

Phillips Nizer LLP v Moy
2022 NY Slip Op 33859(U)
November 15, 2022
Supreme Court, New York County
Docket Number: Index No. 156651/2021
Judge: Sabrina Kraus
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

PHILLIPS NIZER LLP,

Plaintiff,

- v -

MARVIN MOY,

Defendant.

-----X

INDEX NO. 156651/2021

MOTION DATE 11/15/2022

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

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

BACKGROUND

In this action plaintiff has obtained a judgment for unpaid attorneys’ fees against defendant, its former client. Plaintiff commenced enforcement proceedings including service of a Restraining Notice, Information Subpoena and Subpoena Duces Tecum, on defendants’ new matrimonial attorneys, Coffinas & Lusthaus, P.C..

Coffinas & Lusthaus, P.C. now moves for an order to quash the Restraining Notice, Information Subpoena and Subpoena Duces Tecum. For the reasons stated below, the motion is denied.ⁱ

DISCUSSION

CPLR § 5240 explicitly provides that a Court “may at any time, on its own initiative or the motion of any interested person, and upon such notice as it may require, make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement

procedure.” NY CLS CPLR § 5240; see also Paz v. Long Island R.R., 241 A.D.2d 486, 661 N.Y.S.2d 20, 22 (2d Dept. 1997).

Movant argues that pursuant to its retained agreement with defendant, the \$25,000.00 retainer fee is non-refundable, and that the information sought is subject to attorney client privilege.

However, the court finds that the Restraining Notice with Information Subpoena, together with the Subpoena Duces Tecum served on Coffinas & Lusthaus, P.C. are proper. They are the appropriate and statutorily prescribed means of obtaining information to satisfy a money judgment, and they fully comply with CPLR 5222, 5223 and 5224. The Subpoenas state on their face that plaintiff is seeking documents and information for the sole purpose of satisfying the Money Judgment.

With respect to the restraining notice, per CPLR 5222(a), a restraining notice "may be served upon any person, except the employer of a judgment debtor or obligor where the property sought to be restrained consists of wages or salary due or to become due to the judgment debtor or obligor."

With respect to the information subpoena, CPLR 5224(3)(i) provides:

.... information subpoenas, served on an individual or entity other than the judgment debtor, may be served on an individual, corporation, partnership or sole proprietorship only if the judgment creditor or the judgment creditor's attorney has a reasonable belief that the party receiving the subpoena has in their possession information about the debtor that will assist the creditor in collecting his or her judgment.

Plaintiff asserts a reasonable belief that movant holds assets, in the form of unused retainer funds, in which Dr. Moy has an interest. Moreover, the court agrees that a plain reading of the retainer does not support movant's claim that the initial retainer fee is necessarily non-refundable.

Additionally, the Subpoena Duces Tecum served on movant is proper. Disclosure in the form of a Subpoena Duces Tecum is permitted pursuant to CPLR 5223 which provides:

... (a) judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena, which shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon, and shall state that false swearing or failure to comply with the subpoena is punishable as a contempt of court.

CPLR 5224 further states that "a subpoena duces tecum requiring the production of books and papers for examination at a time and place named therein" is a proper type of subpoena. The Document Subpoena states that the purpose for the disclosure is for "satisfying the aforesaid judgment."

Nor has movant alleged that the discovery sought is "utterly irrelevant" to the action or that the "futility of the process to uncover anything legitimate is inevitable or obvious." *Kapon v. Koch*, 23 N.Y.3d 32, 34 (2014); *see also Hudson City Sav. Bank v. 59 Sands Point, LLC*, 153 A.D.3d 611, 613 (Second Department, 2017).

Plaintiff submits that all of the requested information is vitally relevant to the prosecution of the Money Judgment. The requested documents will provide, among other things, the location of Dr. Moy's bank accounts where funds can be attached, and the location of his employment subject to income execution.

Similarly, the court notes that contrary to the arguments of the movant the documents demanded are limited to non-privileged documents and finds no basis to hold that the documents sought are overly broad or that compliance would be unduly burdensome.

However, paragraph 33 of the documents sought which purports, presumably inadvertently, to seek the passport and visas of Maria Coffinas is limited only to documents belonging to the judgment debtor.

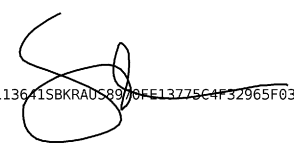
WHEREFORE it is hereby:

ORDERED that the motion is denied in its entirety except with respect to the personal travel documents of Maria Coffinas as provided above; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff 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 this constitutes the decision and order of this court.



202211151136415BKRAUS8978FE13775E4F32965F033E30431929

11/15/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

ⁱ At oral argument it was disclosed that defendant was allegedly in a boating accident in October 2022, and that his body has not been recovered. Movant alleges that he is presumed dead but acknowledges that no death certificate will be issued pending completion of an investigation by the coast guard which is anticipated to last up to one year. Additionally, it was disclosed that defendant was at the time of the accident under indictment for substantial health care fraud. The court finds that none of these allegations provide any basis to grant the pending motion.