

O'Shea Partners LLP v Gladstone
2022 NY Slip Op 31821(U)
June 6, 2022
Supreme Court, New York County
Docket Number: Index No. 656198/2016
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

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O'SHEA PARTNERS LLP,

 Plaintiff,

INDEX NO. 656198/2016

MOTION DATE N/A, N/A

MOTION SEQ. NO. 006 007

- v -

ROBERT GLADSTONE, MADISON EQUITIES,

 Defendant.

**DECISION + ORDER ON
 MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 175, 176, 177, 178, 179, 180, 183, 184, 185, 186, 187, 192, 193, 194, 195

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 188, 189, 190, 191, 196, 197, 198, 199, 200, 201, 202¹

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

BACKGROUND

This lawsuit was originally filed by the law firm O’Shea Partners LLP (OSP) in November 2016. The Complaint seeks approximately \$295,000 in allegedly unpaid fees and expenses for legal services allegedly rendered by OSP to Madison in certain litigation (Underlying Litigation) involving the construction and operation of a new Courtyard by Marriott hotel on East 92nd Street in Manhattan.

In addition to filing an answer, Olshan filed two (2) counterclaims against OSP, one for a declaration that OSP was not entitled to additional fees because OSP had breached its duties and

¹ The court has also considered the transcript of the oral argument held by Judge Shawn Kelly on August 23, 2021.

one, for OSP's alleged failure to disclose that it was joining Boies Schiller Flexner LLP, (BSF) and therefore could not continue to represent Madison in the Underlying Litigation.

PENDING MOTIONS

On June 11, 2021, David Bamberger moved to quash or limit a subpoena served on him in his individual capacity.

On June 20, 2021, defendants moved to quash or limit a subpoena issued Olshan Frome Wolosky LLP.

Judge Shawn Kelly heard argument on the motions on August 23, 2021. The action was subsequently reassigned to this court. The motions are consolidated herein for determination and granted as set forth below.

DISCUSSION

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]). Motions to quash under CPLR §2304 are often accompanied by motions for a protective order under CPLR §3103(a).

CPLR §3103(a) provides that a protective order may be issued to prevent “unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.” In determining whether a protective order should be issued, the general preference for allowing discovery must be balanced against the objecting party's prerogative to be free of unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice (CPLR 3103[a]; *see, Cynthia B. v. New Rochelle Hosp. Med. Ctr.*, 60 N.Y.2d 452 [1983]).

Although Mr. Bamberger is not a party to this action, but counsel to Madison, on May 7, 2021, OSP served with him individually with a subpoena for documents. The Subpoena contains 42 requests covering a 40 year period. The subpoena requests, *inter alia*, documents concerning the commencement, termination or cessation of Mr. Bamberger's affiliations with all prior employers and for any other person for which he performed legal services; all performance evaluations; documents concerning any complaint against or criticism of Mr. Bamberger; all professional disciplinary complaints against me; and all documents in his personal possession concerning the allegations in this case.

The subpoena was issued in response to arguments counsel made in relation to prior motions in this action.

The second subpoena which is the subject of motion seq no 7 also appears to be primarily focused on Mr. Bamberger.

Mr. Bamberger avers that he is counsel and not a witness in this case and that prior to trial an expert will be identified and subject to disclosure on the issue of the alleged excessive fees. Mr. Bamberger argues that his personal opinion as to the excessive fees is irrelevant for the purposes of disclosure.

The court agrees.

Based on the foregoing the motion to quash the subpoena issued to Mr. Bamberger personally is granted. The motion to quash the subpoena issued to Olshan Frome and Wolosky is granted to the extent of limiting said subpoena to items 4, 5 and 6.

The balance of the relief sought in the motions, including the request for sanctions is denied.

WHEREFORE it is hereby:

ORDERED that the motion of David Bamberger to quash the subpoena served upon him is granted; and it is further

ORDERED that the motion of defendants to quash the subpoena served on Olshan Frome Wolosky, LLP served on May 17, 2021, is granted to the extent that the firm need not produce the items sought in paragraphs 1, 2, 3, 7 and 8 of said subpoena; and it is further

ORDERED that the remainder of the items sought shall be produced within 20 days from service of a copy of this order with notice of entry; and it is further


ORDERED that, within 20 days from entry of this order, defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed, including the request for sanctions, has nonetheless been considered and is hereby denied; and it is further

ORDERED that the parties shall appear for a virtual preliminary conference on July 27th, 2022 at 12 pm; and it is further

ORDERED that this constitutes the decision and order of this court.


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6/6/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	