

**Baier v Baier**

2020 NY Slip Op 32697(U)

August 17, 2020

Supreme Court, New York County

Docket Number: 655957/2016

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART IAS MOTION 47EFM

*Justice*

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DANNY DAVID CZARNINSKI BAIER,  
Plaintiff,

- v -

JOHNY JACOBO CZARNINSKI BAIER AND VIVIAN CZARNINSKI  
BAIER DE ADLER,  
Defendants.

INDEX NO.	655957/2016
MOTION DATE	
MOTION SEQ. NO.	010, 011
<b>DECISION AND ORDER</b>	

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 204-250, 256-272; (Motion 011) 251-255, 273-275, 278 were read on this motion to/for QUASH SUBPOENA/SEAL

In this action, plaintiff Danny David Czarninski Baier alleges that his siblings, defendants Johny Jacobo Czarninski Baier and Vivian Czarninski Baier De Adler, engaged in a scheme to deprive him of his one third share of jointly joined assets, which includes property inherited from their parents. By order dated October 4, 2019, this court granted in part defendant Johny's motion to dismiss the second amended complaint and found that the court only had jurisdiction to adjudicate the claims insofar as they relate to property located in New York. Defendant Johny now moves pursuant to CPLR 3103 for an order directing the parties to destroy the production of documents by non-party J.P. Morgan Chase dated May 13, 2020, in response to a subpoena served by plaintiff Danny in New York on February 21, 2020. Defendant Johny also moves pursuant to 22 NYCRR 216.1 for an order directing that certain documents filed in connection with the motion for a protective order remain filed under seal. The motions are consolidated for purposes of this decision.

Under CPLR 3122, a party generally has twenty days after notice of a subpoena to object to a subpoena served on a third party. Here, plaintiff served defendant Johny with notice of its

subpoena on JP Morgan Chase on February 21, 2020 and yet Johny failed to object until JP Morgan's supplemental production on May 13, 2020. The subpoena clearly sought the production of information to which Johny now objects, including documents relating to all accounts which are associated with Johny. Although Johny seeks to blame his belated objection to the subpoena on the global pandemic, the restrictions on filing were not put in place until one month after Johny received notice of the subpoena. In any event, such restrictions did not prevent Johny from communicating his objections to the subpoena to plaintiff's counsel.

When a party fails to object to a subpoena within the twenty day time frame, the court may only grant relief if the demands are "palpably improper" or privileged. *FC Bruckner Associates v. Fireman's Fund Ins.*, 114 A.D.3d 542, 543 (1<sup>st</sup> Dep't 2020). A disclosure request is considered palpably improper if it seeks information of a confidential and private nature that does not appear to be relevant to the issues in the case. *Saratoga Harness Racing v. Roemer*, 274 A.D.2d 887, 889 (3d Dep't 2000). Further, as the movant under CPLR 3103, defendant Johny bears the burden of showing that the subpoena served on JP Morgan Chase was improper. *Westhampton Adult Home Inc. v. National Union Fire Ins.*, 105 A.D.2d 627, 628 (1<sup>st</sup> Dep't 1984).

Here, defendant Johny has failed to meet this burden. Although Johny generally asserts through the affirmation of his counsel that the documents produced by JP Morgan Chase appear to relate to accounts that are located outside of New York, he fails to cite to any specific documents in the production to support this assertion. Further, although the court has ruled that it does not have jurisdiction to adjudicate claims related to assets located outside of New York this does not mean that this information is not discoverable in this action. Indeed, as plaintiff points out, this information may be relevant to the claims in this action as the court's determination

regarding the New York assets may be affected by information regarding the distribution of the other assets which are located outside of New York. Finally, Johnny fails to cite to any case law to support the extraordinary remedy which he seeks, which is the destruction of the documents produced by JP Morgan Chase or explain why a confidentiality order is insufficient to protect this information. While Johnny speculates that plaintiff and defendant Vivian may not comply with such an order, there is no basis for this assertion and in any event, as parties to the case, the court has jurisdiction to impose whatever sanctions it deems appropriate should they fail to comply with terms of a confidentiality order. Accordingly, defendant Johnny's motion for a protective order is denied.

Defendant Johnny also moves pursuant to 22 NYCRR 216.1 to seal NYSCEF document numbers 230, 231, 236-240 and 272 based on the fact that these documents contain personal financial information. The motion is unopposed and upon a review of these documents, the court finds good cause to seal these records as they contain confidential, financial information.

Accordingly, it is

ORDERED that defendant Johnny's motion for a protective order (#010) is denied; and it is further

ORDERED that defendant Johnny's motion to seal (#011) is granted and NYSCEF documents numbers 230, 231, 236-240 and 272 shall remain under seal;

ORDERED that the Clerk of the Court is directed, upon service on him of a copy of this order with notice of entry, to seal NYSCEF documents numbers 230, 231, 236-240 and 272 and to separate these documents and to keep them separate from the balance of the file in this action; and it is further

ORDERED that thereafter, or until further order of the court, the Clerk of the Court shall deny access to the said sealed documents to anyone (other than the staff of the Clerk or the court) except for counsel of record for any party to this case and any party; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

ORDERED that the remaining discovery in this case shall proceed pursuant to the stipulation filed on August 3, 2020 (NYSCEF doc. 277).

8/17/20

DATE

  
PAUL A. GOETZ, J.S.C.

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE