

Sojka v Eisenman

2024 NY Slip Op 33212(U)

September 12, 2024

Supreme Court, Kings County

Docket Number: Index No. 511438/2024

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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CHRISTOPHER SOJKA,
Plaintiffs, Decision and order

- against - Index No. 511438/2024

DAVID EISENMAN,
Defendant, September 12, 2024

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DAVID EISENMAN, individually, and
derivatively on behalf of MADWELL, LLC,
Counterclaim-Plaintiff,

- against -

CHRISTOPHER SOJKA,
Counterclaim-Defendant,

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PRESENT: HON. LEON RUCHELSMAN Motion Seq. #9

The counterclaim defendant Sojka has moved seeking to quash subpoenas served upon the Bank of Texas in Colorado. Those subpoenas seek the bank records of non-party If You Believe in Me I'll Believe in You, LLC which is wholly owned by Sojka. The counterclaim plaintiff Eisenman has opposed the motion. Papers have been submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As recorded in a prior order Sojka and Eisenman were each half owners of an entity called Madwell LLC formed in 2010. Each party has accused the other of financial improprieties. Concerning the subpoena that is the subject of this motion

Eisenman asserts that non-party If You Believe in Me I'll Believe in You, LLC infused Madwell with cash sufficient for Madwell to satisfy payroll obligations. Eisenman argues those funds were "almost certainly" improperly diverted by Sojka from Madwell clients (see, Memorandum in Opposition, page 4 [NYSCEF Doc. No. 229]). Eisenman served a subpoena upon that entity's bank seeking to verify the source of funds used to infuse Madwell's account. The motion seeking to quash has now been filed.

Conclusions of Law

It is well settled that the purpose of a subpoena is to compel the production of specific documents that are relevant to the lawsuit (Bottini v. Bottini, 164 AD2d 556, 82 NYS2d 604 [2d Dept., 2018]).

A subpoena is not proper where one is served to "ascertain the possible existence of evidence" (American Express Property Casualty Company v. Vinci, 63 AD3d 1055, 881 NYS2d 484 [2d Dept., 2009]). Thus, a subpoena may be utilized to compel the production of documents that are evidence themselves not to "ascertain the existence of evidence" (Matter of Terry D., 81 NY2d 1042, 601 NYS2d 452 [1993]). In American Express Property Casualty Company v. Vinci, 63 AD3d 1055, 881 NYS2d 484 [2d Dept., 2009] the court held a subpoena improper merely served for

discovery purposes to ascertain the existence of evidence.

The subpoena in this case states that the documents are sought because the Bank of Texas "may" have relevant information (see, Subpoena Duces Tecum [NYSCEF Doc. No. 223]). Indeed, the subpoena continues and states that information contained in the bank statements may support Eisenman's assertions that Sojka diverted Madwell funds and would support the counterclaims that Sojka dissipated the assets of Madwell.

Admittedly, there is no specific proof the bank statements will contain any information that supports Eisenman's allegations. Thus, the subpoena seeks to discover whether any such information even exists. As noted, it is improper to utilize subpoenas to discover the existence of evidence.

Eisenman argues the subpoena is proper since "the evidence strongly suggests that the source of these funds was the fees from Madwell clients that should have been deposited into Madwell's account in the first place, but were wrongfully diverted to "If You Believe in Me, I'll Believe in You, LLC" by Sojka. That entity's bank records, which are the records sought by the subpoena served on Bank of Texas, are obviously relevant to confirm same" (see, Memorandum of Law in Opposition, page 9 [NYSCEF Doc. No. 229]). The defendant thus concedes the subpoena has been served to ascertain and obtain discovery and not to


request specific and targeted information. Indeed, it may be true that no such information in this regard will even be forthcoming.

Thus, while the bank statements are surely specific documents, the information contained within them is really being used for purposes of discovery, to see what they may contain. That is an improper basis for the issuance of a subpoena. Thus, regardless of whether the subpoena was properly served, a matter the court need not consider at this time, the subpoena is generally improper. Therefore, the motion to quash the subpoena is granted.

So ordered.

ENTER:

DATED: September 12, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC