

<b>White &amp; Case LLP v Kim</b>
2023 NY Slip Op 30242(U)
January 23, 2023
Supreme Court, New York County
Docket Number: Index No. 652445/2022
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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WHITE & CASE LLP,

Plaintiff,

- v -

HANNAH KIM,

Defendant.

-----X

INDEX NO. 652445/2022

MOTION DATE 01/19/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

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

Defendant’s motion to quash plaintiff’s two non-party subpoenas is denied.

**Background**

Plaintiff contends that defendant worked for it as a legal assistant for nearly 7 years, from 2013 to 2020. It asserts that during her employment, she submitted a suspicious number of reimbursement requests (over 1,000). Plaintiff alleges that in August 2019, the firm conducted an audit into defendant’s reimbursement and overtime requests. It explains that she left the firm (in February 2020) before the investigation was completed.

Plaintiff alleges that it discovered that defendant altered documents to ensure that plaintiff reimbursed her for personal expenses, such as clothes shopping, and also increased the dollar value of food or transportation costs on various receipts. Plaintiff cites a purported

example where defendant falsified a credit card statement to ensure that a personal purchase at a clothing store was reflected as reimbursable charge for an Uber ride.

In this motion, defendant moves to quash two non-party subpoenas served on JPMorgan Chase and American Express. Defendant contends that plaintiff seeks every single credit card transaction she or her spouse made on their personal credit cards from June 26, 2013 through February 4, 2020. She complains that plaintiff made no attempt to narrowly target these requests to records that might be relevant to this case. Defendant observes that the subpoena served on JPMorgan seeks all monthly account statements from June 2013 through February 4, 2020.

Defendant complains that out of her many reimbursements, “only a small minority” were related to American Express or JPMorgan Chase. She also contends that the statute of limitations bars any requests for statements prior to July 21, 2016.

In opposition, plaintiff insists that the information sought in the subpoenas is not overbroad. It emphasizes that it believes that defendant altered credit card statements to increase the amounts of supposedly reimbursable expenses and submitted altered statements to plaintiff. It claims it merely wants the original, unaltered credit card statements in order to explore whether defendant changed other statements in connection with her many reimbursement requests over her years of employment for plaintiff.

With respect to the statute of limitations issue, plaintiff contends that the limitations period is either six years or two years from the date the fraud was discovered or could have been

discovered with reasonable diligence. It points out that defendant failed to address this part of the statute entirely in her moving papers. Plaintiff argues that any determination about reasonable diligence is more appropriate for a dispositive motion and can be decided at a later date.

Plaintiff observes that while sometimes defendant used actual receipts to support her reimbursement requests, it needs the records requested here in order to confirm the charged expenses and see whether defendant may have altered the documents submitted to plaintiff.

In reply, defendant insists that discovery must be proportional to the needs of the case. She observes that plaintiff admitted in its complaint that it has access to seven credit card statements related to 23 reimbursement requests but that the complaint only has allegations about three reimbursements. She emphasizes that this entire case is retaliatory due to her own lawsuit against plaintiff for discrimination.

Defendant questions how plaintiff is entitled to so much of her personal financial information, including her husband's financial information. She characterizes the subpoenas as a fishing expedition and argues that reimbursements billed to clients would be utterly irrelevant.

### **Discussion**

“It is well settled that the purpose of a subpoena duces tecum is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding. It is equally well settled that a motion to quash a subpoena duces tecum should be

granted only where the materials sought are utterly irrelevant to any proper inquiry” (*Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 112, 811 NYS2d 5 [1st Dept 2006]).

The Court denies the motion. As an initial matter, the Court observes that the documents requested are clearly relevant to the instant matter. Plaintiff contends that defendant altered reimbursements requests in order to receive reimbursements for personal expenses and to increase the amount of the reimbursements. For instance, the complaint points to an instance where defendant’s credit card statement contained a \$52 Uber charge (for which defendant could seek reimbursement) and a \$90 charge for a personal expense at Zara. Plaintiff maintains that defendant altered her reimbursement request to seek a \$90 charge for the Uber. In other words, the claim is that defendant altered the reimbursement request to make it look like the \$90 charge for personal expenses was actually a reimbursable expense (and for which the charged amount was much less).

Clearly, the only way for plaintiff to discover whether or not defendant submitted fraudulent reimbursement requests is to look at the American Express and JPMorgan Chase statements. This information will provide relevant evidence about the charges incurred and allow plaintiff to explore whether any reimbursement charges were fraudulent.

That the financial information may include joint accounts defendant may share with her husband is not a basis to quash the subpoena. If defendant used those accounts to seek reimbursements, then it is clearly relevant and any prejudice to defendant’s husband is far outweighed by the importance of such evidence. Unfortunately, while the privacy concerns

raised by defendant are understandable, they cannot foreclose the disclosure of what could be critical information.

The Court observes that defendant's moving papers concede that a small minority of the reimbursements were supported by statements from American Express or JPMorgan Chase. Plaintiff's entire position is that it has no idea the extent of the alleged fraud. Defendant cannot arbitrarily limit the scope of discovery where she admits that plaintiff is asking for statements from two accounts directly involved in the reimbursement requests. The extent of that involvement remains to be seen.

Moreover, the Court rejects defendant's argument that a portion of these requests are time barred due to the statute of limitations. As plaintiff points out in opposition, defendant did not address the reasonable discovery portion of the limitations period and cannot raise it for the first time in reply. And even if she had, the Court agrees with plaintiff's argument that, ultimately, a determination about the start of the limitations period will require a fact intensive assessment more suited to a dispositive motion. The Court cannot, on this motion, simply conclude that plaintiff should have known or inquired about the reimbursement requests long ago.

### **Summary**

The Court recognizes that some of the financial information requested is, certainly, personal information that any party would like to avoid turning over in discovery. But this discovery is not a fishing expedition; it is a targeted request so that plaintiff can compare reimbursement requests with the charges those requests are based upon. It may be, as defendant

contends, that only a few of the reimbursement requests were based upon these accounts and this information does not meaningfully aid plaintiff’s case. But plaintiff is certainly entitled to the subject information given the allegations in the complaint and defendant’s admission that at least some of the reimbursements were based on charges from these exact accounts.

The Court also observes that defendant, again, argues that plaintiff will not be entitled to seek recovery for damages for improper reimbursements that were charged to clients (those clients apparently paid these charges and so defendant claims plaintiff cannot seek damages for which it did not expend any money). Such an argument is premature—plaintiff will ultimately, of course, have to prove its entitlement to any claimed damages but the Court cannot, without any concrete discovery, summarily conclude that plaintiff cannot recover for any of these charges. It could be that plaintiff offered a discount to a client (and therefore did expend resources), or decided not to charge a client for certain reimbursements, or discovery could reveal something else altogether.

Accordingly, it is hereby

ORDERED that defendant’s motion to quash certain non-party subpoenas is denied.

Conference: April 13, 2023 per NYSCEF Doc. No. 28.

1/23/2023  
DATE

  
ARLENE P. BLUTH, J.S.C.

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