

**Sydney Sol Group Ltd. v 27 W. Chelsea Inc**

2025 NY Slip Op 33805(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 654377/2024

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

SYDNEY SOL GROUP LTD.,  
Plaintiff,

- v -

27 WEST CHELSEA INC d/b/a IL BASTARDO.,KRISTIN  
SOLLENNE, ROBERT MALTA,  
Defendant.

-----X

ROBERT MALTA  
Plaintiff,

-against-

SHIMON MILUL  
Defendant.

-----X

INDEX NO. 654377/2024  
MOTION DATE 02/28/2025  
MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 596012/2024

The following e-filed documents, listed by NYSCEF document number (Motion 002) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 58, 59, 60, 61, 62, 63, 72

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

Upon the foregoing documents, it is

Plaintiff, SYDNEY SOL GROUP LTD. (“SSG”), and Third-Party Defendant, SHIMON MILUL (“Milul”) (collectively hereinafter “plaintiff” move, pursuant to CPLR § 2304, to quash subpoenas served upon non-party witness Shelly Milul (the “Shelly Subpoena”) and non-party witness Bradley Rock Jr. of M.Y. Safra Bank FSB (the “Bank Subpoena”). Plaintiff also moves, pursuant to CPLR § 3103, for a protective order precluding defendants from enforcing the subpoenas, directing defendants to turn over to the plaintiff any documents obtained pursuant to the subpoenas and to destroy any copies in counsel’s possession or control, and precluding defendants and Third-Party Plaintiff from conducting any non-party discovery until issue has been joined. The defendants oppose the motion.

## **Background**

SSG is the owner of a building located at 544 West 27<sup>th</sup> Street, New York, New York (the “building”). Defendant 27 WEST CHELSEA INC d/b/a IL BASTARDO (“IL BASTARDO”) is a former tenant of the building. Defendant/ Third-Party Plaintiff Robert Malta (“Malta”) is the owner of IL BASTARDO. There is no indication whatsoever in the complaint, answer, or third-party complaint as to the connection of defendant Kristin Solenne to the actions other than that she is an individual believed to reside at 119 West 72<sup>nd</sup> Street, New York, NY. The complaint alleges that the defendants stole certain property, including custom benches, speakers, the sound system, and a hot water heater when IL BASTARDO vacated the premises. The complaint also alleges that there are arrears in use and occupancy and/or rent and/or additional rent. Plaintiff contends that the defendants breached the terms of the lease and a settlement agreement, seeks monetary damages, punitive damages, attorney fees, a declaratory judgment declaring that the defendants committed conversion, and an injunction requiring the defendants to return the allegedly stolen property. The defendants contend that they were not only permitted, but required, to remove the property pursuant to the lease, and interpose counterclaims alleging that the plaintiff breached the lease by failing to repair a water leak, failing to reimburse defendant for plumbing repairs, and allege that Milul engaged in fraud in requesting Malta sign an estoppel certificate to help it obtain financing while knowing that this was a misrepresentation of material fact as defendant had vacated the premises a month prior, and that as a result, Malta is subject to Milul’s lender’s collection efforts. The Third-Party Complaint alleges defamation in that Milul allegedly told a real estate broker that Malta was a thief because he stole equipment from the building.

## **The Subpoenas**

The plaintiff contends that the subpoenas should be quashed because they are premature in that they were served prior to the defendants’ answer, and palpably improper.

Plaintiff contends that the defendants’ counsel did not have authority to issue the subpoenas because they were issued prior to defendants having answered the complaint. Pursuant to CPLR § 2302(a) subpoenas may be issued without a court order by an attorney of record for a party to an action. The answer in this action was filed on October 8, 2024. The Bank subpoena is dated October 16, 2024, which is after the defendants answered. Accordingly, this argument is clearly without merit as to the Bank subpoena. The Shelly subpoena is dated September 20, 2024. While this is before the answer was filed, it is after counsel for the parties stipulated to an extension of the time to answer, and after defense counsel had filed the stipulation with the court on September 17, 2024, indicating that they were counsel for the defendants. Accordingly, they were counsel for a party to the action when the subpoena was issued and, therefore, this plaintiff’s argument that this subpoena must be quashed because the answer had not yet been filed must fail because defense counsel was counsel of record at the time the subpoena was issued. Furthermore, the defendants have since

answered the complaint and filed the Third-Party Complaint, thereby rendering plaintiff's argument on this point moot.

### The Bank Subpoena

The bank subpoena is proper. "Where the person to be examined is not a party or a person who at the time of taking the deposition is an officer, director, member or employee of a party, he shall be served with a subpoena" (CPLR § 3106 [b]). Furthermore, "[b]ank records, although they may reflect transactions between the bank and its customers, belong to the bank. The customer has no proprietary or possessory interests in them. Hence, he cannot preclude their production (*United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71; *Matter of Cappetta v. Santucci*, 42 N.Y.2d 1066, 399 N.Y.S.2d 1172, 369 N.E.2d 1172; *Matter of Shapiro v. Chase Manhattan Bank, N.A.*, 53 A.D.2d 542, 384 N.Y.S.2d 795 [1st Dept.]). The rule is the same with respect to telephone records (see *People v. DiRaffaele*, 55 N.Y.2d 234, 448 N.Y.S.2d 448, 433 N.E.2d 513). Accordingly, if the owner of the records, in this case the Chemical Bank, is not opposed to producing them, the customer is powerless to preclude their production" (*People v Doe*, 96 AD2d 1018, 1019 [1st Dept 1983]). The subpoena is sufficiently specific, the subpoena specifies the date range they are seeking documents for, identifies the transaction they are seeking documents related to – the refinance that closed on December 22, 2023, and identifies four categories of documents: communications between Sydney Sol Ltd. on one hand, and M.Y. Safra Bank on the other hand, concerning the Lease; communications memorializing, constituting, or relating to any inspection performed by M.Y. Safra Bank FSB regarding the Refinance; rent rolls submitted by Sydney Sol Ltd. in connection with the Refinance; and estoppel certificates submitted by Sydney Sol Ltd. in connection with the Refinance. These categories of documents relate to the defendants' second counterclaim for fraud, whereby defendants contend that they have become subject to the lender's collection efforts in connection with an estoppel certificate. Here, the owner of the records sought – M.Y. Safra Bank – has indicated that it will respond to the subpoena and provide the requested information (see NYSCEF Doc. No. 63). Accordingly, the motion to quash the bank subpoena must be denied.

### The Shelly Subpoena

The Shelly subpoena must be quashed. The Shelly subpoena was served on a non-resident in New Jersey. Pursuant to Judiciary Law § 2-b, the court has power to "issue a subpoena requiring the attendance of a person found in the state to testify in a cause pending in that court." "Thus this out-of-state service of the subpoenas on a nonresident was unauthorized and void" (*Peterson v Spartan Indus., Inc.*, 40 AD2d 807, 807-08 [1st Dept 1972], *certified question answered, order affd*, 33 NY2d 463 [1974]; see also *Stafford v EV Transportation Services, Inc.*, 231 AD3d 460 [1st Dept 2024] ["Because the subject subpoenas were served outside the State of New York, the subpoenas were unenforceable."], *23/23 Communications Corp., d/b/a Communications Diversified v Gen. Motors Corp.*, 172 Misc 2d 821, 822 [Sup Ct NY County 1997] ["The law is well settled that the service of a subpoena outside the state is beyond the court's power"]).

**Conclusion**

For the reasons set forth hereinabove; it is hereby

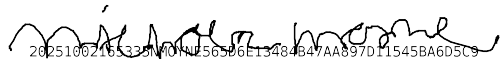
**ORDERED** that the plaintiff’s motion to quash the subpoena served upon non-party Bradley Rock Jr. of M.Y. Safra Bank FSB is **DENIED**; and it is further

**ORDERED** that the plaintiff’s motion to quash the subpoena served upon non-party Shelly Milul is **GRANTED**; and it is further

**ORDERED** that the subpoena served upon non-party Shelly Milul is **QUASHED** and said subpoena is **VOID**; and it is further

**ORDERED** that the plaintiff’s motion is otherwise **DENIED**.

This constitutes the decision and order of the court.



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9/11/2025

DATE

NICHOLAS W. MOYNE, 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