

Ali v BJ Org. of N.Y., Inc.
2020 NY Slip Op 33077(U)
September 17, 2020
Supreme Court, Kings County
Docket Number: 507394/15
Judge: Leon Ruchelsman
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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

-----x

ALI MOHAMED ALI,
Plaintiff, Decision and order

- against - Index No. 507394/15

BJ ORGANIZATION OF NEW YORK, INC, YASIN M.
MOHAMED a/k/a YASIN MOHAMED ALI and AHMED
N. MOHAMED a/k/a AHMED MOHAMED ALI,
Defendants, September 17, 2020

-----x

ABDO MOHAMED ALI a/k/a KENNY ELI,
Third Party Plaintiff

- against -

ALI MOHAMED ALI, YASIN MOHAMED ALI and AHMED
NAGI MOHAMED,
Third Party Defendants,

-----x

PRESENT: HON. LEON RUCHELSMAN

The third party plaintiff Abdo Mohamed Ali has moved seeking to serve subpoenas on three non parties, the New York State Division of Licensing, the New York State Gaming Commission and the United States Department of Agriculture. The defendant/third party defendant Ahmed Mohamed Ali has opposed the motion on the grounds the subpoenas are irrelevant. Papers were submitted by the parties and arguments were held. After reviewing all the arguments, this court now makes the following determination.

As recorded previously, this lawsuit concerns the ownership of the defendant BJ Organization of New York Inc, and the management of such corporation. Specifically, the plaintiff alleges that defendants Yasim Mohamed Ali and Ahmed Mohamed Ali have stolen from the corporation and have committed corporate waste. Similarly,

Abdo Mohamed Ali alleges that Yasim Mohamed Ali and Ahmed Mohamed Ali breached a stipulation of settlement executed in this case. Abdo Mohamed Ali now seeks to subpoena the above noted agencies to examine the applications submitted by the defendants to demonstrate those applications are in the names of entities the defendants have already asserted they had no ownership interests. This evidence will further corroborate the wrongdoing alleged against them.

Conclusions of Law

In Kapon v. Koch, 23 NY3d 32, 988 NYS2d 559 [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]).

Ahmed Mohamed Ali opposes the subpoenas on the grounds that "the subpoenaed documents have nothing whatsoever to do with causes of action by Ali or Kenny's third-party complaint" (see, Affirmation in Opposition, ¶21). However, clearly, the subpoenas are being sought to discern whether Yasim Mohamed Ali and Ahmed Mohamed Ali committed fraud on the corporation and theft of corporate assets. 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 and relate to the applications that were submitted by the defendants. That is a proper avenue of inquiry.

Further, the subpoenas are not being sought to further or support a criminal investigation. Rather, the subpoenas are only being sought to support allegations of fraud and other misconduct committed by Yasim Mohamed Ali and Ahmed Mohamed Ali. There has been no basis presented why such subpoenas are irrelevant and that consequently they would not further the exploration of any issues. There can be little dispute the contents of such

subpoenas are important concerning all the allegations contained in the complaints.

Therefore, based on the foregoing, the subpoenas are proper and the motion seeking to issue such subpoenas is granted.

So ordered.

ENTER:

Dated: September 17, 2020
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC