SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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PATTERSON BELKNAP WEBB & TYLER LLP,

Plaintiff,

- v -

MARCUS & CINELLI LLP, DAVID P. MARCUS, BRIAN L. CINELLI, JOHN DOES

Defendant.

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INDEX NO. 652711/2022

MOTION DATE N/A

MOTION SEQ. NO. 010

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 010) 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 183

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

Defendant Cinelli's ("Movant") motion to quash a subpoena issued by plaintiff to non-party financial institutions is granted in part and denied in part.

Background

Plaintiff obtained a judgment in 2013 against non-party Barbara Stewart for over $2 million arising out of past legal services and served her with a restraining notice in 2013. That restraining notice prohibited her from selling or transferring any property until the judgment was satisfied. Plaintiff claims that it also sent defendants, lawyers who were then representing Mrs. Stewart, a copy of the restraining notice by email. Movants helped Ms. Stewart sell a diamond ring and distribute the proceeds, despite the restraining notice. Plaintiff has not received a single payment and the judgment now exceeds $3 million (as interest has accrued).

In this motion, Movant seeks to quash subpoenas issued by plaintiff to Evans Bancorp and KeyBank for *inter alia* information about defendant Marcus & Cinelli LLP's bank accounts.

Movant contends that the information sought is privileged, immaterial, and inadmissible. He insists that plaintiff failed to adequately identify what information it hopes to discover in the subpoenaed records and that the subpoena is overbroad. Movant maintains that the information will inevitably encompass records that concern clients of Movant who have nothing to do with this lawsuit. He claims that funds deposited in an IOLA account are confidential as a matter of law. Movant also observes that the time period requested encompasses information from three years before the facts alleged in this action.

In opposition, plaintiff argues that these records are not utterly irrelevant and point out that defendants included some of these very same bank records in support of their motion to dismiss. Plaintiff argues that these are the bank accounts where the $2.375 million at issue was deposited and so plaintiff simply seeks information about these accounts.

Discussion

"CPLR 3101(a) requires full disclosure of all matter material and necessary in the prosecution or defense of an action. While trial courts undoubtedly possess a wide discretion to decide whether information sought is 'material and necessary' to the prosecution or defense of an action, such discretion is not unlimited and disclosure is required where it will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 403 [1st Dept 2018] [internal quotations and citations omitted]).

"[U]nder New York law, the individual or entity seeking a protective order bears the initial burden to show that the information sought is irrelevant or that the process will not lead to legitimate discovery, and only then does the burden shift to the subpoenaing party to demonstrate that the information sought is material and necessary" (*id.* at 404).

The Court denies the motion to quash the subpoenas as Movant did not meet its burden to show that the information is irrelevant or that the process would not lead to legitimate discovery. The central part of this case is how the proceeds of the ring sale were treated by defendants. Plaintiff, understandably, wants to track the money that it claims should have been used to satisfy its judgment. There is no dispute here that defendants handled the proceeds from the ring sale; that makes these bank accounts highly relevant to the causes of action at issue here.

Movant's assertion that this information is somehow confidential or privileged is without merit as it there is no indication that the records contain legal advice. And, of course, it is a central issue in this matter. Similarly, Movant's reliance on Section 7000.11(a) of New York's rules and regulations (a provision specifying that IOLA account information is confidential) is not a basis to grant the instant motion because it contains an exception for legal actions. Nor is Movant's argument that Rule 1.6 of the New York Rules of Professional Conduct prevents disclosure as, again, there is no basis to find that these records are subject to attorney client privilege.

Plus, as plaintiff pointed out, Movant attached certain of defendants' bank records to the motion to dismiss (*see* NYSCEF Doc. No. 112). Movant cannot disclose certain records when he deems it beneficial but then seek to prohibit disclosure of those records when plaintiff requests them in discovery.

However, the Court grants the motion to the extent that it limits the time period for which the records must be disclosed for the second category of demands in each subpoena. The second category demands account statements dating back to July 1, 2013 and the Court finds that account statements should be provided starting from July 1, 2016 (about a month before the ring was sold).

Movant argued that there is no basis for disclosure of records back to 2013 as the ring was sold in August 2016. Plaintiff's argument that it wanted records going back three years to explore a pattern or practice is without merit at this stage of the litigation. Of course, if plaintiff is able to subsequently identify a pattern or practice that justifies seeking discovery back to 2013, it may make a further request for such information. But, on these papers, there is no basis to require disclosure of statements from 2013.

Accordingly, it is hereby

ORDERED that defendant Cinelli's motion to quash is granted only to the extent that the time period in Category 2 of both subpoenas shall begin on July 1, 2016 instead of July 1, 2013.

See NYSCEF Doc. No. 164 for details about the next conference.

6/30/2023
DATE

ARLENE P. BLUTH, J.S.C.

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