

**Rosenthal v Meza**

2022 NY Slip Op 30411(U)

February 1, 2022

Supreme Court, New York County

Docket Number: Index No. 656351/2017

Judge: Barbara Jaffe

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. BARBARA JAFFE PART 12

*Justice*

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INDEX NO. 656351/2017

ERIC ROSENTHAL, NICHOLAS CASCIO,

MOTION DATE \_\_\_\_\_

Plaintiffs,

MOTION SEQ. NO. 003

- v -

DEOGENE MEZA, MELODY MEZA, THE  
FUTURES GROUP IT LLC, FUTURES GROUP  
HOLDINGS INC., FUTURES GROUP STAFFING  
SOLUTIONS INC., L.M. COHEN & CO. LLP  
CERTIFIED PUBLIC ACCOUNTANTS,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 85-97  
were read on this motion to quash subpoena.

Defendants Deogene Meza and Melody Meza (Mezas), and The Futures Group IT LLC  
(Futures Group) (collectively, movants) move pursuant to CPLR 3101(a)(4) for an order  
quashing subpoenas that were served on non-parties, JP Morgan Chase Bank, NA and Bank of  
America, NA (collectively, banks) on October 1, 2021. Plaintiffs oppose.

I. PERTINENT FACTS

In their complaint, plaintiffs allege that defendants made material misrepresentations  
concerning commissions owed to them for work performed as employees of Futures Group, and  
that Futures Group possessed sufficient resources to pay the commissions and failed to do so,  
instead using company funds to pay for the Mezas's personal expenses and obtaining business  
loans based on inaccurate financial information. (NYSCEF 69).

The subpoenas sought to be quashed are directed to the banks, whereby they are required

to produce documents and correspondence pertaining to defendants and several enumerated accounts, as well as documents pertaining to loan applications made on behalf of movants. Plaintiffs explain therein that the documents sought are material and necessary as relating to unpaid commissions they duly earned from defendants, and to the misuse of defendants' assets in contravention of their obligations to pay plaintiffs. (NYSCEF 89, 90).

## II. CONTENTIONS

In support of their motion, movants assert that plaintiffs' subpoenas seek information which is not material or necessary to the action, as the Mezas's personal bank records and communications with the banks are outside the scope of the underlying employment dispute; plaintiffs were employed by Futures Group, not by the Mezas. They also argue that the subpoenas are premature, as the documents may be sought from movants in the normal course of discovery, which is ongoing, and that they are overbroad, as they seek documents from a period beyond the statutes of limitations for the pertinent causes of actions. If the court does not quash the subpoenas, movants ask that a protective order be entered limiting the scope to all documents pertaining to Futures Group for the period from 2011 to 2017. (NYSCEF 86).

In response, plaintiffs assert that the motion is made pursuant to an inapposite CPLR provision of the CPLR, that movants fail to annex the subpoenas they seek to quash, that they lack standing to challenge the subpoenas directed at their banks because they, as depositors, have no ownership or other interest in a bank's records of their accounts, and that the motion is moot as to Bank of America, NA, as it has complied with the subpoena by giving plaintiffs the documents that they requested, albeit after movants filed their motion.

Plaintiffs also maintain that the information sought in the subpoenas is germane to their claims that the Mezas purposely undercapitalized and/or transferred assets from Futures Group

and utilized their control over it to evade liability for the its debts to them. They deny that the subpoenas are premature, as they needed to act promptly to secure the documents they seek or risk losing the ability to do so given the banks' document retention policies. Plaintiffs also deny that the subpoenas are overly broad, as the court had previously ordered disclosure of other documents within the time period set forth in the subpoena. Additionally, they note that defendant L.M. Cohen & CO. LLP Certified Public Accountants does not object to the subpoenas even though documents are sought relating to their dealings with the banks. (NYSCEF 88).

### III. GOVERNING LAW

“There shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by: . . . (4) any other person, upon notice stating the circumstances or reasons such disclosure is sought or required.” (CPLR 3101[a][4]; *Kapon*, 23 NY3d at 38). The statute is liberally interpreted to “require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” (*Id.*, citing *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]).

When evidence is sought by subpoena, the subpoenaing party must state the “circumstances or reasons” underlying the subpoena on the face of the subpoena itself or the notice accompanying it. (CPLR 3101[a][4]; *Kapon*, 23 NY3d at 34). A court may quash, modify or fix conditions related to a subpoena (CPLR 2304), and such an application should be granted “only where the futility of the process to uncover anything legitimate is inevitable or obvious . . . or where the information sought is utterly irrelevant to any proper inquiry.” (*Kapon v Koch*, 23 NY3d 32, 38 [2014]).

It is the burden of the party moving to quash a subpoena to establish that the discovery sought is “utterly irrelevant” to the action or that the “futility of the process to uncover anything legitimate is inevitable or obvious,” after which the burden shifts to the subpoenaing party to establish that the discovery is “material and necessary.” (*Id.*)

#### IV. ANALYSIS

While it is of no moment that movants do not specify that they move pursuant to CPLR 2304, which is the provision governing motions to quash subpoenas (*Rosenheck v Schachter*, 194 AD3d 1144, 1146 [3d Dept 2021] [notice of motion need not list the statute or regulation that is the basis of the motion as long as some grounds are mentioned]), a depositor lacks standing to object to a subpoena directed at a bank’s records of their accounts, as they have no ownership or other interest in those records (*AQ Asset Mgt. LLC v Levine*, 111 AD3d 245, 260 [1st Dept 2013]).

Additionally, as Bank of America has complied with its subpoena by producing the requested documents, the motion is moot as to it. (*Henry St. Investors, Ltd. v Brennan*, 153 AD3d 1403, 1404 [2d Dept 2017]; see e.g. *Cadle Co. v Court Living Corp.*, 34 AD3d 254 [1st Dept 2006] [motion to quash subpoena moot where witness appeared for deposition and provided information sought]).

In any event, movants fail to sustain their burden of proving that the subpoenas lack relevance as they do not attach to their motion the subpoenas they seek to quash, nor do they describe them in detail. Movants also fail to demonstrate that the requested documents are irrelevant to plaintiffs’ causes of action and that they are not limited to the period of time previously found to be relevant. Nor are the subpoenas premature under the circumstances.

V. CONCLUSION

Accordingly, it is hereby

ORDERED, that the motion to quash the subpoenas issued to JP Morgan Chase Bank, NA and Bank of America, NA is denied; and it is further

ORDERED, that the parties are directed to either enter into a stipulation encompassing their next compliance conference on or before April 27, 2022, or appear for the conference in room 341, 60 Centre Street, New York, New York, on April 27, 2022 at 2:15 pm or virtually if necessary.

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2/1/2022  
DATE

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BARBARA JAFFE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE