

FTI Consulting, Inc. v Napoli Bern Ripka Shkolnik & Assoc., LLP
2022 NY Slip Op 33967(U)
November 21, 2022
Supreme Court, New York County
Docket Number: Index No. 651133/2020
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	HON. LOUIS L. NOCK	PART	38M
	<i>Justice</i>		
-----X			
		INDEX NO.	651133/2020
FTI CONSULTING, INC.,			11/10/2021,
	Plaintiff,		11/10/2021,
			12/03/2021,
	- v -	MOTION DATE	05/18/2022,
NAPOLI BERN RIPKA SHKOLNIK & ASSOCIATES, LLP,			05/26/2022
	Defendant.	MOTION SEQ. NO.	004 005 006 007 008

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document numbers (Motion 004) 62, 63, 64, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, and 87

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

The following e-filed documents, listed by NYSCEF document numbers (Motion 005) 66, 67, 68, 69, 86, and 88

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

The following e-filed documents, listed by NYSCEF document numbers (Motion 006) 70, 71, 72, 73, 74, 89, 90, and 91

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

The following e-filed documents, listed by NYSCEF document numbers (Motion 007) 92, 93, 94, 95, 96, 97, 98, 99, 106, and 109

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

The following e-filed documents, listed by NYSCEF document numbers (Motion 008) 100, 101, 102, 103, 104, 105, 107, and 110

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

Motion sequence numbers 004 through 008 are consolidated for decision. The court assumes familiarity with the facts and procedural history of this matter as set forth in its prior decisions (NYSCEF Doc. Nos. 20, 34, 56).

Upon the foregoing documents, it is ORDERED that motion sequence numbers 004, 005, and 006, which are to quash an information subpoena issued to nonparty Bank of America, N.A. dated October 15, 2021 (NYSCEF Doc. No. 64), seeking information regarding accounts held for nonparties Paul Napoli and Hunter Shkolnik (Mot. Seq. No. 004), Napoli Shkolnik PLLC (Mot. Seq. No. 005), and Marc Bern (Mot. Seq. No. 006), are denied, for the reasons stated in plaintiff's opposition papers (NYSCEF Doc. Nos. 75, 85, 86, 89) and the exhibits attached thereto, in which the court concurs. As more specifically set forth therein, a "judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena" (CPLR 5223). "A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order to determine whether the judgment debtor concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment" (*George v Victoria Albi, Inc.*, 148 AD3d 1120, 1121 [2d Dept 2017] [internal quotation marks and citations omitted]). "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" (*Technology Multi Sources, S.A. v Stack Global Holdings, Inc.*, 44 AD3d 931, 932 [2d Dept 2007] [internal quotation marks and citations omitted]). Here, plaintiff's papers establish, at least, the possibility that the judgment debtor Napoli Bern Ripka Shkolnik and Associates LLP may have dissipated assets to the nonparty movants, and accordingly, the nonparty movants do not meet the high bar necessary to quash the subpoena seeking information relevant to that issue (*Young v Torelli*, 135 AD2d 813, 815 [2d Dept 1987]). Movants' citations to case law deriving from CPLR 3103, which applies to pre-trial discovery proceedings, are not relevant to the post-judgment phase of the instant action; and it is further

ORDERED that motion sequence number 007 made by nonparty Paul Napoli to quash an information subpoena served on him dated May 3, 2022, is granted. As set forth more specifically in the moving and reply papers (NYSCEF Doc. Nos. 93, 106), the subpoena was served on Napoli by certified mail, return receipt requested, at two addresses in Puerto Rico. Service of an information subpoena by certified mail outside of New York State on a nonparty is not authorized by the CPLR (*Siemens and Halske, GmbH. v Gres*, 37 AD2d 768, 768 [1st Dept 1971] [“There is no indication that service of a subpoena without the state is authorized”]). *Harbor Footwear Grp. Ltd. v ASA Trading Inc.* (1 Misc 3d 911[A], 2004 NY Slip Op 50036[U] [Sup Ct, Nassau County 2004]), cited by plaintiff to the contrary, is unavailing, as that case concerned service of an information subpoena upon the judgment debtor rather than service on a nonparty; and it is further

ORDERED that motion sequence number 008 made by nonparty Marc Bern to quash an information subpoena served on him dated May 3, 2022, is denied, for the reasons set forth in plaintiff’s opposition papers (NYSCEF Doc. No. 107), in which the court concurs, and which are largely set forth above in relation to the court’s decision on motion sequence numbers 004-006. Additionally, Bern contends that the information sought in the information subpoena is more properly sought from the judgment debtor; but cites no authority for the proposition that plaintiff is precluded from seeking the information from him as well. As plaintiff asserts, the judgment debtor’s responses to a separate information subpoena were incomplete and, in any case, do not overlap entirely with the information sought from Bern. *Bandler v Liberty Chevrolet, Inc.* (25 Misc 3d 1214[A], 2009 NY Slip Op 52095[U] [Civ Ct Bronx County 2009]), cited by Bern, is distinguishable. In that case, the plaintiff sought discrete information from defendant that it already possessed; and it is further

ORDERED that nonparty Marc Bern shall comply with the information subpoena served upon him within 30 days of the date of entry of this order; and it is further

ORDERED that the parties shall appear for a status conference in Room 1166, 111 Centre Street, New York, New York, on January 18, 2023, at 10:00 AM.

This constitutes the decision and order of the court.

Louis L. Nock

<u>11/21/2022</u>				<u>LOUIS L. NOCK, J.S.C.</u>
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				OTHER
				REFERENCE