

**Haider v Rupall**

2023 NY Slip Op 34230(U)

November 29, 2023

Supreme Court, New York County

Docket Number: Index No. 650917/2023

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: PART 14

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SYED HAIDER,  Plaintiff,  - v -  JASBIR KAUR RUPALL, TARLOCHAN SINGH RUPALL, RH HOSPITALITY, LLC  Defendants.	<table border="0"> <tr> <td style="padding-right: 10px;"><b>INDEX NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">650917/2023</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION DATE</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">11/08/2023</td> </tr> <tr> <td style="padding-right: 10px;"><b>MOTION SEQ. NO.</b></td> <td style="border-bottom: 1px solid black; padding-left: 10px;">002</td> </tr> </table> <p style="text-align: center;"><b>DECISION + ORDER ON MOTION</b></p>	<b>INDEX NO.</b>	650917/2023	<b>MOTION DATE</b>	11/08/2023	<b>MOTION SEQ. NO.</b>	002
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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 43, 44, 45, 46, 47, 48  
 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Defendants' motion to quash is granted in part and denied in part.

### Background

Plaintiff contends that he is an investor in defendant RH Hospitality, LLC ("RH"), which owns and operates an Indian restaurant in Manhattan. As an investor, plaintiff owns 50% of RH, along with defendant Jasbir Kaur Rupall ("JKR") and her husband, defendant Tarlochan Singh Rupall ("TSR") (collectively, "defendants" or "individual defendants") as the managing members. Plaintiff insists that the individual defendants have engaged in self-dealing by embezzling funds from RH and diverting it for their own personal use.

Plaintiff contends that in 2022, defendants expressed a desire to buy out plaintiff's interest in RH and that defendants allegedly said that the company was not doing well. Plaintiff insists that he endeavored to find out the true value of RH (and therefore the value of his investment) and discovered that the restaurant was thriving. He claims that the defendants were

using the funds from RH to pay personal expenses, paying individuals in cash to avoid state and local taxes, and refused to turn over the company's books and records.

Plaintiff brings twelve causes of action to inspect RH's books and records, two claims for breach of fiduciary duty, breach of the duty of good faith and fair dealing, two claims for unjust enrichment, a request for a constructive trust, equitable accounting, injunctive relief, judicial dissolution of RH, fraud in the inducement, as well as another breach of contract claim.

During discovery, plaintiff contends that he requested a variety of documents, including defendants' bank statements dating back to January 2020. The bank statements were never produced, and so plaintiff issued subpoenas to Chase Bank, Bank of America, and CitiBank for each defendant requesting:

1. All documents in your possession, custody, or control concerning the [Defendant] for the period of 2020 to Present.
2. All savings bank books, accounts and records, current as well as those that may have been cancelled or closed, whether in the [Defendant's] name individually, jointly, in trust as a custodian, as nominee, or in conjunction with any other person or persons, including but not limited to deposit slips, withdrawal slips, and money order or bank check stubs for the period of 2020 to Present.
3. All records, papers and memoranda concerning all checking accounts in [Defendant's] name individually, jointly, in trust, as custodian, as nominee or in conjunction with any other person or persons, including checkbooks, statements, cancelled checks and deposit slips, whether these said accounts are current or closed for the period of 2020 to Present.
4. All personal financial statements received on behalf of [Defendant] and all credit applications for the period of 2020 to Present.

(NYSCEF Doc. Nos. 32-38).

Defendants now move to quash the subpoenas, contending that they were issued for the purpose of harassment and that they seek to obtain materials that are irrelevant to the case at issue. Defendants argue the subpoenas are overbroad and seek information from at least 21 months prior to when the parties entered their operating agreement in August of 2021. Additionally, defendants assert that plaintiff is seeking banking information related to defendants' children. Furthermore, defendants argue that plaintiff should have engaged in traditional discovery resolution procedures, such as document demands or discovery conferencing, prior to issuing subpoenas.

In opposition, plaintiff contends that the bank statements are at the heart of this matter. Plaintiff argues that because he is pursuing claims that defendants are embezzling money from the restaurant, he must have access to the bank statements to prove his claim. Additionally, plaintiff asserts that he is not seeking the bank statements of defendants' children and insists that he would enter into a confidentiality agreement to alleviate concerns about privacy. Plaintiff further argues that the subpoenas are not overbroad as they only seek information going back less than four years and were narrowly tailored in scope. Plaintiff also contends that defendants violated discovery rules by failing to meet and confer prior to bringing a motion to quash the subpoena. According to plaintiff, this failure should result in denial of defendants' motion. Finally, plaintiff contends that it has no obligation to seek this information from defendants first, but nevertheless attempted to retrieve these documents but alleges that defendants refused to produce them.

In reply, defendants contend that plaintiff has not shown that the information sought is material and necessary. Defendants argue that plaintiff is on a fishing expedition as he has no basis to conclude that defendants were diverting funds from the restaurant to their personal

accounts. Defendants assert that the subpoenas are overly broad and seek information that is not relevant to the instant matter as the restaurant was not incorporated until after January 2020. Moreover, defendants maintain that there are inherent privacy concerns attached to subpoenaing bank statements. Defendants also emphasize that a failure to meet and confer with plaintiff should not result in denial of their motion, as defendants had no choice but to seek judicial intervention after plaintiff issued the subpoenas. Finally, defendants argue that a party's right to discovery is not unlimited, and that consequently, plaintiff seeks information that is supported by no more than a hunch.

### **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]).

This case began because defendants allegedly refused to open their books and records to plaintiff, an investor who wanted to see where the money went in the restaurant he partially owned. After this case started, defendants apparently refused to provide the information in discovery, which necessitated plaintiff seeking the information from other sources (i.e., the banks). Even in making this motion, defendants failed to provide discovery about the books and records or the restaurant yet claim that plaintiff is not permitted to seek this information from third-party sources. Had defendants at any time allowed plaintiff to see where the money was

going, then perhaps follow up discovery requests would be more focused or even unnecessary. And so, it is not lost on this Court that the subpoenas are only necessary because the defendants refuse to produce discovery about the restaurant.

The arguments about the lack of a “meet and confer” prior to serving the subpoenas or filing a motion are unavailing. Defendants appear to have little interest in turning over the documents and this Court prefers to decide this issue on the merits rather than waste time on procedural technicalities which, once resolved, will require a ruling on the merits anyway. There is no purpose in requiring what would assuredly be a fruitless meet and confer.

Bank records are relevant as they may shed light about plaintiff’s theory concerning the misuse of the corporate funds. Plaintiff contends that defendants were funneling money to their personal accounts from the restaurant and lying about the profitability of the business to purposely lower the value of his investment in an effort to buy him out at a discount. However, plaintiff seeks documents from nearly 2 years prior (January 2020) to the start of the business (the parties entered into the operating agreement in August 2021).

Plaintiff failed to sufficiently articulate why he needs records going back to 2020, as plaintiff’s complaint focuses on incidents that occurred, at the earliest, in 2021. Surely, if plaintiff was looking to prove some deceitful misdeeds while he worked with defendants, he would not need to go further back than when he became involved in the restaurant. And because defendants refused to produce financial documents related to the restaurant, plaintiff could not tailor his requests in the subpoenas. Plaintiff has even represented that he is willing to enter into confidentiality agreements.

Because defendants would not provide any information, plaintiff is simply attempting to gather information from all possible accounts under any of the named defendants in order to

“follow the money.” This could include accounts completely unrelated to the restaurant. But the breadth is necessary only because defendants refused to provide relevant information, and, at this point, it is certainly possible that relevant information can be found in whatever account information is produced. If defendants are linked to an account, it may have been used to funnel money and so it may be relevant, and plaintiff is entitled to discover it.

However, at this time, the Court sees no point in requiring the production of documents dated before the parties entered their agreement in August 2021. If more discovery is needed based on what the documents show, follow up discovery requests may be made (and can be opposed).

**Summary**

The Court emphasizes that while the bank records of defendants are clearly and obviously relevant, the instant subpoenas seek records from an overinclusive timeframe. Therefore, the records shall be limited, at this time, to statements including August 2021 to the date of the subpoenas.

Accordingly, it is hereby

ORDERED that defendants’ motion to quash the subpoenas issued to Chase Bank, CitiBank, and Bank of America is granted in part only to the to the extent that plaintiff may seek records from August 1, 2021 to the date of the subpoenas.

See NYSCEF Doc. No. 25 about the next conference.

<u>11/29/2023</u> DATE					<u>ARLENE P. BLUTH, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
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