

F&R Goldfish Corp. v Furleiter
2021 NY Slip Op 30369(U)
February 5, 2021
Supreme Court, Kings County
Docket Number: 521162/18
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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F&R GOLDFISH CORP., AND NEW YORK CITY
FISH, INC.,

Plaintiffs, Decision and order

- against -

Index No. 521162/18

VLADIMIR FURLEITER, Individually and on
behalf of ROYAL BALTIC, LTD., N.Y. FISH,
INC., AND ROYAL DEVELOPMENT, INC.,
ALEXANDER KAGANOVSKY, Individually and
on behalf of ROYAL BALTIC, LTD.,
N.Y. FISH, INC., AND ROYAL DEVELOPMENT, INC.,

Defendants, February 5, 2021

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ROYAL DEVELOPMENT, INC.,
Third-Party Plaintiff,

-against-

MYM SMOKED FISH, INC., MAXIM KUTSYK,
YEFIM KUTSYK AND PAVEL ROYTKOV,
Third-Party Defendants,

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PRESENT: HON. LEON RUCHELSMAN

The defendants/third party plaintiffs have moved seeking to
quash or modify subpoenas served upon JPMorgan Chase and
Santander Bank. The plaintiffs oppose the motion. Papers were
submitted by the parties and after reviewing all the arguments,
this court now makes the following determination.

As recorded in prior orders this lawsuit concerns an entity
called Royal Baltic Ltd. that ceased operations at a fish smoking
facility located at 738 Chester Street in Kings County. The
property was owned by an entity called Royal Development Inc.,

that was owned by Vladimir Furleiter and Alexander Kaganovsky. New York City Fish instituted the within lawsuit against Furleiter and others alleging various causes of action including an account stated and fraud. The defendants asserted various counterclaims. Royal Development Inc., filed a third party action against the third party defendants and has alleged ejectment, unjust enrichment, a constructive trust, conversion, an injunction and breach of contract. The plaintiff served non-party subpoenas upon the banks noted and the defendants have moved to quash or modify them.

Conclusions of Law

In a prior order the court already ordered noted that third party subpoenas are appropriate. The court noted that 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])" (id).

The basis for the bank records sought for Furleiter and Kaganovsky is that they may shed light on whether they operated the fish facility in violation of an injunction imposed by the Food and Drug Administration in 2000. Further, plaintiff argues that "it is necessary to inspect their personal bank records since Plaintiffs' Complaint alleges that they were personally responsible for 60% of the fish-smoking business's expenses, as evidenced by an email from Furleiter to Mr. Kutsyk admitting to responsibility for 60% of NYC Fish's rent" (Affirmation in Opposition, ¶12).

First, whether or not the injunction was violated has no relevance in this lawsuit. The complaint does not assert a claim for punitive damages and it is improper to seek to discover evidence of 'illegality' whether the illegality stems from violating a Federal injunction or stealing someone else's money.

There is no broad right to subpoena bank records to determine if there is any illegally obtained funds there to then demonstrate unclean hands or illegal behavior. That is not a proper basis upon which to subpoena bank records. This is particularly true in this case where the complaint does not assert any specific allegations that Furleiter of Kaganovsky stole any of plaintiff's money. Further, the email referenced was dated in 2014 and cannot support reviewing bank records fourteen years older than the date of the email. In any event that email does not support the argument the parties admitted personal responsibility for paying the rent and other expenses.


Further, concerning Boyarin Inc., and Royal Baltic Ltd., they must first be served with subpoenas before serving banks for such records. There has been no showing these entities were first served with subpoenas.

Thus, the motion seeking to quash all subpoenas served on JPMorgan Chase and Santander bank for Furleiter, Kaganovsky, Boyarin Inc., and Royal Baltic Ltd., is granted.

So ordered.

ENTER:

DATED: February 5, 2021
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC