

Grayson v Fruchter

2020 NY Slip Op 33148(U)

September 24, 2020

Supreme Court, New York County

Docket Number: 603272/2006

Judge: Marcy Friedman

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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 60

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ROBERT GRAYSON, LILLIAN GRAYSON, PAUL GRAYSON, Plaintiffs, - v - STEPHEN FRUCHTER, PHILLIP FRUCHTER, MONTAUK RUG & CARPET CORP, 111 WEST 24TH STREET LP, MARA GRAYSON, DAVID ROSENBERG (RECEIVER), Defendants.	INDEX NO. <u>603272/2006</u> MOTION DATE <u>N/A</u> MOTION SEQ. NOS. <u>005, 006</u>
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GRAYSON, LILLIAN, GRAYSON, BILLI, Plaintiffs, - v - FRUCHTER, STEPHEN, FRUCHTER, PHILLIP, GRAYSON, MARA, GRAYSON, PAUL, MONTAUK RUG & CARPET CORP., 111 WEST 24TH STREET LP, DAVID ROSENBERG ESQ. RECEIVER FOR MONTAUK AND THE PROPERTY Defendants.	INDEX NO. <u>102120/2008</u> MOTION DATE <u>N/A</u> MOTION SEQ. NOS. <u>010, 011</u>
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DECISION AND ORDER

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The only remaining issues in these two related actions concern the amount of commissions due to David Rosenberg for his work as temporary receiver for the defendant companies, as well as the amount of fees and expenses due to Mr. Rosenberg's firm, Marcus Rosenberg & Diamond LLP. (8/14/2018 Decision and Order, at 5 [NYSCEF Doc. No. 241].)¹ This court referred those remaining issues to a Special Referee to hear and report with recommendations by order dated August 14, 2018. (Id.; see also 11/4/2019 stipulation

¹ Unless specifically stated, the NYSCEF document numbers in this decision and order refer to the docket for the 2006 action (Index No. 603272/2006). All documents cited were also filed in the 2008 action (Index No. 102120/2008). Motion sequence no. 10 in the 2006 action was filed as motion sequence no. 5 in the 2008 action and motion sequence no. 11 in the 2006 action was filed as motion sequence no. 6 in the 2008 action.

adjourning Special Referee hearing to 12/19/19 [NYSCEF Doc. No. 262].)² On these motions, non-parties Steven A. Weg, Goldberg Weg & Markus PLLC, Laurie Sayevich Horz, and the Law Office of Laurie Sayevich Horz, PLLC, and defendant Stephen Fruchter, individually and as Executor for the estate of defendant Phillip Fruchter, move, pursuant to CPLR 2304, to quash Trial Subpoenas Duces Tecum and Ad Testificandum issued by Mr. Rosenberg. (Notice of Motion [Mot. Seq. No. 011] [NYSCEF Doc. No. 265]; Notice of Motion [Mot. Seq. No. 010] [NYSCEF Doc. No. 279].)³ Movants also seek a protective order under CPLR 3103 and an award of attorney's fees and expenses associated with bringing the motions. (Id.) By stipulation dated January 21, 2020, the return date for the motions was set for March 27, 2020. (NYSCEF Doc. No. 288.) No opposition or other response to the motions has been filed.

The court grants the motions to quash, pursuant to CPLR 2304, upon the default of Mr. Rosenberg and for good cause shown. The subpoenas appear to be overbroad, insofar as the document requests do not specifically concern the issues that are before the Special Referee. (See Weg Subpoena, "Required Documents" [NYSCEF Doc. No. 276]; Horz Subpoena, "Required Documents" [NYSCEF Doc. No. 281]; Fruchter Subpoena, "Required Documents" [NYSCEF Doc. No. 282]; Horz Aff. ¶¶ 15-25 [NYSCEF Doc. No. 280]; Weg Aff. ¶¶ 18-19 [NYSCEF Doc. No. 266].) Rather, the subpoenas seek broad categories of documents that generally concern these actions and defendant companies. (Id.) The subpoenas also appear to

² The Special Referee hearing was adjourned pending mediation before Surrogate Renee Roth (NYSCEF Doc. No. 253).

³ The subpoenaed non-parties are counsel of record in these actions. Mr. Weg, of Goldberg Weg & Markus PLLC, is counsel of record for plaintiff Lillian Grayson in both actions and plaintiff Billi Grayson in the 2008 action. Ms. Horz, of the Law Office of Laurie Sayevich Horz, PLLC, is counsel of record for defendants Stephen Fruchter, Phillip Fruchter, Montauk Rug & Carpet Corp., and 111 West 24th Street LP in both actions.

seek disclosure of information protected from disclosure by the attorney-client privilege or work product doctrine. (Id.)

The court declines to exercise its discretion under CPLR 3103 to enter a protective order. While the subpoenas will be quashed, this order should not be read as precluding appropriate pre-hearing discovery or reaching a determination as to who may be compelled to testify at the hearing. These issues are more appropriately supervised by the Special Referee who will conduct the hearing. The order of reference will accordingly be expanded by the court. The court further notes that Mr. Rosenberg and the parties should confer and undertake all reasonable efforts to reach agreement on pre-hearing discovery and hearing witnesses.

The court also denies the movants' request for attorney's fees and expenses incurred in bringing the motions. The movants in effect request sanctions. The record on these motions does not, however, support such an award.

It is accordingly ORDERED that the motion of non-parties Steven A. Weg, Goldberg and Weg & Markus PLLC (Index No. 603272/2006, Mot. Seq. No. 11; Index No. 102120/2008, Mot. Seq. No. 6) and the motion of non-parties Laurie Sayevich Horz, and the Law Office of Laurie Sayevich Horz, PLLC, and defendant Stephen Fruchter, individually and as Executor for the estate of defendant Phillip Fruchter (Index No. 603272/2006, Mot. Seq. No. 10; Index No. 102120/2008, Mot. Seq. No. 5) are granted to the following extent:

It is hereby ORDERED that the Trial Subpoenas Duces Tecum and Ad Testificandum dated December 12, 2019 (Weg Subpoena [NYSCEF Doc. No. 276]; Horz Subpoena [NYSCEF Doc. No. 281]; Fruchter Subpoena, [NYSCEF Doc. No. 282]) are quashed; and it is further

ORDERED that the branch of the motions seeking a protective order, pursuant to CPLR 3103, is hereby denied; and it is further

ORDERED that the branch of the motions seeking an award of attorney’s fees and expenses associated with the motions is hereby denied; and it is further


ORDERED that the Special Referee is directed to supervise pre-hearing proceedings, including limited discovery, in so far as it relates to the issue(s) referred in this matter pursuant to the order of reference dated August 14, 2018 (Index No. 603272/2006, NYSCEF Doc. No. 241; Index No. 102120/2008, NYSCEF Doc. No. 113); and it is further

ORDERED that the August 14, 2018 order of reference is hereby expanded to refer any such issues to the assigned Special Referee to hear and report with recommendations; and it is further

ORDERED that, in advance of any pre-hearing conference date set by the assigned Special Referee or at such time as directed by the Special Referee, the parties shall confer concerning the scope of reasonable pre-hearing document discovery, a limited pre-hearing discovery schedule, and the production of witnesses for the Special Referee hearing.

This constitutes the decision and order of the court.

Dated: New York, New York
September 24, 2020



MARCY S. FRIEDMAN, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input checked="" type="checkbox"/> REFERENCE