

City of New York v Lacroix

2023 NY Slip Op 30839(U)

March 20, 2023

Supreme Court, New York County

Docket Number: Index No. 452107/2021

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JUDY H. KIM **PART** **05RCP**

Justice

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THE CITY OF NEW YORK,

Plaintiff,

- v -

MARTINE JOWELLE LACROIX; THE
DINOSAURHAUS LLC; HOLIDAY RENTALS NYC
LLC; MJL HOSPITALITY INC.; AND “JOHN DOE” AND
“JANE DOE,” NUMBERS 1 THROUGH 10,
FICTITIOUSLY NAMED PARTIES, TRUE NAMES
UNKNOWN, THE PARTIES INTENDED BEING THE
MANAGERS OR OPERATORS OF THE BUSINESS
BEING CARRIED ON BY DEFENDANTS MARTINE
JOWELLE LACROIX; THE DINOSAURHAUS LLC;
HOLIDAY RENTALS NYC LLC; AND MJL
HOSPITALITY INC.,

Defendants.

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INDEX NO. 452107/2021
MOTION DATE 05/09/2022
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186 were read on this motion for ORDER OF PROTECTION.

On June 29, 2021, plaintiff the City of New York (the “City”) commenced this action alleging that defendant Martine Jowelle Lacroix, acting through various corporations she owned and controlled—i.e., defendants the Dinosaurhaus LLC, Holiday Rentals NYC LLC, and MJL Hospitality Group Inc—“converted ... permanent residential dwelling units into de facto hotels, and misled thousands of transient guests into booking such unlawful and unsafe accommodations” in violation of violation of Administrative Code §20-700 and New York State Multiple Dwellings Law §4.8(a) (NYSCEF Doc. No. 1 [Compl. at ¶¶5-6, 164-180]).

Lacroix now moves for a protective order: (i) quashing three subpoenas duces tecum served by the City on April 21, 2022 and April 27, 2022 upon non-parties Cross River Bank, Cache Valley Bank, and MBE Capital Partner LLC; (ii) limiting or precluding the City from obtaining certain discovery in this action; and (iii) striking the City's First Set of Interrogatories (the "Interrogatories") dated April 14, 2022. Lacroix also moves for an order, pursuant to 22 NYCRR §130.1-1, imposing sanctions against the City¹.

The City opposes the motion and cross-moves for an order, pursuant to CPLR §3124, compelling Lacroix to respond to its discovery demands. For the reasons set forth below, Lacroix' motion is denied in its entirety and the City's cross-motion is granted.

DISCUSSION

The Court first addresses that branch of Lacroix's motion, pursuant to CPLR §2304, seeking to quash the subpoenas duces tecum served on non-parties Cross River Bank, Cache Valley Bank, and MBE Capital Partner LLC. These subpoenas seek documents and information relating to any federal loans issued by these non-parties to Lacroix and the corporate defendants under the Small Business Administration's Payroll Protection Program ("PPP") (NYSCEF Doc. No. 174 [Subpoenas]). Lacroix contends that these subpoenas are overbroad and irrelevant to the City's claims herein. The City responds that the documents sought are relevant because the loans issued to Lacroix were obtained to fund the illegal enterprise alleged in the complaint (See NYSCEF Doc. No. 1 [Compl. at ¶¶158-163]).

¹ Lacroix also moves for a protective order: (i) vacating the City's Notice of Deposition Upon Oral Examination served on Lacroix on April 14, 2022 (NYSCEF Doc. No. 181); and (ii) requiring the City to conduct Lacroix's deposition "only on the eve of trial." However, these branches of Lacroix's motion have been withdrawn (See NYSCEF Doc. No. 185 [McKenzie Reply Affirm. at ¶4]).

Lacroix's motion to quash these subpoenas is denied. As a threshold matter, a motion to quash must be accompanied by "an affirmation that counsel has conferred with counsel for the opposing party in a good faith effort to resolve the issues raised by the motion" (22 NYCRR §202.7[a]) and Lacroix has not submitted any such affirmation, mandating the denial of this branch of her motion on that ground alone (See 148 Magnolia, LLC v Merrimack Mut. Fire Ins. Co., 62 AD3d 486, 487 [1st Dept 2009] [affirming trial court's denial of defendant's motion for a protective order quashing subpoena where, inter alia, movant "failed to submit affirmation attesting to good faith efforts to resolve disclosure issues]; see also Sixty-Six Crosby Assoc. v Berger & Kramer, L.L.P., 256 AD2d 26 [1st Dept 1998] ["IAS Court properly denied the motion to compel plaintiffs to answer a second set of interrogatories since summary denial of such a motion is mandated when it is made without a proper affirmation of good faith"]).

Even ignoring the foregoing, "[a]n 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'" (Matter of Kapon v Koch, 23 NY3d 32, 38-39 [2014] [internal citations and quotations omitted]) and Lacroix has not demonstrated that the discovery sought through these subpoenas is "utterly irrelevant to any proper inquiry" (Id. at 38 [2014]). To the contrary, such information is relevant to the City's allegations that Lacroix, acting through the defendant corporations, funded an unlawful enterprise. Accordingly, that branch of Lacroix's motion to quash the City's subpoenas is denied.

The Court also denies that branch of plaintiff's motion to strike the City's Interrogatories. Lacroix argues that these interrogatories must be stricken because the City exceeded the twenty-five interrogatory limit set forth in 22 NYCRR §202.20. Ultimately, however, as Lacroix failed to object to the City's Interrogatories within twenty days after service of same (CPLR §3133[a]), she

is barred from challenging them now except on the grounds that the material sought is privileged under CPLR §3101 or that the interrogatories are “palpably improper” (See McMahon v Cobblestone Lofts Condominium, 134 Ad3d 646, 646 [1st Dept 2015]; see also Kleinberg v Am. Mayflower Life Ins. Co. of New York, 106 AD2d 268, 268 [1st Dept 1984]). In light of the fact that, after discounting the interrogatories related to the corporate entities which Lacroix denies ownership, there are only twenty-one interrogatories directed to Lacroix, the number of interrogatories does not, in and of itself, render them palpably improper (Cf. PF2 Sec. Evaluations, Inc. v Fillebeen, 168 AD3d 617 [1st Dept 2019] [service of 150 interrogatories, where Court Rules limit same to 25, amounted to “gross violation” of Court’s Rules, rendering Interrogatories palpably improper]). Moreover, the City’s Interrogatories are not overly broad or unnecessarily burdensome such that they may be considered palpably improper (Cf. Lerner v 300 W. 17th St. Hous. Dev. Fund Corp., 232 AD2d 249, 250 [1st Dept 1996]).

That branch of Lacroix’s motion seeking a protective order, pursuant to CPLR §3103, to protect certain privileged information, is denied without prejudice. Lacroix seeks an order: (i) “[p]rohibiting the City from seeking utterly irrelevant documents and testimony, including, inter alia, documents and testimony that in no way bear on the causes of action asserted by the City and those outside of the scope and jurisdiction of the case at bar”; (ii) “[p]rohibiting the City from obtaining, seeking to obtain, or otherwise maintaining physical possession of any document containing unredacted, sensitive or confidential information, about Defendants, not already in the City’s actual possession, including, inter alia, complete account numbers, social security numbers, complete street addresses, and complete telephone numbers”; (iii) “[r]equiring that the City be prohibited from filing or publicly disseminating, whether directly or indirectly, any document with

sensitive, confidential, personally-identifiable information about Defendants or otherwise in violation of 22 NYCRR §202.5(e) and 22 NYCRR §206.5(e).”

The requested relief cannot be granted, as it lacks particularity, without reference to any specific deposition or discovery demand or, indeed, any “effort being made to specify the information in need of protection and why it will be necessary to disclose such to plaintiff in the course of disclosure, and indeed, as yet, plaintiff has not even served any discovery demands” (Ward v Arcade Bldg. Maintenance, Inc., 200 AD2d 455 [1st Dept 1994]). Accordingly, this branch of Lacroix’s motion is denied without prejudice to renewal “upon submissions specifying the documents to be protected or the contents thereof, and explaining why such documents are confidential or proprietary information in need of protection, how such are relevant and material to the discovery process, and why the protections already in place are inadequate” (*Id.*).

That branch of Lacroix’s motion seeking sanctions against the City is also denied. Lacroix offers no support for her assertion that the City has engaged in frivolous conduct warranting sanctions under 22 NYCRR §130.1-1.

Finally, the City’s cross-motion for an order, pursuant to CPLR §3124, to compel Lacroix to respond to its discovery demands is granted. Although the City has not submitted an affirmation of good faith in support of its cross-motion, as required by 22 NYCRR §202.7, the Court excuses the omission as “any effort to resolve the present dispute non-judicially would have been futile” under the circumstances (*Baulieu v Ardsley Assoc. L.P.*, 84 AD3d 666, 666 [1st Dept 2011] [internal citations and quotations omitted]). Accordingly, Lacroix is directed to respond to the City’s Interrogatories and Demand for Discovery and Inspection (*See* NYSCEF Doc. No. 173) within thirty days from the date of this decision and order. As Lacroix has withdrawn any objection

to appearing for a deposition (See NYSCEF Doc. No. 185 [McKenzie Reply Affirm. at ¶27]), the Court declines to set a date certain for her deposition at this juncture.

In light of the foregoing, it is

ORDERED that the branch of Martine Jowelle Lacroix's motion to quash the subpoenas upon non-parties Cross River Bank, Cache Valley Bank, and MBE Capital Partner LLC is denied; and it is further

ORDERED that the branch of Martine Jowelle Lacroix' motion for a protective order is denied without prejudice; and it is further

ORDERED that the branch of Martine Jowelle Lacroix's motion to impose sanctions on the City of New York is denied; and it is further

ORDERED that the City of New York's cross-motion to compel is granted; and it is further

ORDERED that counsel for the City of New York shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office 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 "efiling" page on this court's website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that counsel for the City of New York shall serve a copy of this decision and order upon Martine Jowelle Lacroix, with notice of entry, within fifteen days of the date of this decision and order.

This constitutes the decision and order of this Court.

Judy H. Kim
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3/20/2023
DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: