

Tekiner v Bremen House Inc.
2022 NY Slip Op 33683(U)
October 25, 2022
Supreme Court, New York County
Docket Number: Index No. 657193/2020
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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YASEMIN TEKINER,

Plaintiff,

- v -

BREMEN HOUSE INC., BREMEN HOUSE TEXAS, INC.,
 GERMAN NEWS COMPANY, INC., GERMAN NEWS
 TEXAS, INC., 254-258 W. 35TH ST. LLC, BERRIN
 TEKINER, GONCA TEKINER, BILLUR AKIPEK, ZEYNEP
 TEKINER,

Defendants.

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INDEX NO. 657193/2020

MOTION DATE 10/11/2022

MOTION SEQ. NO. 035

**DECISION + ORDER ON
 MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 035) 688, 689, 690, 691, 692, 693, 694, 695, 696, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 765, 766

were read on this motion to QUASH SUBPOENA.

Defendants Bremen House Inc., German News Company, Inc., Berrin Tekiner, Gonca Chelsea, and Billur Akipek (collectively, “Defendants”) move for an order (i) pursuant to CPLR 2304, to quash or narrow the subpoena duces tecum served by plaintiff Yasemin Tekiner on non-party Santander Bank, N.A. (the “Subpoena”) (NYSCEF 691); and (ii) for a protective order pursuant to CPLR § 3103, preventing Plaintiff from seeking irrelevant and immaterial information via the Subpoena. For the following reasons, Defendants’ motion to quash is denied.

“A motion to quash, fix conditions or modify a subpoena shall be made promptly in the court in which the subpoena is returnable” (CPLR § 2304). It “should be made prior to the return date” (*Santangelo v People*, 38 NY2d 536, 539 [1976] [internal citations omitted]), since

“[o]nce there has been compliance with the subpoena, [] a motion to quash or vacate no longer is available” (*Brunswick Hosp. Ctr., Inc. v Hynes*, 52 NY2d 333, 339 [1981]). Further, “[a]n application to quash a subpoena should be granted ‘[o]nly 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’” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014] [citation omitted]). “It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances” (*id.* at 39).

First, contrary to Plaintiff’s arguments, Defendants have standing to object to this subpoena (*M&T Bank Corp. v Moody’s Inv’rs Services, Inc.*, 191 AD3d 1288, 1290 [4th Dept 2021]; *Tsunis Gasparis LLP v Ring*, 74 Misc 3d 1206(A) [Sup Ct, Suffolk County 2022]).

Second, Defendants’ procedural defects are not fatal. Although Defendants filed this application by notice of motion as opposed to by order to show cause as they were directed,¹ it was Defendants that bore the risk that Santander Bank would comply with the Subpoena before their application was decided, which would render Defendants’ motion moot.

However, Defendants have failed to satisfy their burden of demonstrating that the subpoena should be vacated. Defendants fail to adequately show how the requested bank records in Requests No. 7, 8, 9, 11, 12, 13, 15, 16, and 17—which seek records evidencing transfers of funds into and out of the accounts of the Company, and records evidencing transfers of funds into and out of the business accounts opened on July 29 and July 30, 2020 by the Individual

¹ On September 15, 2022, Defendants sought a court conference, and during the conference with the Court’s law clerk, they were advised that if they wished to quash the subpoena, they should file an order to show cause before the return date of the subpoena, which was represented to the Court to be September 16, 2022. The parties seem to dispute whether September 15 or September 16 is the return date. In any event, Defendants filed their motion on September 16, 2022, and Plaintiff has not demonstrated any prejudice from this one-day discrepancy.

Defendants—are irrelevant to this litigation, given Plaintiff’s allegations of corporate waste, mismanagement, and misuse of funds by the named defendants. Furthermore, there is “no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source” (*Kapon*, 23 NY3d 32 at 38).

Likewise, Defendants have not shown that Requests Nos. 5, 6, 10 and 14—which seek records evidencing transfers of funds into and out of the Bremen House managed account for non-parties 254-258 W. 35th Street, LLC, Bremen House Texas, Inc. and German News Texas, Inc.²—are irrelevant given Plaintiff’s allegations of funds being transferred from Company accounts into non-Company accounts that are controlled by the Individual Defendants (*see Mapfre Ins. Co. of New York v Soltanov*, 2019 NY Slip Op 30239[U], 5 [Sup Ct, NY County 2019] [“Plaintiffs sufficiently demonstrate that the bank records are material to the case because they can shed light on the movement of funds, which is material in determining whether Moving Defendants engaged in fraud”]). Finally, Requests 1, 2, and 3, which seek complete versions of documents that Defendants produced in discovery in incomplete or illegible form, are granted.³

The Court has considered the parties’ remaining arguments and finds them unavailing.

Accordingly, it is

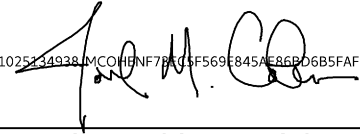
² These parties were dismissed from this case (*see* NYSCEF 140).

³ In her Opposition, Yasemin submits that she has withdrawn Request No. 20, which seeks Signature Cards (NYSCEF 698 at 5), as well as her requests for records evidencing transfers of funds into and out of certain accounts held by Billur (Requests No. 18, 19) (NYSCEF 698 at 14). Further, Yasemin agreed to limit the Subpoena’s scope to January 1, 2015, to the present, and allow for the redaction of Personally Identifiable Information (“PII”) pursuant to the Stipulation and Order for the Production and Exchange of Confidential Information (*see* Parker Aff. at ¶ 18, Ex. M; NYSCEF 91) (NYSCEF 698 at 6).

ORDERED that Defendants’ motion to quash the Subpoena is **denied**, and Santander Bank, N.A. is directed to comply with the Subpoena, subject to the restrictions described in footnote 3 *supra*.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

10/25/2022
DATE

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