

Haimovici v Castle Vil. Owners Corp.

2025 NY Slip Op 30332(U)

January 27, 2025

Supreme Court, New York County

Docket Number: Index No. 156094/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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GABRIEL HAIMOVICI,

Plaintiff,

- v -

CASTLE VILLAGE OWNERS CORP., ANDREW DITTON,
JIM BERLIN, MICHAEL UYSAL, TIMOTHY GLADDEN, LISA
ALDISERT, HERBERT LAMBERT, EDWARD SONN

Defendant.

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INDEX NO. 156094/2022

MOTION DATE 01/16/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 159, 160, 161, 162, 163¹

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

Defendants' motion for a protective order is granted. Plaintiff's cross-motion to *inter alia* compel is denied.

Background

Plaintiff commenced this action to stop defendants from terminating his proprietary lease. He claims that he lives in the building and that the defendant Castle Village Owners Corp. ("Co-op") sent him a notice of termination pursuant to a resolution on July 14, 2022 (NYSCEF Doc. No. 5). The notice referenced a June 27, 2022 special meeting of the board of directors at which plaintiff's purported conduct was considered. The notice cited numerous instances in which plaintiff engaged in what defendant considered to be objectionable conduct under the terms of the proprietary lease (*id.* at 5). This included purportedly rude comments made to fellow

¹ The Court did not consider plaintiff's impermissible sur-reply uploaded as a letter (NYSCEF Doc. No. 164).

residents, “shouting profanities” in the proximity of young children, allegedly “harassing and screaming at a pregnant woman” who was guest of a resident and yelling at another resident (*id.*).

The notice also insisted that plaintiff repeatedly filed baseless complaints about another apartment, including one where he insisted that one of these residents spit on plaintiff’s child; however, security footage revealed that the person accused of doing the spitting was wearing a face covering over her mouth the entire time (*id.*). Plaintiff was also accused of harassing building staff, including calling the property manager 30 times about a mannequin in the window of a neighbor’s apartment (*id.* at 6). And defendant maintained that plaintiff called certain staff members “lazy and dishonest” (*id.*).

Plaintiff denies all of the allegations and insists that the issues with his neighbors stem from the fact that they allegedly smoke marijuana often and it harms one of his children who suffers from autism. He argues that defendant is retaliating against him because he wants to inspect the Co-op’s books and records and the claimed objectionable conduct all arose after he made this demand. Plaintiff explains that he made the request after the Co-op board increased the monthly maintenance fees.

In this motion defendants seek a protective order quashing a subpoena issued by plaintiff to non-party Citibank, N.A. (“Citibank”). That subpoena seeks all emails sent and received from defendant Ditton’s Citibank email address (Mr. Ditton used to work at Citibank) with any board members or Co-op property managers for a four-year period. Defendants argue that the subpoena does not limit its scope to matters relevant to this action nor does it exclude privileged communications. They insist that the subpoena is grossly overbroad.

Defendants also contend that the subpoena fails to meet the minimum requirements under CPLR 3101(a)(4) in that it does not notify Citibank about the reasons why the subpoena was issued. They emphasize that plaintiff did not make clear why the documents requested are relevant and why they could not be acquired from other parties to this lawsuit. Defendants maintain that vast majority of documents encompassed by this subpoena are likely irrelevant and that the relevant documents are obtainable from other parties. In fact, defendants insist that the relevant documents have already been produced by both the defendants and the co-op's property management company.

In opposition and in support of his cross-motion, plaintiff argues that the Citibank subpoena should not be quashed because Citibank was provided with proper notice of the instant dispute. Plaintiff emphasizes that he included a copy of the amended complaint and that satisfied his burden to give proper notice. He also complains that although defendants assert that some sort of attorney-client privilege applies, they have not produced a privilege log to support this argument. Plaintiff contends that Mr. Ditton's emails are Citibank's property and are not confidential. He argues that this forecloses any assertion that the attorney-client privilege applies. Plaintiff emphasizes that Citibank employees are expressly told that emails sent from their Citibank email accounts are the exclusive property of Citibank. He claims that Mr. Ditton violated Citibank's policies regarding using his work email address from personal communications.

With respect to his cross-motion, plaintiff contends that documents (NYSCEF Doc. No. 146) produced with redactions should have the redactions removed. He contends that no privilege applies that would justify these redactions. He also wants the Court to order defendants to produce records in response to plaintiff's third demand for documents dated December 17,

2024. Plaintiff observes that this demand seeks all shareholder demands served on the Co-op between January 1, 2022 and December 4, 2024. Finally, plaintiff seeks the deposition of Jeremy Cohen, Esq., a former partner with defendants' co-counsel.

In reply, defendants contend that the Citibank subpoena is an attempt to do an end run around applicable privileged board communications by dragging in a non-party who is unable to identify which documents are subject to a privilege. They maintain that simply turning over the amended complaint is not sufficient because this document does not explain Citibank's connection to this case. Defendants contend that the redactions were proper, and that the deposition of Mr. Cohen is not appropriate as depositions of opposing counsel are heavily disfavored under applicable caselaw.

The Subpoena

“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.

Although the nonparty bears the initial burden of proof on a motion to quash, section 3101 (a) (4)'s notice requirement nonetheless obligates the subpoenaing party to state, either on the face of the subpoena or in a notice accompanying it, “the circumstances or reasons such disclosure is sought or required. The subpoenaing party must include that information in the notice in the first instance lest it be subject to a challenge for facial insufficiency. . . . the subpoenaing party's notice obligation was never intended by the legislature to shift the burden of proof on a motion to quash from a nonparty to the subpoenaing party, but, rather, was meant to

apprise a stranger to the litigation the circumstances or reasons why the requested disclosure was sought or required” (*Matter of Kapon v Koch*, 23 NY3d 32, 38-39 [2014] [internal quotations and citations omitted]).

The Court grants the motion to quash the subpoena as the notice provided to Citibank was inadequate. Here, the Court must consider whether Citibank, “a stranger to the litigation,” was apprised of the reasons for the requested disclosure. This case has nothing to do with Citibank and so the reasons for issuing the subpoena were not self-evident. The subpoena only mentions that Mr. Ditton was an employe of Citibank and seeks communications with other people (NYSCEF Doc. No. 116). But the subpoena does not identify why plaintiff wants email communications between a former Citibank employee and several other people, none of whom are Citibank employees. The subpoena also does not describe what the underlying litigation is about.

To be sure, as plaintiff points out, the Court of Appeals in *Kapon* stressed that including a copy of an amended complaint with a subpoena could satisfy the notice requirement (*Kapon*, 23 NY3d at 39). However, the Court of Appeals also observed in a footnote that “This is not to say that a pleading will always provide sufficient notice, or that the only way the subpoenaing party can comply with the ‘circumstances or reasons’ notice requirement is to affix a copy of the pleadings to the subpoena” (*id.* n 3). The fact that the plaintiff here attached a 35-page amended complaint is not sufficient to provide proper notice to Citibank. The amended complaint² does not mention Citibank and does not have any specific allegations relating to Mr. Ditton. In fact, Mr. Ditton is only directly mentioned in the caption.

² The Court observes that defendants purported to reject the amended complaint as untimely although no party ever sought relief from the Court regarding this issue.

In other words, Citibank would be required to, essentially, guess at the relevance of any documents it found. A subpoena should, at the very least, give the non-party some guidance as to what relevant documents are sought. This subpoena provides almost no assistance to Citibank.

Moreover, the subpoena is wildly overbroad. This case involves plaintiff's dispute with defendants. The subpoena seeks all documents between defendant Ditton and other board members over a four-year period. No effort was made to limit the request to plaintiff's claims. As defendants point out, this subpoena would appear, on its face, to require all communications concerning any apartment or Co-op issue. That is inherently overbroad. And defendants insist that they already produced all non-privileged and relevant emails from the board members, including any emails from Mr. Ditton's Citibank email account. Plaintiff did not cite an adequate reason for why it sought records directly from Citibank when, at least on this record, defendants contend they have turned over the exact documents at issue in the subpoena.

The Court also observes that defendant's failure to produce a privilege log in support of the instant motion does not compel the Court to deny defendants' motion. The Court questions how it can order defendants to produce a privilege log for documents that Citibank has not yet produced. As the subpoena was not accompanied by adequate notice and was clearly overboard, the Court need not opine about the impact of Mr. Ditton's use of a work email account.

Plaintiff's Cross-Motion

The Court denies the cross-motion in all respects. With respect to the redacted documents, defendants met their burden to show that the redactions contain privileged communications. They point out that these minor redactions largely reference advice from Jeremy Cohen, the Co-op's former attorney. Defendants also argue that the final redacted

document contains an email from a woman to the Co-op's property manager that details an allegedly uncomfortable encounter with plaintiff in the laundry room. Defendants turned over this woman's first name but asked that her last name and contact information not be turned over to plaintiff. This Court agrees. There is no need at this time for defendants to turn over this information. Certainly, there may be a reason to revisit this issue but in light of the fact that this person asked to remain anonymous, the Court sees no reason to force disclosure absent a compelling reason from plaintiff.

The Court also denies plaintiff's demand to depose defendants' former co-counsel, Mr. Cohen. Defendants properly pointed out that, as a procedural matter, plaintiff improperly seeks relief via cross-motion against a non-party. In fact, there is no indication that Mr. Cohen was served with this motion.

On the merits, the Court declines to order the deposition of Mr. Cohen. When seeking the deposition of opposing counsel, "In addition to showing that the information sought is material and necessary, the subpoenaing party must demonstrate good cause, in order to rule out the possibility that the deposition is sought as a tactic intended solely to disqualify counsel or for some other illegitimate purpose. . . . [I]n the unusual situation where a party seeks to depose opposing counsel, we hold that the party seeking the deposition must show that the deposition is necessary because the information is not available from another source" (*Liberty Petroleum Realty, LLC v Gulf Oil, L.P.*, 164 AD3d 401, 406, 84 NYS3d 82 [1st Dept 2018]).

Plaintiff ostensibly seeks to depose Mr. Cohen about a March 2022 letter to plaintiff's counsel that purportedly details defendants' claims of objectionable conduct committed by plaintiff. However, as defendants point out, the objectionable conduct issue is also detailed in a later July 14, 2022 notice of termination of proprietary lease and an exhibit to that notice details

instances of objectionable conduct. In other words, setting aside the fact that depositions of opposing counsel are disfavored, it is unclear what deposing Mr. Cohen will reveal. The March 7, 2022 letter from Mr. Cohen (NYSCEF Doc. No. 13) does not suggest that Mr. Cohen possesses exclusive personal knowledge about certain facts about which only he can be deposed. Instead, the letter reads as a typical communication from an attorney—Mr. Cohen makes assertions apparently based upon information he received from his client and other witnesses. The Court finds no basis to require a deposition of defendants’ attorney under these circumstances. In any event, there is no dispute that plaintiff is well aware of the nature of the objectionable conduct cited by defendants.

To the extent that plaintiff seeks the deposition of Mr. Rodriguez (the Co-op’s former managing agent), that requested relief was not included in the notice of cross-motion and was not explored in plaintiff’s memorandum of law. Therefore, the Court denies that request on this record.

Plaintiff also demands records about other shareholder demands. The Court declines to compel defendants to produce such records as plaintiff did not meet his burden to establish the relevance of such documents. On these papers, defendants terminated plaintiff’s lease for the reasons stated in the notice of termination. It is not clear how another shareholder’s demand, without more, has anything to do with this case.


Accordingly, it is hereby

ORDERED that defendants’ motion to quash a subpoena issued to Citibank, N.A. is granted; and it is further

ORDERED that plaintiff’s cross-motion is denied in its entirety.

Next Conference: April 9, 2025 at 10 a.m.

On or before April 2, 2025, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or, 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required). If nothing is uploaded by April 2, 2025, or if the documents submitted show that inadequate progress has been made, the Court may adjourn the conference or order a note of issue be filed.

<u>1/27/2025</u> DATE			 <hr/> ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/> DENIED	<input type="checkbox"/> SUBMIT ORDER	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		