

**Bright Sky Dental P.C. v Broadway Family Dental,
P.C.**

2020 NY Slip Op 31758(U)

June 4, 2020

Supreme Court, Kings County

Docket Number: 518776/18

Judge: Leon Ruchelsman

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

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BRIGHT SKY DENTAL P.C., ELLA DEKHTYAR MD,
Plaintiff,

Decision and order

- against -

Index No. 518776/18

BROADWAY FAMILY DENTAL, P.C.,
ANDREY IVANOV, D.D.S., DV SOLUTIONS INC,
VLADIMIR DAVYDOV and JULIA DAVYDOV,
Defendants,

June 4, 2020

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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 have cross-moved seeking to strike the complaint for the failure to engage in discovery. Papers were submitted by all the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On July 10, 2017 the plaintiff purchased a dental office from the defendants located at 1152 Broadway in Kings County. One of the conditions of the purchase required the plaintiff to maintain Julia Davydov as the office manager of the dental office. The plaintiff alleges the defendants deliberately misrepresented the worth of the dental office and has accused Julia Davydov of orchestrating altering patient information. The plaintiff has sued alleging various causes of action including breach of contract, fraud, defamation and tortious interference with business. The defendants filed counterclaims for alleging

breach of contract, defamation, intentional infliction of emotional distress and Article 5 of the New York Civil Rights Law. The defendants served subpoenas upon the plaintiffs banks seeking "all account information including but not limited to: checking, savings, business, credit card, debit card account information (all deposits and all debits)" from January 2014 through December 2019 (see, Affidavit in Support of Motion to Quash Subpoenas, ¶14). The plaintiff has now moved seeking to quash those subpoenas and for a protective order. A discovery motion has also been filed.

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 plaintiff argues there is absolutely no basis for records that predate the contract entered into in 2017. The defendants do not present any basis for records prior to that time. Further, there is a confidentially agreement entered into protecting the dissemination of any information. Therefore, the motion seeking to quash subpoenas is granted to the extent the subpoenas can only concern records from six months prior to the contract until December 31, 2019.

Concerning allegations the plaintiff has failed to comply with discovery, the plaintiff disputes that contention and argues they have complied with all discovery. To the extent any discovery is outstanding of course the plaintiff must comply. If any discovery disputes still remain the parties should reach out to the court whereby a conference will be held and each disputed item can be explored. At this juncture the motion seeking to strike the complaint is denied.

So ordered.

ENTER:

DATED: June 4, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC