Davidson Kempner Capital Mgt. LP v Wow Media, Inc.
2025 NY Slip Op 33229(U)
August 29, 2025
Supreme Court, New York County
Docket Number: Index No. 159235/2024
Judge: Paul A. Goetz

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

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DAVIDSON KEMPNER CAPITAL MANAGEMENT LP

Petitioner,

- v -

WOW MEDIA, INC.,

Respondent.

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INDEX NO. 159235/2024

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 19, 20, 21, 22, 23, 24, 25, 29, 32

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

Petitioner, Davidson Kempner Capital Management LP, ("Davidson"), seeks to quash a subpoena served on it by respondent, WOW Media Inc. ("WOW"). The subpoenas request records and a deposition pertaining to a civil case pending in California.

BACKGROUND

Davidson, an investment management firm (NYSCEF Doc No 4 ¶ 4), is not a party in the underlying action entitled *Wow Media Inc. v. Does 1 through 20, inclusive*, pending in the Superior Court of California, County of Los Angeles, case number 23STCV15666 (the "California Action"). In the California Action, WOW, a digital outdoor advertising company, asserts three causes of action against unknown entities, for 1) Intentional Interference with Prospective Economic Advantage; 2) Negligent Interference with Prospective Economic Advantage; and 3) Violation of Business & Professions Code §§ 17200, et seq.

In that action WOW alleges that certain unknown parties interfered unlawfully with its business by publishing false information about its business and sending the information to Davidson, and non-party InfraNext Partners, LLC ("InfraNext"). Davidson and Infranext, at the

time, were considering investing in WOW (NYSCEF Doc No 9 ¶ 1). WOW owns digital adverting billboard displays in the City of Inglewood, California, pursuant to agreements with the city (*id*. at ¶ 7). In July 2021, WOW began entertaining offers for investment in the company, requiring potential purchasers, including Davidson, to sign non-disclosure agreements about the offers (*id*. at ¶ 9). WOW alleges that during these negotiations, a principal at Davidson received a leaked copy of a final report issued by the Federal Highway Administration ("FHWA"), criticizing the California Department of Transportation ("Caltrans"), for failing to "effectively control" outdoor advertising singling out some of the signs owned by WOW, and indicating that the federal government might reduce California's highway funding (*id*. at ¶ 13). WOW disputes the content of the report and claims that all of its signs are in compliance with state and federal law (*id*. at ¶ 17). WOW alleges that because of the disclosure of this report, Davidson and InfraNext, withdrew from negotiations and terminated any planned investments (*id*. at ¶ 26).

In November 2022, WOW initiated an action entitled *Wow Media, Inc. v. California Department of Transportation*, ("Caltrans Action") seeking disclosure of public records between Caltrans and the FHWA. WOW then served a subpoena on Davidson, seeking communications and documents between Davidson and Caltrans and the FHWA (NYSCEF Doc No 6). Davidson moved to quash that subpoena which was granted by this court by decision and order dated August 4, 2023 (NYSCEF Doc No 8).[1]

WOW then, initiated the California Action, naming John Does as the defendants, because while it suspected that its competitors were the entities that sent the leaked report to Davidson, it

[1] The petition to quash this first subpoena, entitled *Davidson Kempner Capital Mgt. LP v Wow Media, Inc.*, 2023 N.Y. Slip Op. 32689[U] [SC NY Co 2023] was granted because petitioner met its burden "of demonstrating that Respondent's subpoena is utterly irrelevant to the claims raised in the [Caltrans] action," because the [Caltrans] action was initiated through the California Public Records Act, which only applies to California governmental entities, and thus, the disclosure sought from Davidson had no bearing on that claim.

did not know the identities of these alleged competitors. WOW moved in the California action for leave to serve a subpoena on Davidson, which was granted by decision and order dated October 11, 2023 (NYSCEF Doc No 20 at p 49 – 52). The court held that WOW adequately demonstrated that Davidson has information "that would be useful in identifying" the John Does in the California action (*id*. at p 52). WOW served this subpoena (NYSCEF Doc No 10), and Davidson again petitioned to quash it in this court. By decision and order date August 26, 2024 the petition was granted, without prejudice, for WOW "to bring a new, more narrowly tailored subpoena" (NYSCEF Doc No 15). Following this determination, WOW served the more narrowly tailored subpoena at issue in this proceeding on Davidson (NYSCEF Doc No 5).

DISCUSSION

Procedural Grounds

Davidson argues that the subpoena should be quashed because it is invalid under California law. It argues that California limits how early in an action a plaintiff may serve a deposition subpoena for documents and testimony. California Code of Civil Procedure § 2025.210(b) provides that:

> The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. On motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

Here, WOW has not served a summons on any defendant, because it initiated the action against John Does, and has yet to identify the entity that allegedly sent the report to Davidson. WOW sought and was granted leave in California to serve the second subpoena on Davidson, which was subsequently quashed in New York as overbroad (NYSCEF Doc No 20 at p 49 – 52). However, Davidson argues that WOW was not granted leave to serve the third more narrowly

tailored subpoena, authorized by the New York court. The third subpoena specifically seeks records regarding the identity of the party or parties who sent Davidson the FHWA report (NYSCEF Doc No 5).

While California Code of Civil Procedure § 2025.210(b) provides that a court may grant a plaintiff leave to serve a discovery demand prior to a summons being served on a named defendant, petitioner fails to cite any authority that the California court must approve each individual subpoena. Indeed, in the October 11, 2023 order granting WOW leave to serve discovery demands on Davidson, the California court noted "[t]o require the inclusion and service of a named party prior to the commencement of discovery would defeat the entire purpose of the statute [allowing plaintiff to name John Doe defendants], which is to preserve a plaintiff's legal rights while it pursues discovery necessary to find defendants and, if appropriate, amend the complaint" (NYSCEF Doc No 20 at p 50; *citing Opt. Surplus, Inc. v Superior Ct.*, 228 Cal App 3d 776, 279 Cal Rptr 194 [Cal Ct App 1991]).

In the October 11, 2023 order the California court held that WOW had demonstrated the good faith need for discovery from Davidson, in order to pursue its causes of action. Since, WOW has already been granted leave to serve third-party discovery demands on Davidson, the subpoena will not be quashed on these procedural grounds.

Relevancy of Discovery

"The standard to be applied on a motion to quash a subpoena … is whether the requested information is utterly irrelevant to any proper inquiry (*Gertz v Richards*, 233 AD2d 366, 366 [2d Dept 1996]). Here, the question of relevancy pertains to the claims asserted in the California Action. The three causes of action are asserted under California common and statutory law. As stated above, the California court has already made a determination that Davidson may have

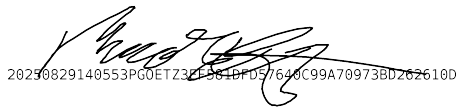
information that is pertinent to the prosecution of WOW's causes of action. While, Davidson argues that the discovery sought is irrelevant because WOW's causes of action are facially invalid under California law, that question is for the California court to determine, not this court.

Indeed, "information sought [that has] already been judicially determined to be relevant to the … proceedings pending in [another state are] entitled to full faith and credit without further inquiry" (*Suresh v Krishnamani*, 212 AD3d 514 [1st Dept 2023]). While Davidson also argues that it is entitled to protection under Section 74 of New York's Civil Rights Law, which provides that "[a] civil action cannot be maintained against any person, firm or corporation, for the publication of a fair and true report of any judicial proceeding, legislative proceeding or other official proceeding," this argument implicitly seeks to apply New York law to a case pending in a California court, thereby running afoul of the "Full Faith and Credit Clause" (*Balboa Capital Corp. v Plaza Auto Care, Inc.*, 178 AD3d 646 [2d Dept 2019]). Furthermore, "[p]rivileges against liability are irrelevant to the question of discovery" (*Daly v Genovese*, 96 AD2d 1027 [2d Dept 1983]), and even if such a privilege did exist for discovery, petitioner fails to identify support for the notion that the Uniform Interstate Deposition and Discovery Act requires a party to establish the viability of their claims under the substantive law of the state where the action is pending.

Accordingly, it is,

ORDERED that the petition is denied and the Clerk is directed to enter judgment in favor of respondent as against petitioner, with costs and disbursements to respondent; and it is further

ORDERED that the Clerk is directed to mark the matter as disposed.



8/29/2025
DATE

PAUL A. GOETZ, J.S.C.

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