

Commissioners of the State Ins. Fund v Alba Servs. Inc.
2022 NY Slip Op 31710(U)
May 26, 2022
Supreme Court, New York County
Docket Number: Index No. 451055/2021
Judge: Arlene Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

COMMISSIONERS OF THE STATE INSURANCE FUND

Plaintiff,

- v -

ALBA SERVICES INC.,

Defendant.

-----X

INDEX NO. 451055/2021

MOTION DATE 05/25/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

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

The motion by defendant to quash the subpoena served by plaintiff on Signature Bank is denied.

Background

The instant action arises out of a workers' compensation insurance policy issued by plaintiff to defendant. Plaintiff contends that defendant owes it over \$1 million in unpaid premiums.

In this motion, defendant moves to quash a subpoena served by plaintiff on Signature Bank—where defendant was a customer during the relevant time period (November 14, 2013 to December 19, 2016). Defendant argues that the sole purpose of the subpoena is to harass and insists that the information requested has no bearing on plaintiff's case. The subpoena asks for all documentation relating to defendant's accounts with Signature.

Defendant maintains that plaintiff already has all the documentation about payroll and that it used a payroll company so the bank accounts would only show amounts paid to that entity. Defendant argues that bank records are highly confidential and should not be disclosed.

In opposition, plaintiff argues that it demanded various payroll and business records, including defendant's bank statements with cancelled checks on August 5, 2021. It argues that defendant never formally filed an objection to the demand and can only raise objections now based on privilege or that the demand is palpably improper, which plaintiff argues it is not.

Plaintiff insists that the bank records are material and necessary because they provide detailed transactions of who was paid by the company. It explains that payments, whether to a third-party or to individuals, could be remuneration used for calculating workers' compensation insurance premiums.

In reply, defendant argues that the case be sent to mediation. It also insists that the subpoena asks for irrelevant information and should be quashed.

Discussion

“An application to quash a subpoena 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. It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances” (*Matter of Kapon v Koch*, 23 NY3d 32, 38-39, 988 NYS2d 559 [2014] [internal quotations and citations omitted]).

The Court denies the motion. The information sought by plaintiff is material and necessary to plaintiff's prosecution—plaintiff wants to accurately calculate the premiums that defendant might owe. Defendant's bank accounts are directly relevant to that effort.

Defendant's contention, submitted only through the affirmation of its attorney, that the records would not show anything is unavailing. That is not a basis to quash a subpoena.

That defendant wants to mediate the dispute is admirable but this Court cannot force the parties to settle. The fact is that plaintiff requested relevant documents that are material and necessary to the prosecution of this action and defendant did not meet its burden to block this request.

And while defendant is correct that plaintiff was required to provide a notice (pursuant to CPLR 3101[a][4]) detailing the reasons for the disclosure, the Court finds that this argument is not a basis to grant defendant's motion. As plaintiff points out, defendant (or Signature) had 20 days to object and the subpoena is dated March 10, 2022. This motion was not brought until April 25, 2022, long after that deadline had passed. The Court recognizes that counsel for defendant insists that the delay in making this motion was due to an illness suffered by the "handling attorney." Certainly, the Court routinely accommodates parties who seek extensions due to illness. But defendant cannot have it both ways; it cannot insist that plaintiff strictly comply with one provision of the CPLR and then insist that it need not comply with another provision.


In any event, the subpoena clearly identified the pending action related to the subpoena and this satisfies the notice provision (*Kapon*, 23 NY3d at 38-39 [observing that the notice requirement was not intended to shift the burden of proof on a motion to quash to the subpoenaing party]).

Accordingly, it is hereby

ORDERED that the motion to quash the subject subpoena served on Signature Bank is denied and Signature Bank must respond on or before June 29, 2022 and plaintiff shall serve a

copy of this order, along with a notice of entry, on Signature Bank on or before June 2, 2022 via certified mail.

Next Conference: June 23, 2022 at 11 a.m. (NYSCEF Doc. No. 26 [directing that the parties update the Court about discovery by June 16, 2022]). The Court recognizes that this piece of discovery may not be completed by that time but the Court declines to adjourn the conference at this time. The parties are free to stipulate to adjourn that conference if they wish.

<p><u>5/26/2022</u> DATE</p>		 <hr/> ARLENE BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION <input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input checked="" type="checkbox"/> DENIED <input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE