

**Paramount Mgt. Group, LLC v Fifth Ave. Gourmet
Deli**

2023 NY Slip Op 31895(U)

June 5, 2023

Supreme Court, New York County

Docket Number: Index No. 653240/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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PARAMOUNT MANAGEMENT GROUP, LLC,

Plaintiff,

- v -

FIFTH AVENUE GOURMET DELI, MORSHAD H. NAGI,
ALHASSAN A, NAGI A/K/A ALI NAGI, FAWAZ TAREB,
AZIZ TAREB, ATM ACCESS, INC., ATM ACCESS GROUP,
INC.,

Defendant.

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INDEX NO. 653240/2020

MOTION DATE 05/30/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 67, 68, 69, 70, 71, 72, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92

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

Non-Party El Tareb Enterprises, Inc.’s (“El Tareb”)’s motion to quash a subpoena is granted in part.

Background

Plaintiff brings this case concerning the use of an ATM it provided to defendants, who run a deli in Manhattan. Plaintiff contends that pursuant to an ATM agreement with defendants, an ATM machine was placed in the deli. It argues that defendants breached this agreement in numerous ways, including allowing a competing ATM machine to be placed at the location and by permitting an individual to drill a hole through the cashbox and steal about \$14,700 from the machine.

In this motion, El Tareb seeks to quash a subpoena issued by plaintiff to Chase Bank and Ponce Bank for records relating to El Tareb’s bank accounts. El Tareb points out that the

subpoena seeks bank statements for account holders with the names “El Tareb Enterprises Inc., El Tareb Deli Grocery Corp., El Tareb Deli Grocery Corp. -Santana, El Tareb 2020, any combination or variation of the above names, Wafaz Corp.” (*see* NYSCEF Doc. No. 69).

El Tareb claims that this is a fishing expedition and these records are irrelevant. It emphasizes that it was not a party to the contract between plaintiff and defendants. El Tareb insists the requests are overbroad and do not deal with the central issues in the case—plaintiff’s ATM machine and whether defendant Fifth Avenue Gourmet breached the agreement by removing the machine. El Tareb seeks a protective order for the subpoena issued to each bank as well as reasonable legal fees as a sanction.

In opposition, plaintiff emphasizes that defendants breached their contract with plaintiff by bringing in a competitor’s machine and disconnecting plaintiff’s ATM machine. It insists that defendant Aziz Tareb’s post-EBT responses revealed that payments were made to El Tareb, payments that were previously undisclosed and that were made in connection with defendant Fifth Avenue Gourmet Deli.

Plaintiff maintains that in an affidavit for another action, defendant Aziz Tareb claimed that his brother (defendant Fawaz Tareb) ordered defendant ATM Access to redirect payments intended for Fawaz Tareb to El Tareb. It insists the information sought from the banks will help determine the identity of the owner of EL Tareb, who benefitted from the operation of El Tareb, payments made to other people or corporations, frequency of the payments and to whom El Tareb transferred monies it obtained from the ATM fees for Fifth Avenue Gourmet Deli.

Plaintiff insists that this information goes to how defendants acted to circumvent plaintiff’s contract with defendants.

Discussion

“An 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. It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances” (*Matter of Kapon v Koch*, 23 NY3d 32, 38-39, 988 NYS2d 559 [2014] [internal quotations and citations omitted]).

The Court grants the motion to the extent that it quashes the subpoena and grants movant a protective order. This Court previously quashed a subpoena that sought, in part, a deposition from El Tareb on the ground that it was unclear what relevance El Tareb had to this case (NYSCEF Doc. No. 65 at 3).

As this Court observed in that decision, “The complaint details how defendants Fifth Avenue Gourmet Deli, Morshad Nagi and Ali Nagi signed an exclusive ATM agreement in 2017 to place an ATM in the deli for 5 years. It argues that these defendants disconnected the ATM in May 2020 and someone tampered with the machine. Plaintiff argues that the other defendants (ATM Access Inc., ATM Access Group Inc., Aziz Tareb and Fawaz Tareb) tortiously interfered with this exclusive ATM agreement by inducing plaintiff to breach the agreement and put a competing machine in the store. The Court observes that this is a straightforward legal theory—that these other defendants knew about plaintiff’s ATM agreement with the deli and they intervened to get their own ATM in the store” (*id.*).

Plaintiff’s desire to explore El Tareb’s financial relationship with the defendants is not relevant to the instant action. The causes of action listed in the complaint all detail issues related

to plaintiff's ATM machine and defendants' breach of the subject agreement. None of those allegations relates to El Tareb's role.

Moreover, the requests in the subpoena are overbroad. Plaintiff seeks the following information from each bank: "1. monthly account transaction statements; 2. copies of all checking statements, cancelled checks, including both the front of the check and the back; 3. copies of all bank reconciliations; 4. account formation and governance documents including but not limited to signature cards, powers of attorney and corporate resolutions suitable for the purpose of determining ownership and control of the account during the time period; and, 5. all documents reflecting or relating to deposits and/or cash withdrawals, electronic fund transfers and/or wire transfers" (NYSCEF Doc. Nos. 69 and 70).

Plaintiff failed to sufficiently articulate why it needs records about every single bank statement from a non-party for more than five years (the subpoenas seek information from March 1, 2018 through the present). Even if the information sought in the subpoenas was relevant, the requests were not properly tailored to apply to the issues in this case. In other words, simply because plaintiff sued various defendants does not mean it is entitled to all financial records of a non-party entity affiliated with some of those defendants at this stage of the case.

The Court observes that such requests are typical in post-judgment discovery where a plaintiff is attempting to satisfy a judgment. But that is not the case here.


The Court denies the branch of the motion that seeks sanctions. There is no doubt that El Tareb is affiliated or related in some way with certain defendants. It was therefore not frivolous to seek information related to it. Simply because the Court grants the request for a protective order does not make plaintiff's conduct worthy of sanctions.

Finally, the Court observes that in the previous decision, (NYSCEF Doc. No. 65), it ordered that the note of issue must be filed by May 26, 2023 pursuant to a prior discovery order (NYSCEF Doc. No. 37). It has not been done. There is no stay of that order and no excuse for the failure to file it. The Court extends the deadline for plaintiff to file the note of issue to June 8, 2023.

Accordingly, it is hereby

ORDERED that non-party El Tareb Enterprises, Inc.'s motion is granted to the extent that the subpoenas served on Chase Bank and Ponce Bank are quashed and it is entitled to a protective order barring plaintiff from accessing its bank records and denied with respect to the remaining relief requested and it is further

ORDERED that plaintiff must file the note of issue by June 8, 2023.

6/5/2023			
DATE			ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE