

**Lantern Endowment Partners, LP v Bluefin Servicing
Ltd.**

2023 NY Slip Op 31240(U)

April 17, 2023

Supreme Court, New York County

Docket Number: Index No. 654002/2019

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

-----X

LANTERN ENDOWMENT PARTNERS, LP,
Plaintiff,

INDEX NO. 654002/2019

MOTION DATE 03/13/2023

MOTION SEQ. NO. 005

- v -

BLUEFIN SERVICING LTD., PATRIOT CREDIT COMPANY,
LLC, MODERN ART SERVICES, LLC, IAN S PECK,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217

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

This action concerned several loan transactions and participation agreements involving, among others, plaintiff Lantern Endowment Partners, L.P. (“Lantern” or the “Judgment Creditor”) and individual defendant Ian S. Peck (“Peck” or the “Judgment Debtor”). The court assumes familiarity with the facts underlying this 2019 case as set forth in the June 24, 2022 dated Supplemental Decision + Order + Judgment on Motion (Doc 186 [MS 01 Supplemental Decision, Order and Judgment]), and provides the following facts as relevant to this motion.

On July 18, 2022, this court entered judgment, in favor of Lantern, and as against Peck, in the amount of \$590,561.17 (Doc 199 [7/18/22 Judgment]). On August 29, 2022, after entry of judgment, Lantern’s counsel served Peck with a Restraining Notice and Information Subpoena (Doc 211 [Notice and Subpoena]). The Restraining Notice and Information Subpoena required Peck to provide certain information requested within seven (7) days after receipt (which would have been September 5, 2022) and requested information relating to Lantern’s collection of the \$590,561.17 judgment.

On September 13, 2022, having received a response, Lantern sent Peck a follow-up letter as a reminder of his obligations to comply with the Notice and Information Subpoena, which meant that he had another five (5) days to do so, by September 19, 2022 as the preceding day, September 18, 2022, was a Sunday (Doc 212 [9/13/22 Follow Up Letter]).

On February 1, 2023, Lantern issued information subpoenas to two (2) non-party entities to Castle Farraday Associates (“CFA”) and East Egg Associates (“EEA”) (Docs 206-207 [Information Subpoenas to CFA and EEA]) and on February 21, 2023, Peck moved [MS 05] to quash the two information subpoenas issued by Lantern to CFA and EEA pursuant to CPLR 5224(a)(3) (Doc 203 [Notice of Motion to Quash]).

On March 6, 2023, Lantern, voluntarily withdrew the CFA and EEA Subpoenas (Doc 213 [Notice of Withdrawal and Affidavit of Service]). Lantern then cross-moved, pursuant to CPLR 2308 and 5224, to compel Peck’s compliance with the August 29, 2022 dated Restraining Notice on Debtor and Information Subpoena that Lantern served on Peck, as well as for costs associated with bringing its Cross-Motion (Doc 208 [Notice of Cross Motion]).

The court denies defendants’ motion to quash as moot because the underlying CFA and EEA Subpoenas were withdrawn.

With regard to plaintiff’s cross motion to compel Peck to respond to the information subpoena, CPLR 5223 authorizes post-judgment disclosure in these situations, and CPLR 5224(a)(3) sets forth the requirements for the subpoenas that were referenced in CPLR 5223. Peck opposes the cross motion, arguing that the Information Subpoena was defective because it failed to include two (2) copies and a self-addressed stamped envelope (Doc 215 [Press Reply Affirmation] ¶ 2)

CPLR 5224(a)(3) states that service of an information subpoena, accompanied by a copy and original of written questions and a prepaid addressed return envelope, “may be made by registered or certified mail, return receipt requested.” It further provides that the answers together with the original of the questions must be returned “within seven days after receipt” (CPLR 5224[a][3]).

Here, the parties do not dispute that Peck actually received the Notice and Subpoena. The Affidavit of Service for the Restraining Notice on Debtor and Information Subpoena served on Peck states that on August 29, 2022, the process server “mailed via Certified Mail, Return Receipt Requested a true copy of the RESTRAINING NOTICE ON THE DEBTOR, INFORMATION SUBPOENA and QUESTION AND ANSWERS” to defendant Peck by way of his counsel (Doc 211 [Notice and Information Subpoena AOS]).

However, the Affidavit of Service does not state or otherwise provide two copies and a self-addressed stamped envelope, indicating non-compliance with CPLR 5224(a)(3)’s requirements accompanied the information subpoena. Lantern does not assert that it sent two copies of the information subpoena with a prepaid, self-addressed return envelope. Instead, it argues that defendant Peck waived any objections by failing to timely move to quash the subpoena.

The Notice and Information Subpoena were served on August 29, 2022 (Doc 211 [Notice and Subpoena]). Lantern sent its follow up letter to Peck, that requested his compliance with the subpoena, on September 13, 2022 (Doc 212 [9/13/22 Follow Up Letter]). Given the seven (7) day period to raise objections to these types of subpoenas, Peck had to raise any objection or disputes concerning the notice and subpoena by September 5, 2022 (seven days after August 29, 2022). Even if Peck received the Notice and Information Subpoena on September 13, 2022, the date of

Lantern's follow up letter, Peck was required to lodge or otherwise memorialize his objection no later than September 20, 2022 (seven days after September 13, 2022).

The record on this cross motion demonstrates that Peck did not properly memorialize or raise **any** objection to the Notice and Subpoena during the roughly six-month period following Lantern's September 13, 2022 letter. In fact, Peck's counsel's affirmation states that "Mr. Peck duly disregarded the purported information subpoena" because the associated Affidavit of Service Lantern submitted in support of this motion indicated that CPLR 5224(a)(3)'s requirements were not met (Doc 215 [Peck Affirmation in Opposition] ¶¶ 3-4). Peck first raised his objection to the information subpoena in opposition to this motion, long after his time to object to the information subpoena expired under CPLR 5224[a][3]).

Peck's failure to object to the Information Subpoena or move to quash the Information Subpoena within the time permitted under CPLR 5224(a)(3) amounts to waiver (*see e.g. Cornell Fed. Credit Union v Thorpe*, 199 AD2d 936, 937 [3d Dept 1993]; *see also In re Landberg v National Enterprises Inc.* [Sup Ct, New York County 2006]). Thus, the court grants Lantern's cross motion to the extent that Lantern seeks an order compelling Peck to respond to the information subpoena. The court denies the portion of Lantern's cross motion that seeks costs and attorneys' fees. Plaintiff has not submitted any support for its request for fees or costs.

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

Accordingly, it is

ORDERED that the court denies as moot defendant Peck's motion to quash the CFA and EEA information subpoenas [MS 05]; and it is further

ORDERED that the court grants Lantern’s cross-motion to the extent that it seeks to compel Peck’s compliance with the August 29, 2022 dated Restraining Notice on Debtor and Information Subpoena [MS 05]; and it is further

ORDERED, that defendant Peck must respond to the August 29, 2022 dated Restraining Notice on Debtor and Information Subpoena within ten (10) days after service upon Peck of a copy of this Order together with notice of entry, along with two copies of the Information Subpoena and a prepaid, self-addressed envelope (*see* CPLR 5224); and it is further

ORDERED that the remainder of Lantern’s cross-motion is denied.

4/17/2023
DATE


MELISSA A. CRANE, J.S.C.

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