

**Ruxton Tower Ltd. Partnership v Central Park  
Taekwondo, LLC**

2021 NY Slip Op 31521(U)

May 4, 2021

Supreme Court, New York County

Docket Number: 656715/2020

Judge: Nancy M. Bannon

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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  
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

*Justice*

-----X

THE RUXTON TOWER LIMITED PARTNERSHIP

Plaintiff,

- v -

CENTRAL PARK TAEKWONDO, LLC,

Defendant.

-----X

INDEX NO. 656715/2020

MOTION DATE 04/01/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 43, 44

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

In this breach of contract action to recover unpaid rent, non-party QCRE VI, LLC (QCRE), moves, *inter alia*, pursuant to CPLR 2304 to quash a subpoena duces tecum dated March 8, 2021, served on it by the plaintiff property owner, The Ruxton Tower Limited Partnership (Ruxton), and for a protective order pursuant to CPLR 3101 as to the information sought in that subpoena. Defendant Central Park Taekwondo LLC (CPT), which operated a martial arts studio at plaintiff Ruxton's property on West 72<sup>nd</sup> Street pursuant to a lease with the Ruxton, claims that it ceased all operations due to the COVID-19 public health crisis and mandatory closures but continued to pay rent through August 2020, when it vacated and surrendered the premises back to Ruxton. Ruxton asserts that CPT merely moved its operations to property located at 50 West 77<sup>th</sup> Street, owned by QCRE, and continues to owe and accrue rent arrears under the lease. CPT denies any further liability on the lease and denied that it operated out of QCRE's property for that period.

Ruxton opposes the instant motion. The motion is granted.

The Court of Appeals in Kapon v Koch, 23 NY3d 32 (2014), held that a subpoenaing party has the initial burden of demonstrating a need for the disclosure, and must sufficiently state the “circumstances or reasons” that support disclosure. Kapon, supra at 32. Such notice is required to provide a third-party with enough information to apprise a stranger to the litigation the ‘circumstances or reasons’ why the requested disclosure was sought or required.” Id. at 39. The discovery sought must be “material and necessary.” Id. at 36; see CPLR 3101(a). A motion to quash a subpoena should be granted when the futility of uncovering anything legitimate is obvious, or the information sought is, “utterly irrelevant to any proper inquiry.” Id. It is well settled that a subpoena must not be used as a tool of harassment or for a “fishing expedition to ascertain the existence of evidence.” Reuters Ltd. v Dow Jones Telerate, Inc., 231 AD2d 337, 337 (1<sup>st</sup> Dept. 1997); see Law Firm of Ravi Batra, P.C. v Rabinowich, 77 AD3d 532 (1<sup>st</sup> Dept. 2010). Discovery sought pursuant to a subpoena may also be denied if such discovery is overbroad or harassing. See Id.; CPLR 3103. Furthermore, document requests in a subpoena using the terms “any” and “all” without limitations as to date may be overbroad if the materials sought include matters that may be privileged or are “clearly irrelevant.” Id. Where discovery sought is improper, the court has broad discretion in supervising disclosure and to grant a protective order pursuant to CPLR 3103. See Foster v Herbert Slepoy Corp., 74 AD3d 1139 (2<sup>nd</sup> Dept. 2010).

The burden of establishing the information sought is irrelevant is on the non-party being subpoenaed. See Velez v Hunts Point Multi-Serv. Ctr., Inc., 29 AD3d 104 (1<sup>st</sup> Dept. 2006). QCRE has met its burden on the motion.

By the subpoena served on QCRE Ruxton seeks:

- (a) the operating agreement for QCRE
- (b) the contract for purchase of Unit CUA or any other portion of the –
- (c) any and all leases between QCRE and any person or entity occupying Unit CUA or any other portion of the premises owned by QCRE; included but not limited to Central Park Taekwondo or CPTKD Academy, Inc.

- (d) documents sufficient to show each item of material or equipment brought to or incorporated into the leased premises to prepare the space for the tenant
- (e) documents sufficient to identify all items of personal property taken from 50 West 72<sup>nd</sup> Street and delivered to or incorporated into the leased premises for the use or benefit of the tenant or occupant
- (f) documents sufficient to identify when the tenant or occupant of the premises commenced occupancy thereof;
- (g) documents sufficient to show all rent and other payments made to or received by QCRE (or its agents) from or on behalf of the tenant or occupant at the premises

Ruxton filed a motion to dismiss (MOT SEQ 001) the day after defendant CPT made its first discovery demand on Ruxton, a Notice to Take Deposition. The subject subpoena was served on non-party QCRE five days later. No discovery demand was made by Ruxton on CPT. Then, in the Order to Show Cause to quash the subpoena, signed on April 1, 2021, the court directed the parties to proceed with discovery. Notably, only “parties” were included in that directive. Thus, discovery was not to be stayed, as asserted by QCRE. See CPLR 3214. However, as correctly argued by QCRE, the subpoena is improper for other reasons.

No discovery was provided by the parties prior to service of the subject subpoena on non-party QRCE. Ruxton fails to explain why this discovery is relevant to its claims against CPT under the lease for the 72<sup>nd</sup> Street premises, or even assuming it were relevant, why it was not first sought from CPT. Ruxton’s speculation that CPT “had no intention of providing that material in discovery” is not a valid basis for serving a non-party subpoena. Should that occur, Ruxton has a remedy in that any party who fails to comply with proper discovery demands or court orders risks sanctions under CPLR 3126.

The subpoena is also invalid on its face as it does not provide “notice stating that the circumstances or reasons such disclosure is sought or required” as mandated by CPLR 3101(a)(4). See Kapon v Koch, supra; De Stafano v MT Health Clubs, 220 AD2d 331 (1<sup>st</sup> Dept. 1995). Ruxton has not shown that the discovery sought is “material and necessary” to its

claims. See Hudson City Savings Bank v 59 Sands Point, LLC, 153 AD3d 611 (2<sup>nd</sup> Dept. 2017). The discovery sought includes information regarding CPT as well as other tenants and occupants of QCRE's property which are also strangers to this action and to the subject lease. A landlord seeking to collect unpaid rent from a former tenant under a lease generally has no claim against the tenant's new landlord or its other tenants, and the plaintiff has not demonstrated otherwise here. Thus, the requested discovery appears to be "utterly irrelevant to any proper inquiry" in this action. Kapon v Koch, supra at 32. Beyond that, it is also overbroad to the extent it seeks "any and all" leases for QCRE's premises, without limitation. See Reuters Ltd. v Dow Jones Telerate, Inc., supra at 337.

For these reasons, QCRE's motion is granted, the subpoena is quashed pursuant to CPLR 2304 and QCRE need not comply and is granted a protective order as to the information sought in that subpoena pursuant to CPLR 3101.

QCRE's application for sanctions is denied without prejudice.

Accordingly, it is

ORDERED that motion on non-party QCRE VI, LLC pursuant to CPLR 2304 to quash the subpoena dated March 8, 2021, is granted, the subpoena is quashed, and third-party QCRE VI, LLC need not comply, and non-party QCRE VI, LLC is granted a protective order as to the information sought in that subpoena pursuant to CPLR 3101, and the motion is otherwise denied, and it is further,

ORDERED that the parties shall promptly confer, commence discovery and appear for a preliminary conference on **August 12, 2021**, at 11:30 a.m., to be held remotely, and it is further

ORDERED that the parties shall conduct discovery in a cooperative fashion, using remote technology whenever possible (see Administrative Order of the Chief Administrative Judge of the Courts AO/129/2020), in accordance with the New Uniform Rules for the Supreme

Court and County Court, made effective February 1, 2021 (see Administrative Order of the Chief Administrative Judge of the Courts AO/270/2020), and it is further

ORDERED that the plaintiff's motion to dismiss the defendant's counterclaims (MOT SEQ 001) is adjourned to **May 20, 2021**, for submission on papers, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

  
NANCY M. BANNON, J.S.C.  
HON. NANCY M. BANNON

5/4/2021  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER