

Citibank, N.A. v N/A

2025 NY Slip Op 32559(U)

July 15, 2025

Supreme Court, New York County

Docket Number: Index No. 652233/2022

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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|-----------------|---------------------------------------|-----------------------------------|
| CITIBANK, N.A., | INDEX NO. | <u>652233/2022</u> |
| Petitioner, | | |
| - v - | MOTION DATE | <u>04/07/2025, 06/02/2025</u> |
| N/A, | MOTION SEQ. NO. | <u>010 011</u> |
| Respondent. | DECISION + ORDER ON MOTION | |

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 191, 192, 193, 194, 195, 196, 197

were read on this motion to/for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207

were read on this motion to/for DISCOVERY.

Upon the foregoing documents and for the reasons set forth on record (*tr.* 7.14.25), (i) OWS Administration, LLC (**OWS**) and the 18 movant noteholders (the **Noteholders**)’ motion to compel discovery (Mtn. Seq. No. 010) from Icon Brand Holdings LLC, Icon DE Intermediate Holdings, LLC, Icon Holdings LLC, and Icon NY Holdings LLC (collectively, the **Co-Issuers**) is GRANTED.

Under CPLR 3120(1)(i), a party may serve notice on other party “to produce and permit the party seeking discovery ... any designated documents or any things which are in the possession, custody or control of the party or person served.” Documents “are under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party to

the action” (*Commonwealth of the N. Mariana Is. v Canadian Imperial Bank of Commerce*, 21 NY3d 55, 63 [2013]). It is simply irrelevant that there is a pending subpoena (NYSCEF Doc. No. 162) that was served in abundance of caution against Iconix. The issue is whether the documents held by Iconix is within the possession, custody and control of the defendants. Indisputably, they are. Among other things, several directors and officers of Iconix are also directors or officers of Co-Issuers and they have overlapping facilities, IT infrastructure, email infrastructure and counsel (NYSCEF Doc. No. 197 at 16). As such, the motion is granted.

The Co-Issuers’ motion to compel discovery (Mtn. Seq. No. 11) from OWS is also granted to the extent that OWS must provide, and revise (in accordance with today’s order [*tr.* 7.14.25]) their ESI protocol. As discussed, the Appellate Division identified ambiguity as to the 4.1(h) obligation. OWS can not limit discovery as to the understanding of this term based on the fact that they acquired the notes after the Indenture was drafted and executed. Among other things, what the plaintiffs understood when they acquired their interest, and how they conducted themselves is relevant to the 4.1(h) obligation and requires disclosure. Nor can they hide the basis upon which they searched for responsive documents. Thus, they must provide their ESI search terms (as expanded). Certain of the requests (*tr.* 7.14.25) however are irrelevant, overly broad and unduly burdensome (*Accent Collections, Inc. v Cappelli Enterprises, Inc.*, 84 AD3d 1283, 1283 [2d Dept 2011]). For example, documents requests no. 4, 10, 15 in OWS’ October 18, 2024 First Set of Requests for the Production of Documents (NYSCEF Doc. No. 179) have nothing to do with the ambiguity identified by Appellate Division and are not otherwise relevant or material and necessary to the prosecution of either party’s position in this lawsuit:

4. All retainer agreements between Identified A-2 Noteholders and Cadwalader, Wickersham & Taft LLP concerning this Proceeding.

[...]

10. Documents and communications concerning the consequences, or lack thereof, of an Iconix bankruptcy on Co-Issuers, on the value or valuation of the Notes, or under the Indenture, Supplements, or Management Agreement, including without limitation any documents or communications concerning Co-Issuers or any Co-Issuer being bankruptcy-remote with respect to Iconix.

[...]

15. Documents or communications concerning the acquisition of Iconix by an affiliate of Lancer Capital LLC.

As such, response to these requests is not required.

The Court has considered the Co-Issuers remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that OWS and the Noteholders' motion to compel (Mtn. Seq. No. 010) discovery from the Co-Issuers is granted; and it is further

ORDERED that the Co-Issuers' motion to compel discovery (Mtn. Seq. No. 11) from OWS is granted only to the extent that OWS must provide and revise their ESI protocol in accordance with today's order.


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7/15/2025

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE