

Mahn v Major, Lindsey & Africa, LLC
2022 NY Slip Op 32090(U)
June 30, 2022
Supreme Court, New York County
Docket Number: Index No. 653048/2014
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

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SHARON MAHN

Petitioner,

- v -

MAJOR, LINDSEY & AFRICA, LLC,

Respondent.

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INDEX NO. 653048/2014

MOTION DATE 06/28/2022

MOTION SEQ. NO. 004 005

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 125

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154

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

Motion Sequence Numbers 004 and 005 are consolidated for disposition. The motion (MS004) by respondent to hold petitioner in contempt is denied and the cross-motion for a protective order is denied. The motion (MS005) by petitioner to quash subpoenas issued to petitioner's father is denied.

Background

In this post-judgment action, respondent seeks to hold petitioner in contempt for not providing complete responses to various post-judgment information requests. Respondent previously obtained a nearly \$3 million judgment against petitioner arising out of an underlying arbitration. Petitioner unsuccessfully moved to vacate that award and respondent cross-moved to confirm it (which explains why the judgment creditor is the respondent here).

MS004

Petitioner was previously directed to provide additional responses with respect to post-judgment requests as part of motion sequence 003, a decision issued in June 2019 (NYSCEF Doc. No. 83). Respondent now moves¹ to hold petitioner in contempt for not providing complete responses. It complains that while providing tax information, petitioner deliberately withheld information about taxable income and, in fact, only produced information about her tax liabilities. Respondent points to what it characterizes as inconsistent responses from petitioner about her tax documents during a post-judgment deposition. It claims that petitioner eventually produced tax documents for 2011, 2012, 2013, 2014 and 2016 but did not produce anything for 2009, 2010 and 2015. Respondent suggests that petitioner has been withholding documents that show she generated fees from her consulting company and that respondent is left in the dark about where it should look to collect its judgment.

In opposition and in support of its cross-motion for a protective order, petitioner contends that she offered to sign a form to permit respondent to see all of her tax documents but that respondent refused to execute the form. She contends that respondent seems focused on fighting about contempt instead of actually finding her assets. Petitioner emphasizes that she has cooperated with respondent's post-judgment document requests.

She explains that because she is engaged in a malpractice lawsuit with her former accountant, she is unable to provide all of her tax documentation so she suggested that respondent's counsel get the tax information directly from the IRS. Petitioner insists she is still

¹ The Court observes that motion sequence 004 has been fully submitted since May 2021 and respondent sent a letter to the judge previously assigned to the case about this pending motion in November 2021. This case was not assigned to the undersigned until June 13, 2022. Unfortunately, the matter should have been reassigned much earlier as the judge previously assigned to this case was elevated to an appellate court. This Court apologizes for the delay caused by the court system. It never should have taken more than a year to reassign this case.

willing to provide respondent access in this way. She observes that she exhausted her assets by spending nearly \$1 million defending herself in the arbitration, which she ultimately lost and cannot satisfy the judgment.

Petitioner maintains that she cannot find the tax documents for 2009, 2010 and 2015. With respect to her consulting company (Mahn Consulting), she claims she identified the banks she uses for this entity and that respondent should subpoena the records from the banks. Petitioner also maintains that she searched her records for information about certain legal placement deals (her occupation) and she could not find any documents relating to a \$1,000 fee in 2020, a 2016 fee for \$100,000 (apparently split with a colleague), a \$125,000 in 2020 and a \$300,000 fee in 2020.

In reply, respondent maintains that petitioner has not justified her deficient document productions. It insists she has an obligation to produce documents that are in her possession or to which she has reasonable access.

As an initial matter, the Court considered the reply as it prefers to decide motions on the merits. The Court denies both the motion to hold petitioner in contempt and the cross-motion for a protective order. The record before this Court is clear that petitioner is cooperating with respondent, although (as described below) there is more for petitioner to do. There is no basis for this Court to hold petitioner in contempt at this time, where petitioner has sat for a post-judgment deposition and produced documents.

But there is also no reason to grant the cross-motion for a protective order. Respondent is entitled to ask for information in order to collect its judgment. And respondent's inquiries are reasonable. Therefore, the Court finds that petitioner must provide the bank records for Mahn Consulting from 2009 to the present from the two banks she identified. It is not respondent's

burden to subpoena records that are readily available to petitioner. After all, she has easy access to these statements and she does not deny these are the financial records for her company.

With respect to the tax information, the Court finds that petitioner should execute the form cited above, and any other forms that may be requested by the IRS, so that respondent can get information directly from the IRS. Once that is completed, respondent may bring another application for additional relief concerning tax information. But that application should explain what other information is outstanding and why respondent seeks it.

The Court emphasizes that it cannot force petitioner to produce documents she claims she does not have. Respondent is correct that petitioner's deposition transcript contains confusing responses. But that is not a basis to hold her in contempt. The record before this Court suggests that respondent is aggressively pursuing post-judgment discovery as part of its effort to collect the judgment. Respondent is absolutely entitled to do so and those efforts do not, as petitioner complains, constitute harassment. But that does not mean petitioner must be held in contempt if she does not possess certain records or does not have the assets necessary to satisfy respondent's judgment. While the Court questions how petitioner does not have records about certain placement deals, bad record keeping is not a reason to grant respondent's motion; instead, it may be a reason for respondent to ask for the records from other sources.

MS005

In this motion, petitioner seeks to quash the subpoenas served on her father. She complains she has already provided documents responsive to these requests and that the information sought is not relevant to the satisfaction of respondent's judgment against her. Petitioner insists the inquiries are merely an attempt to harass. She claims her father's medical condition prevents him from sitting for a deposition and attaches a letter from his doctor.

In opposition, respondent claims that no evidence was submitted showing that petitioner's father is incapable of sitting for a deposition or responding to the information requests. Respondent contends that petitioner does not have standing to bring the motion on behalf of her father.

In reply, petitioner admits that there is a judgment against her that now exceeds \$4 million and that her father is unlikely to have financial information about his adult daughter.

As an initial matter, the Court finds that petitioner has standing to bring this motion (*see Capacity Group of NY, LLC v Duni*, 186 AD3d 1482, 131 NYS3d 373 [2d Dept 2020] [granting respondents' motion to quash subpoenas served by petitioner on nonparties]). However, the Court denies the motion. Respondent points to a 2013 real-estate transaction between petitioner and her father in which he purchased an apartment from her and is purportedly petitioner's landlord. This provides a justification for the subpoenas.

That Mr. Mahn might not be intimately familiar with his daughter's finances does not compel the Court to grant the motion to quash these subpoenas. If he does not know the answer to certain questions, he can simply respond that way under oath. But the Court is unable to find that this is a fishing expedition given the substantial financial transaction they entered into in 2013 (petitioner was apparently fired from her job with respondent in 2009 and the arbitration that led to respondent's judgment commenced in 2010).

While the Court acknowledges Mr. Mahn's purported health condition, the fact is that nothing was submitted to conclusively show he cannot sit for a deposition or answer an information subpoena. The only document included in the moving papers is a letter (not an affirmation or notarized document) stating that Mr. Mahn should avoid undue stress (NYSCEF Doc. No. 142). That letter does not compel the Court to grant petitioner's motion to quash.

The Court also rejects petitioner’s arguments that the requests (NYSCEF Doc. No. 138) are overbroad or irrelevant. As stated above, if Mr. Mahn does not possess documents responsive to these requests, he can simply respond that he does not have any documents. But the record before this Court shows that petitioner admits she does not have certain documents (such as tax information for various years) and so respondent is entitled to explore whether her father might have those items, among other things. As a judgment creditor, respondent has the right to look for assets; if petitioner cannot or will not provide that information, then the creditor is entitled to question people who may be able to provide information about assets or which may lead to finding assets.

Accordingly, it is hereby

ORDERED that the motion (MS004) by respondent to hold petitioner in contempt is denied and the cross-motion by petitioner for a protective order is denied; and it is further

ORDERED that petitioner must produce all bank statements for her consulting company from the two banks she identified from 2009 to the present by July 29, 2022; and it is further

ORDERED that petitioner must execute the form(s) to permit respondent to access her IRS records on or before July 29, 2022 and execute any subsequent forms that may be requested by the IRS for this purpose; and it is further

ORDERED that the motion (MS005) by petitioner to quash the subpoenas served on her father is denied.

6/30/2022
DATE



ARLENE BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE