Conzentino v Reda
2022 NY Slip Op 30785(U)
March 9, 2022
Supreme Court, New York County
Docket Number: Index No. 651624/2020
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LAURENCE LOVE** **PART** **63M**

Justice

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CHARLES CONZENTINO, AMBULATORY SURGICAL CONSULTANTS, LLC, DAECREW 63, LLC,1324 OCEAN LLC,

Plaintiffs,

- v -

CHRISTOPHER REDA, CREDA, LLC, SLJ BAR, LLC, NICOLE PASSARO, DAE LLC, ABC COMPANIES 1-10 SAID NAMES BEING FICTITIOUS

Defendants.

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INDEX NO. 651624/2020

MOTION DATE 03/15/2022

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 84, 85, 86, 87

were read on this motion to/for REARGUMENT/RECONSIDERATION.

Upon the foregoing documents, it is

The following read on i) defendant's motion to reargue, CPLR 2221(d), this Court's prior Decision and Order of October 26, 2021 where, in pertinent part, defendants' motion to dismiss was denied, and motion to quash subpoena's was denied; and ii) to dismiss the complaint in its entirety against defendant – Nicole Passaro, per CPLR 3212(a)(7) – failure to state a cause of action; iii) to quash plaintiff's subpoena duces tecum and ad testificandum to JP Morgan Chase, N.A., dated October 28, 2021; iv) to quash plaintiff's subpoena duces tecum and ad testificandum to American Express Company, dated October 28, 2021; and v) to direct that the subpoenas' shall provide responsive documents first to defendants' counsel for redaction.

A Virtual Microsoft Teams Appearance was held on January 14, 2022 where both sides appeared, and the matter was fully submitted.

Defendant's "Affirmation of Emergency" states, "exigent circumstances exist requiring the Court to grant an order enjoining and restraining Plaintiff from serving or enforcing any third – party subpoenas seeking the financial documents of Christopher Reda or Creda, LLC. Defendants would be irreparably harmed if JP Morgan Chase, N.A., American Express Company, or any other nonparty served with a subpoena by Plaintiffs were to respond and produce Christopher Reda's or Creda's confidential and sensitive financial documents in response to the Subpoenas" (see NYSCEF Doc. No. 78 Par. 4, 8). Defendant's Affirmation does not explain precisely what harm would occur with regards to said financial subpoenas..

CPLR 2221(d)(2) states, "[a] motion for leave to reargue … shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion."

Defendants do not highlight any "matters of fact or law allegedly overlooked or misapprehended by the court."

Further, defendants submit "matters of fact not offered on the prior motion."

Defendant argues against the subpoenas for JP Morgan Chase, N.A. and American Express Company should not be allowed in their point number – one i) motion to reargue; in their point number – three iii) to quash subpoena against JP Morgan Chase, N.A.; and point number – four iv) to quash subpoena against American Express Company.

Defendants' memorandum of law states, "[t]he decision and order should be modified to protect the parties' financial information which has no bearing on the applicable facts" (see NYSCEF Doc. No. 79 P. 9).

Plaintiff attorney's affirmation in opposition states, "[t]his is an action alleging, *inter alia*, fraud concerning the finances, distribution of profits and return of investment of a New

York City bar and restaurant business. Specifically, the plaintiffs allege that the bar and restaurant business was being used for the non-business personal expenses of at least one of the defendants while a substantial sum of the 'cash' revenue of the business was being diverted to destinations other than the business" (see NYSCEF Doc. No. 84 P. 1).

Point number two (2) has defendants' motion to dismiss the complaint against defendant Nicole Passaro, per CPLR 3212(a)(7) – failure to state a claim. Plaintiff's opposition states, "CPLR 1001 and its case law requires parties who may have their property rights effected by any judgment rendered in the matter to be joined as necessary parties to prevent inconsistent judgments and afford them the opportunity to be heard. Defendants have taken the position that Nicole Passaro is a beneficial owner … of SLJ Bar, LLC. Thus, the risk of inconsistent judgments and an adverse determination as to property rights is present with respect to Nicole Passaro" (see NYSCEF Doc. No. 84 Par. 5).

Defendants' fifth (5) point seeks "directing that the subpoenas shall provide any responsive documents first to defendants' counsel for redaction of unrelated financial information and for redaction of personal identification information" (see NYSCEF Doc. No. 79 P. 4 Par. 5). Defendant does not cite any statute or caselaw with regards to this issue.

This Court has already found that there is no basis to deny the subpoenas and nothing has been provided by Defendant to indicate the court overlooked or misapprehended any facts.

It is now,

ORDERED that defendants' motion to reargue, CPLR 2221(d), this Court's prior Decision and Order of October 26, 2021 is DENIED; and it is further

ORDERED that defendants' motion to dismiss the complaint in its entirety against defendant – Nicole Passaro, per CPLR 3212(a)(7) – failure to state a cause of action is DENIED; and it is further

ORDERED that defendants' motion to quash plaintiff's subpoena duces tecum and ad testificandum to JP Morgan Chase, N.A., dated October 28, 2021, and to quash plaintiff's subpoena duces tecum and ad testificandum to American Express Company, dated October 28, 2021 are DENIED; and it is further

ORDERED that defendants' motion to direct that the subpoenas' shall provide responsive documents first to defendants' counsel for redaction is DENIED; and it is further

ORDERED that plaintiff may now serve or enforce any third-party subpoenas in the instant action, including, but not limited to, the subpoenas served onto JP Morgan Chase, N.A., and American Express Company.

3/9/2022
DATE

Hon. Laurence L. Love

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE