

Oaks Prospects Inc. v Borovinsky

2023 NY Slip Op 31316(U)

April 11, 2023

Supreme Court, New York County

Docket Number: Index No. 657403/2019

Judge: Andrew Borrok

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
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

-----X

OAKS PROSPECTS INC.,

Plaintiff,

- v -

RON BOROVINSKY,

Defendant.

INDEX NO. 657403/2019

MOTION DATE 02/24/2023

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

-----X

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167 were read on this motion to/for MISCELLANEOUS.

Upon the foregoing documents, (I) Oaks Prospects Inc.'s (the **Judgment Creditor**) motion to compel and to hold Ron Borovinsky (the **Judgment Debtor**) and the Related Recipients in contempt must be granted to the extent that he must supplement his answer to the Information Subpoena (hereinafter defined) served upon him and the Related Recipients (hereinafter defined) must respond to the Information Subpoenas (hereinafter defined) or be held in contempt of Court and (II) Elizabeth Negron Borovinsky, Emuna 22, Inc., Be Beautiful By Liz, Inc., Arbie Management Inc., Arbie Development LLC, Arbie Constructions LLC, Arbie Funding LLC, Arbie Processing LLC, Arbie RA 10502 LLC, Arbie Real Estate Solutions LLC, 3020 Holdings LLC, 3020 Lowell Holdings LLC, 11747 Management LLC, 14727 233 Holdings LLC, 20655 Whitehall Holdings LLC, 771E169 St Holdings LLC, Liberty 889 Holdings LLC, 3469 Atlantic Holdings LLC, 3302 Shore Pkwy Management LLC, 1865 Oliver Ave Holdings LLC, Vansiclen Holdings LLC, 1250 Jefferson Management LLC, 7D Herk LLC, 647 Greene LLC, 1396 Prospect LLC, Sanz Adar LLC, 13543 Management LLC, 155 Street Holdings LLC, 607

Farmers Holdings LLC and 3713 Rombouts Avenue Holdings LLC's (hereinafter, collectively the **Related Recipients**) cross-motion to quash the Information Subpoenas served upon them must be denied. The questions posed are clearly relevant to the legitimate debt collection efforts of the Judgment Creditor (*Kapon v Koch*, 23 NY3d 32, 38–39 [2014]; CPLR 5223) and the Related Recipients are persons associated with or in which the Judgment Debtor is reasonably suspected to have an ownership interest. Indeed, given his otherwise inadequate responses and inappropriate attempts at obfuscation, it appears that there may well be cause for concern for fraudulent transfers to these persons.

By way of background the Judgment Creditor secured a money judgment (the **Judgment**) against the Judgment Debtor and the Judgment was entered on May 23, 2022 (NYSCEF Doc. No. 141). Subsequently, the Judgment Creditor served certain information subpoenas (each an **Information Subpoena**, and collectively, the **Information Subpoenas**; NYSCEF Doc. Nos. 147, 148) on the Judgment Debtor and the Related Recipients in its effort to collect monies due pursuant to the Judgment.

On August 15, 2022, the Judgment Debtor wrongly objected to some of the questions in the Information Subpoena served upon him as overbroad, unduly burdensome and irrelevant (NYSCEF Doc. No. 151, at 3-4) and then subsequently provided an inadequate partial response to the Information Subpoena served upon him (NYSCEF Doc. No. 152). The Related Recipients simply ignored the Information Subpoenas served upon them and never responded.

The information which the Judgment Creditor seeks and which has not been provided by the Judgment Debtor includes:

- (a) Judgment Debtor's driver's license number and expiration date;
- (b) Judgment Debtor's intangible assets;
- (c) The names of businesses in which the Judgment Debtor received income from over the past three years;
- (d) Information regarding transfers, gifts, funds, stocks, bonds, membership interests, etc. owned by Judgment Debtor from January 1st;
- (e) The last 150 checks drawn from Judgment Debtor's bank accounts;
- (f) Financial information going back six years; and
- (g) Information regarding the Judgment Debtor's wife and children

(NYSCEF Doc. No. 152).

The information which the Judgment Creditor seeks from the Related Recipients includes the following:

- (a) the Judgment Debtor's addresses;
- (b) any gifts, transfers, distributions, disbursements, or other payments received from the Judgment Debtor since January 1, 2016;
- (c) any transaction with the Judgment Debtor;
- (d) any indebtedness of the Judgment Debtor;
- (e) any physical or intangible asset in which the Judgment Debtor and the Related Recipients have a joint interest;

- (f) information of any entity in which the Judgment Creditor and the Related Recipients have a joint interest;
- (g) all accounts at any financial institution in which the Judgment Creditor and the Related Recipients have a joint interest;
- (h) all known assets in which the Judgment Debtor has an ownership interest;
- (i) the relationships between the Judgment Debtor and those Related Recipients who are entities;
- (j) identity of the owners, managers, shareholders, members, and/or registered agents of those Related Recipients who are entities;
- (k) any right to payment that the Judgment Debtor may have with respect to profits or distributions generated by those Related Recipients who are entities;
- (l) identity of the person signing the information subpoenas on behalf of those Related Recipients who are entities;
- (m) information with respect to certain real properties likely held by of those Related Recipients who are entities

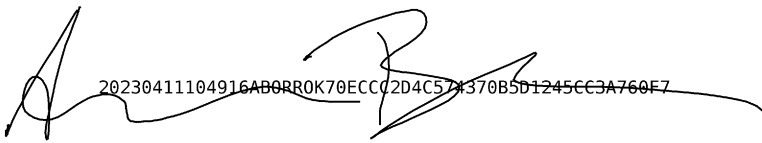
(NYSCEF Doc. No. 153).

This sought information is clearly relevant to the Judgment Creditor's legitimate debt collection efforts and therefore must be responded to by April 25, 2023 (*Kapon v Koch*). This is proper post-judgment discovery. Should the Judgment Debtor or the Related Recipients fail to adequately respond by such date, the Judgment Creditor shall email Part 53 and the Court may issue a supplemental order holding them in contempt (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]; *Madigan v Berkeley Capital, LLC*, 205 AD3d 900, 905-906 [2d Dept 2022]). For the

avoidance of doubt, (i) spousal privilege does not provide a basis for Ms. Borinsky’s failure to respond to the Information Subpoena served upon her because the Judgment Creditor does not seek disclosure of privileged spousal communications and (ii) the Related Recipients’ cross-motion to quash subpoenas must be denied. Again, this is proper relevant post-judgment discovery sought pursuant to CPLR 5223.

It is hereby ORDERED that the Judgment Creditor’s motion (Mtn. Seq. No. 4) to compel and for contempt must be granted solely to the extent that (i) the Judgment Debtor must supplement his answer to the Information Subpoena by April 25, 2023, and (ii) the Related Recipients must respond to the Information Subpoenas served upon them by April 25, 2023; and it is further

ORDERED that the Related Recipients’ cross motion to quash the information subpoenas must be denied.


 202304111104916AB0RR0K70ECC02D4C574370B5D1245CC3A760F7

ANDREW BORROK, J.S.C.

4/11/2023

DATE

CHECK ONE: **CASE DISPOSED** **DENIED** **NON-FINAL DISPOSITION**
 GRANTED **DENIED** **GRANTED IN PART** **OTHER**
APPLICATION: **SETTLE ORDER** **SUBMIT ORDER**
CHECK IF APPROPRIATE: **INCLUDES TRANSFER/REASSIGN** **FIDUCIARY APPOINTMENT** **REFERENCE**