

Willowbrook Suites LLC v 65 Willowbrook LLC

2023 NY Slip Op 31280(U)

April 21, 2023

Supreme Court, New York County

Docket Number: 152581/2023

Judge: Erika M. Edwards

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. ERIKA M. EDWARDS PART 10M

Justice

-----X

WILLOWBROOK SUITES LLC, WILLOWBROOK HOLDINGS LLC, JOSEPH HEIMANN a/k/a JOSEPH HEIMAN, ROYAL PROPERTY MANAGEMENT NY LLC, and CENTRAL SUITES LLC,

Petitioners,

- v -

65 WILLOWBROOK LLC,

Respondent.

-----X

INDEX NO. 152581/2023

MOTION DATE 03/20/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
 MOTION AND PETITION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, in addition to the reasons stated on the record after oral argument before the court on April 20, 2023, the court grants Petitioners Willowbrook Suites LLC’s (“Suites”), Willowbrook Holdings LLC’s (“Holdings”), Joseph Heimann’s a/k/a Joseph Heiman’s (“Heimann”), Royal Property Management NY LLC’s (“Royal”) and Central Suites LLC’s (“Central”) (collectively, “Petitioners”) Verified Petition and motion by order to show cause to quash four subpoenas issued by Respondent 65 Willowbrook LLC (“Respondent”).

Petitioners seek an order quashing Respondent’s subpoenas issued to Signature Bank, Bethpage Federal Credit Union and Petitioners Royal and Central. Respondent opposes the Petition and motion by order to show cause.

Respondent filed two related actions in New Jersey, which are currently pending. A foreclosure action was filed in the Superior Court of New Jersey against Petitioners Suites and Heimann and an action to recover damages and for declaratory relief was filed in the Law

Division of the Superior Court of New Jersey against Petitioners Suites, Holdings and Heimann. Respondent alleges in substance that Petitioner Suites and Heimann defaulted on an agreement for Respondent to sell the property to Suites for approximately \$6,400,000, which included a cash payment in the amount of approximately \$996,830 and Respondent financed the transaction with a mortgage in the amount of \$5,400,000. Respondent further alleges in substance that the property was sold in 2019 with the understanding that Heimann would reasonably operate it as a commercial property.

Respondent further alleges that Heimann committed fraud because he had no intent to operate the property in an appropriate manner, but instead he breached the agreement by wrongfully assigning the antenna rights to the property to a third party for approximately \$1,109,882.84 just two days after the closing and he failed to fulfill the obligations under the agreement. Respondent further argues that Heimann abandoned the property, defaulted on the agreement, failed to adequately maintain the property and permitted the property to become dilapidated. Among other allegations in the Law Division case, Respondent alleged in substance that Heimann pierced the corporate veil and that he is personally liable for damages to Respondent for his purposeful and negligent misrepresentation, unjust enrichment, conversion, breach of contract and for fraudulently inducing Respondent to sell the property to Suites and finance the transaction.

Respondent further alleges in substance that it is seeking the bank records to determine the location of the \$1,109,882.84 from Heimann's wrongful assignment of the antenna rights. Respondent further alleges in substance that Heimann testified at a deposition in the foreclosure action and claimed that he did not recall where the money was deposited or where it was located.

As such, Respondent alleges that the subpoenas are “material and necessary” to the claims in the Law Division case.

Petitioners move to quash the subpoenas and argue in substance that the information sought includes confidential bank records, financial records and internal information from Royal and Central, which are non-parties to both New Jersey Actions. They argue that such information is not “material or necessary” to any of the New Jersey actions, that there is no judgment against any of the Petitioners in favor of Respondent and that Respondent is only attempting to harass Petitioners. Petitioners also argue in substance that the subpoenas are procedurally improper and overbroad.

Petitioners further argue in substance that Heimann is the sole interest owner of Suites and Holdings, which are limited liability companies, and that the sale of the property was never completed because Suites never received clear title to the property due to the actions of Respondent and tenants vacated the property. Petitioners further argue in substance that Heimann was not a party to the sale or the mortgage agreement, so he cannot be held liable for any alleged defaults. They further argue in substance that Respondent never issued the subpoenas in the foreclosure action, that they never demanded them in the Law Division action and that discovery in the Law Division action is in its early stages, as there has been no written discovery, no documents exchanged and no depositions taken in that case. Therefore, Petitioners argue that the court should quash the subpoenas since Respondent failed to demonstrate that the information sought is “material and necessary” to the pending matters in New Jersey.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof” (CPLR 3101[a]). CPLR 3103 governs protective orders to prevent abuse and the court has discretion to

suppress information to prevent disclosure of information that has been improperly or irregularly obtained so that a substantial right of a party is prejudiced (CPLR 3103).

Courts have held that an individual or entity seeking a protective order bears the initial burden of showing that the information sought is irrelevant or that it is obvious that it will not lead to legitimate discovery (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 403 [1st Dept 2018] [internal quotations and citations omitted]). Once this burden is met, then the party seeking the subpoenaed information has the burden to establish the relevancy of the information by demonstrating that the information sought is “material and necessary” to the prosecution or defense of an action (*id.*). The phrase “material and necessary” are interpreted liberally “to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity” (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 [1968]; *Kapon v Koch*, 23 NY3d 32, 38 [2014]).

Additionally, the subpoenaing party must sufficiently state the circumstances or reasons underlying the subpoena when seeking discovery from a nonparty, and the witness moving to quash must establish that the discovery was utterly irrelevant to the action or that the futility of the process to uncover anything legitimate was inevitable or obvious (*Kapon*, 23 NY3d at 36; CPLR 3101[a][4]).

The court finds that Petitioners met their initial burden of demonstrating that Respondent’s subpoenas for the bank records and other material is “utterly irrelevant” to the claims raised in the New Jersey Law Division action and Respondent failed to demonstrate that the information sought is “material and necessary” to the prosecution or defense of the action. Here, although Heimann claimed that he did not recall where the money from the sale of the antenna rights had been deposited or where it was located, he did not deny that the rights were

assigned to a third party in exchange for money or that the money was deposited into an account. Since there has been no judgment entered in favor of Respondent against any of the Petitioners, there is no need to locate any assets nor trace the location of the money at this time.

Additionally, although Respondent is not required to first seek an alternative means of obtaining the requested information, since discovery in that action is just beginning, there is limited information disclosed. Therefore, Respondent failed to demonstrate why the subpoenaed information sought is “material and necessary” for the prosecution or defense of that action. The court is not persuaded by Respondent’s arguments to the contrary.

However, as noted on the record on April 20, 2023, depending on what occurs in the New Jersey actions, the court can foresee a time when such subpoenaed information may become “material and necessary” to either or both New Jersey actions.

Additionally, the court agrees with Petitioners that Respondent failed to sufficiently state the circumstances or reasons underlying its subpoenas to the nonparties and that the subpoenas are unduly broad and burdensome. The subpoenas seek a wide array of material which are not sufficiently narrowly tailored to obtain the location of the proceeds from the assignment of the antenna rights, which is Respondent’s primary reason for the issuance of the subpoenas.

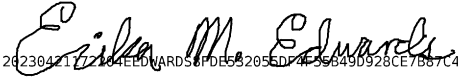
Since the court is granting Petitioners’ motion to quash on these grounds, the court declines to address Petitioners’ additional arguments, including the alleged procedural defects.

The court considered any additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court grants Petitioners Willowbrook Suites LLC’s, Willowbrook Holdings LLC’s, Joseph Heimann’s a/k/a Joseph Heiman’s, Royal Property Management NY LLC’s and Central Suites LLC’s Verified Petition and motion by order to show cause to quash four subpoenas issued by Respondent 65 Willowbrook LLC, without costs to any party.

This constitutes the decision and order of the court.


20230421172104 EDWARDS, ERIKA M. EDWARDS, J.S.C. 20230421172104 EDWARDS, ERIKA M. EDWARDS, J.S.C.

4/21/2023
DATE

ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

CHECK IF APPROPRIATE: