendants Michael Duni and Christopher Duni diverted CGNY customers to other insurance brokers in violation of fiduciary duties and contractual obligations. Plaintiff alleges that Michael Duni is bound by a non-compete/non-solicit clause within CGNY’s Amended and Restated Operated Agreement dated September 1, 2016. Additionally, plaintiff claim that Chris Duni agreed to maintain the confidentiality of proprietary information, and to not solicit CGNY customers or compete with CGNY for a period of three years from the date of his termination. The defendants submit that the crux of the dispute is whether CGNY can meet the factual legal requirements to enforce the restrictive convents.

CPLR §3101 requires that each party provide full disclosure of all evidence material and necessary. *Harrison v. Bayley Seton Hosp., Inc.*, 219 AD2d 584, 631 NYS2d 182 (2nd Dept., 1995). The words “material and necessary” are to be liberally interpreted. *Allen v. Crowell-Collier Pub.Co.*, 21 NY2d 403, 288 NYS2d 449 (1968). Evidence which includes any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay is considered material and necessary. *Id.* CPLR §3103 confers a broad discretion upon a Court to fashion appropriate remedies both where abuses are threatened and where they have occurred. *Lipin v. Bender*, 84 NY2d 562, 620 NYS2d 744 (1994).

In determining whether to quash a subpoena duces tecum, a court must determine, among other things, whether the documents sought by the subpoena are relevant to the investigation. *In the Matter of N., v. Novello*, 13 AD 3d631 (2nd Dept 2004) citing *Matter of Miller v. Waters*, 1 A.D.3d 829, 830, 767 N.Y.S.2d 314; *Matter of Abrams v. Thruway Food Mkt. & Shopping Ctr.*, 147 A.D.2d 143, 146, 541 N.Y.S.2d 856.

The Court of Appeals has held that an application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious or where the information sought is utterly irrelevant to any proper inquiry. *Kapon v. Koch.*, 23 NYS3d 32, 11 NE3rd 709, 988 NYS 2nd 559 (2014).

In the instant case, there is not dispute that C. Duni is doing business with these clients. The heart of the instant case is whether Defendants Michael Duni and Christopher Duni diverted CGNY customers to other insurance brokers in violation of fiduciary duties and contractual obligations.

CGNY requests from the non-party witnesses, *inter alia*, contracts, correspondence, letters, emails, policies, binders, emails, texts, and the relationship between the defendants and the non-parties. Again, defendants do not deny that the non-parties subpoenaed are clients of Defendant C. Duni. This Court agrees with defendants that the disclosures will reveal information that is obvious, irrelevant, and is already known by all parties.

Accordingly, Defendant's motion (sequence number 10) for an Order quashing or vacating non-party subpoenas duces tecum and deposition subpoenas served by the plaintiff upon Bradly & Parker, Inc, Wynne Nowland, James Latham, Loyal Building Services, Inc., Network Technology Solutions Inc., Helen Ferro, Northgate Electric Corp and Dina Dunn, pursuant to CPLR §2304 is granted.

Similarly, Defendant's motion (sequence number 11) for an Order quashing or vacating non-party subpoenas duces tecum and deposition subpoenas served by the plaintiff upon LMB Consultants and Laura Boehm is granted. Again, the court notes that the cause of action in Plaintiff's complaint arise out of alleged breached of contracts. The defendants do not deny that the non-parties subpoenaed are clients of Defendant C. Duni. Once again, This Court agrees

with defendants that the disclosures will reveal information that is obvious, irrelevant, and is already known by all parties.

Lastly, in harmony with this Court's decision, Defendant's motion (sequence number 12) for an Order quashing or vacating non-party subpoenas duces tecum and deposition subpoenas served by the plaintiff upon Hybrid Risk Solutions, Josh Rogove, SML Capital Advisors LLC, Jaime Linseen, United Rheumatology, MDI Medical Data, Inc, Max Hamburger, Pali Buildings Restoration, Inc. Nick Frazis, Adalsan Inc, Sharon Karp, Boileroom Equipment Sales, John Milito, Boileroom Rentals, Frank Mino, NSP Enterprises Inc, and Nick Plakoudas, pursuant to CPLR §2304 is granted. Yet again, the defendants do not dispute that C. Duni is doing business with these clients. The information sought from these non-parties is irrelevant.

Counsel for defendants shall file and serve a copy of the within order with notice of entry upon all parties within fifteen (15) days from the date of this Order. All parties are directed to appear at the next scheduled certification conference to be held at 100 Supreme Court Drive, Mineola, New York on June 18, 2019 at 9:30 a.m.

The foregoing constitutes the Decision and Order of the Court.

DATED: June 10, 2019

Mineola, New York

ENTER:

Anna R. Anzalone
HON. ANNA R. ANZALONE

ENTERED
JUN 13 2019
NASSAU COUNTY
COUNTY CLERK'S OFFICE