

Angel v Strulovich

2020 NY Slip Op 31498(U)

May 18, 2020

Supreme Court, Kings County

Docket Number: 500827/2020

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CIVIL TERM: COMMERCIAL PART 8

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BARUCH ANGEL et, al,

Plaintiff,

Decision and Order

-against-

May 18, 2020

Index #500827/2020

YECHESKEL STRULOVICH et, al,

Defendant,

-----X
PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to quash 485 subpoenas served upon six third party banks pursuant to CPLR §2304 and for a protective order. The plaintiffs oppose the motion. Papers were submitted by the parties and arguments were held. After reviewing all the arguments, this court now makes the following determination.

As recorded in a prior order, the plaintiffs are all individuals who invested sums of money with the defendant Yechezkel Strulovich as investments in various real estate ventures in Kings County. According to the Amended Complaint the defendant did not invest any of the money given to him for the intended purposes but rather used the money for other ventures unrelated to the interests of any of the plaintiffs. The Amended Complaint alleges causes of action for constructive

trusts, fraud, RICO, breach of contract, conversion, breach of fiduciary duty, unjust enrichment, violations of the debtor creditor law and an accounting. The plaintiff has served these subpoenas seeking to discover the whereabouts of the funds that were invested and to trace their movement through numerous holding companies owned and controlled by the defendants. The motion to quash followed.

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). Thus, "disclosure from a nonparty requires no more than a showing that the requested information is relevant to the prosecution or defense of the action" (see, Bianchi v. Galster Management Corp., 131 AD3d 558, 15 NYS3d 189 [2d Dept., 2015], CPLR §3103(a)). A party seeking to vacate or quash a third party subpoena has a burden establishing the information is "utterly irrelevant" or "the futility of the process to uncover anything

legitimate is inevitable or obvious" (Anheuser-Busch Inc., v. Abrams, 71 NY2d 327, 525 NYS2d 816 [1988]).

Preliminarily, there are questions whether a customer of a bank even maintains standing to challenge subpoenas served upon the bank seeking the customer's banking information (see, Norkin v. Hoey, 181 AD2d 248, 586 NYS2d 926 [1st Dept., 1992]). As the court noted in AQ Asset Management LLC v. Levine, 111 AD3d 245, 974 NYS2d 332 [1st Dept., 2013] "a depositor has no ownership or other interest in a bank's records of his accounts. Thus, he has no standing to object to a subpoena directed at them" and that this "proposition remains true, even more strongly, in the civil context" (id).

In any event, considering the propriety of the motion the defendants present three reasons why the subpoenas are improper. First, they argue the requested documents are for periods that cannot form the basis for any causes of action since the statute of limitations has already passed. However, even if true, that is not a basis upon which to quash the subpoenas. The plaintiffs allege the defendants orchestrated an elaborate scheme designed to defraud the plaintiffs and essentially steal their money. The plaintiffs have the right to pursue those claims and examine the bank records of the defendants. If claims are time barred then they are obviously improper.

However, that cannot stop the plaintiffs from examining the flow of funds given by the plaintiffs in efforts to trace their whereabouts.

Second, the defendants argue the request is burdensome. However, the banks have not objected to the burdensomeness of the request. Without a demonstration from the banking institutions themselves regarding the burdens imposed by the subpoenas, the defendants cannot so argue on their behalf (see, Rankine v. Roller Bearing Company of America Inc., 2013 WL 12096448 [Southern District of California 2013]).

Third, the defendants argue the subpoenas fail to describe the "circumstances and reasons" the information is sought (see, Emergency Affirmation in Support, ¶14). However, clearly, the subpoenas are being sought to discern and discover the location, if possible, of plaintiff's investments. As noted, this is a proper purpose. Indeed, the defendants have failed to demonstrate the request is utterly irrelevant. Nor are the subpoenas being sought to ascertain the existence of evidence or as a fishing expedition (Goodstein v. 695 9th Avenue Housing Development Fund Corporation, 60 Misc3d 1227(A), 110 NYS3d 501 [Supreme Court New York County 2018]). Rather, the documents sought are specific, even though voluminous, and relate to the


specific accounts wherein the defendants allegedly deposited the plaintiffs money. That is a proper avenue of inquiry.

Therefore, based on the foregoing, the subpoenas are proper and the motions seeking to quash and for a protective order are denied.

So ordered.

ENTER:

Dated: May 18, 2020
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC