

Barlow v Skroupa
2021 NY Slip Op 32886(U)
December 23, 2021
Supreme Court, New York County
Docket Number: Index No. 651739/2020
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41
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HEATHER BARLOW, VALUE EXTRACTION
SERVICES LLC, PHILLIP LOFASO, JAKE
HENRICKSON, MAKEEDA PERKINS, JEN
DOBIES, ROES 1-2, and all other
similarly situated and or interested
parties,

Index No. 651739/2020

Plaintiffs

- against -

DECISION AND ORDER

CHRISTOPHER SKROUPA, INSPIRE SUMMITS
LLC d/b/a SKYTOP STRATEGIES, DAVID
KATZ, JOHN STEPHEN WILSON, PAULA LUFF,
and ADVISORY BOARD MEMBERS DOES 1-20,

Defendants
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LUCY BILLINGS, J.S.C.:

I. DEFENDANTS' MOTION TO QUASH PLAINTIFFS' SUBPOENAS

Defendants move to quash plaintiffs' four subpoenas duces
tecum issued to Wells Fargo Bank October 20, 2020, JPMorgan Chase
Bank, N.A., January 13, 2021, Citibank January 13, 2021, and
Fidelity Legal Operations January 20, 2021. C.P.L.R. § 2304.
Defendants request either that plaintiffs destroy all documents
received in response to the subpoenas and any copies of those
documents or that plaintiffs' attorneys keep those documents
confidential. C.P.L.R. § 3103(a). The court already temporarily
ordered the latter alternative in the order to show cause signed
November 10, 2021, reinstating this motion. The court also
ordered plaintiffs temporarily to cease further enforcement of
the subpoenas, to notify the subpoenas' recipients temporarily to

cease production of any further documents in response to the subpoenas, C.P.L.R. §§ 2304, 3103(a) and (b), and to serve on defendants all subpoenas issued and all documents received in response. C.P.L.R. § 3120(3). Finally, defendants request a further protective order prohibiting plaintiffs from serving further subpoenas without the court's permission, C.P.L.R. § 3103(a), and notice to defendants, C.P.L.R. § 3120(3), and an award of attorneys' fees and expenses incurred by defendants in response to the four subpoenas, including pursuing this motion. The only authority defendants cite for this last request for relief is 22 N.Y.C.R.R. § 130-1.1, authorizing sanctions.

Plaintiffs have complied with the temporary relief ordered and agreed to the relief requested except the alternative of destroying the documents received, the prohibition against serving further subpoenas without the court's permission, and the award of attorneys' fees and expenses. The remaining relief that the court temporarily ordered and that plaintiffs agreed to is warranted. Plaintiffs failed to serve the four subpoenas on defendants when plaintiffs served the subpoenas on the four financial institutions and failed to notify defendants within five days after receiving the documents produced in response to the subpoenas. C.P.L.R. § 3120(3). Although plaintiffs protest that defendants were unrepresented when plaintiffs served the subpoenas and received the responsive documents, plaintiffs did not serve the subpoenas on defendants themselves, nor notify them of the documents received. Nevertheless, since plaintiffs

complied with these requirements once a new attorney appeared for defendants, and defendants show no prejudice from this delay, it does not rise to the level of sanctionable conduct. 22

N.Y.C.R.R. § 130-1.1(c); Bradley v. Bradley, 167 A.D.3d 489, 489-90 (1st Dep't 2019); Korangy v. Malone, 161 A.D.3d 645, 646 (1st Dep't 2018); Curtis v. Tabak Is Tribeca, LLC, 144 A.D.3d 509, 509-10 (1st Dep't 2016); Gordon Group Invs., LLC v. Kugler 127 A.D.3d 592, 594 (1st Dep't 2015).

Two of the subpoenas also failed to set forth the "circumstances or reasons" why the documents were sought. C.P.L.R. § 3101(a)(4); Kapon v. Koch, 23 N.Y.3d 32, 39 (2014); Harold Levinson Assoc., Inc. v. Wong, 128 A.D.3d 566, 567 (1st Dep't 2015); Nacos v. Nacos, 124 A.D.3d 462, 463 (1st Dep't 2015). The subpoenas to Wells Fargo Bank and Fidelity Legal Operations comply with this requirement by notifying the recipients that the documents were "necessary to prove deliberate nonpayment of fees, wages, and loans to independent contractors and employees, as well as commingling of individual and corporate funds." Decl. of Adam E. Engel Ex. A, at 2. See id. Ex. D, at 2; Kaiafas v. Ammos NYC LLC, 179 A.D.3d 416, 417 (1st Dep't 2020). The subpoenas to JPMorgan Chase Bank and Citibank, however, omit any such explanation to these nonparties. As nonparties, JPMorgan Chase Bank and Citibank are entitled to know the parties' claims or defenses to which these banks' disclosure may be relevant. Kapon v. Koch, 23 N.Y.3d at 37, 39; Kaiafas v. Ammos NYC LLC, 179 A.D.3d at 417.

Assuming the explanation provided to Wells Fargo Bank and Fidelity Legal Operations conveys valid "circumstances or reasons" why the documents were sought, the documents sought extend well beyond these purposes to a wide swath of personal as well as corporate financial information, involving transactions not just among the parties, but with their family members and other nonparties. The subpoena to Wells Fargo Bank seeks all bank statements for all accounts of defendants Skroupa and Inspire Summits LLC, doing business as Skytop Strategies, over a span of years extending beyond the periods when plaintiffs allege they were not paid, showing every charge against those accounts, every transfer from those accounts, and the recipients of those transfers. The subpoena to Fidelity Legal Operations seeks all bank statements for all accounts of defendant Wilson as well as Skroupa and Inspire Summits LLC, doing business as Skytop Strategies, and other records showing loans and financing, including their sources, to the latter defendant and transactions between any of the three parties, over an even longer time span. Plaintiffs do not need all those documents to prove that plaintiffs were not paid fees or wages due from defendants or not repaid loans to defendants or that Skytop Strategies commingled its funds with Skroupa's or other individual defendants' funds. Horn v. Nestor, 172 A.D.3d 659, 659 (1st Dep't 2019); Curran v. New York City Tr. Auth., 161 A.D.3d 649, 649 (1st Dep't 2018); DeLeonardis v. Harà, 136 A.D.3d 558, 558 (1st Dep't 2016); Matter of Souza, 80 A.D.3d 446, 446 (1st Dep't 2011). See Nacos v.

Nacos, 124 A.D.3d at 463.

The subpoenas to JPMorgan Chase Bank and Citibank likewise seek all bank statements and other records of transactions between either Katz or his nonparty law firm and Skytop Strategies. These transactions might relate to any firm employees' attendance at, presentation at, or sponsorship of Skytop Strategies' conferences. Again, plaintiffs do not explain the relevance of documents relating to Katz's law firm or its other employees. Nor do plaintiffs explain how Katz's own attendance at, presentation at, or sponsorship of Skytop Strategies' conferences, even if it involved waiving his attendance fee, paying him for a presentation, or receiving payment for his sponsorship, are relevant to a failure to pay plaintiffs or commingling of funds between Skytop Strategies and Katz. Similarly, the documents sought relating to transactions between Katz and defendant Luff, a Skytop Strategies advisory board member, are unlikely to lead to evidence of a failure to pay plaintiffs or commingling of funds with Skytop Strategies.

Plaintiffs concede that they have sought much of the same information from defendants directly and have agreed to re-serve the subpoenas to the four nonparties. Therefore, after defendants have responded to plaintiffs' document requests to defendants, plaintiffs may re-serve the subpoenas to Wells Fargo Bank, JPMorgan Chase Bank, Citibank, and Fidelity Legal Operations, seeking relevant information that plaintiffs did not receive from defendants. Any new subpoenas must be carefully

tailored to seek only documents that may prove (1) that plaintiffs were not paid fees or wages due from defendants or not repaid loans to defendants or (2) that Skytop Strategies commingled its funds with Skroupa's or other individual defendants' funds. The period for which the first category of documents may be sought shall be limited to the period when plaintiffs allege they were not paid. The period for which the second category of documents may be sought shall be limited to the period when plaintiffs allege they were not paid and since then. Plaintiffs shall not seek information pertaining to defendants' nonparty family members, employers, co-employees, or law firms. If, as plaintiffs insist, they seek Katz's financing agreements with and financial control of Skytop Strategies, plaintiffs may seek those agreements and documents showing his financial control, but not every financial transaction by Skytop, Katz, his law firm, or his family members.

II. PLAINTIFFS' CROSS-MOTION FOR ATTORNEYS' FEES AND EXPENSES

Plaintiffs cross-move for attorneys' fees and expenses incurred by plaintiffs in response to the reinstatement of this motion after the action was remanded from the United States District Court for the Southern District of New York. Plaintiffs insist that they resolved this motion before it was reinstated, by agreeing to keep the documents received confidential; to cease further enforcement of the subpoenas temporarily; to notify the subpoenas' recipients to cease production of further documents temporarily, C.P.L.R. §§ 2304, 3103(a) and (b); to serve the

subpoenas and documents received in response on defendants, C.P.L.R. § 3120(3); and to re-serve the subpoenas.

The court denies plaintiffs' cross-motion for three reasons. First, plaintiffs consented to the reinstatement of defendants' motion to quash the subpoenas. NYSCEF No. 159. Second, plaintiffs already had opposed the motion before it was reinstated and expended no more time or resources in opposing the motion except in serving their cross-motion. NYSCEF Nos. 72-74, 153-54. Finally, plaintiffs' nonappearance for their cross-motion December 10, 2021, at 3:30 p.m., despite abundant advance notice and their consent to that time, is reason alone to deny the cross-motion.

III. CONCLUSION

Consequently, for the reasons explained above, the court grants defendants' motion to quash plaintiffs' four subpoenas duces tecum issued to Wells Fargo Bank October 20, 2020, JPMorgan Chase Bank, N.A., January 13, 2021, Citibank January 13, 2021, and Fidelity Legal Operations January 20, 2021. C.P.L.R. § 2304. Plaintiffs shall destroy all documents received in response to the subpoenas and any copies of those documents, cease further enforcement of the subpoenas, and notify the subpoenas' recipients to cease production of any further documents in response to the subpoenas. C.P.L.R. § 3103(a). Plaintiffs shall serve on defendants any future subpoenas issued and all documents received in response. C.P.L.R. § 3120(3). The court denies defendants all other relief requested, including attorneys' fees

and expenses, 22 N.Y.C.R.R. § 130-1.1(c), and denies plaintiffs' cross-motion for attorneys' fees and expenses.

DATED: December 23, 2021

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C