

**Sprecher v Miller**

2025 NY Slip Op 33947(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 655888/2020

Judge: Lyle E. Frank

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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. LYLE E. FRANK **PART** **11M**

*Justice*

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BENNETT SPRECHER, PROMENADE THEATRE CORPORATION, AMY SPRECHER

Plaintiff,

- v -

MAX MILLER AND JACOB MILLER, CADOGAN CORPORATION, MAX MILLER,

Defendant.

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**INDEX NO.** 655888/2020

**MOTION DATE** 08/18/2025

**MOTION SEQ. NO.** 017

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 017) 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, the motion is granted in part, and the cross-motion is granted.

**Background**

This discovery motion arises out of a long-running dispute between two shareholders in the Promenade Theatre Corporation (“Promenade” or the “Business Plaintiff”). Plaintiffs Bennett Sprecher and Amy Sprecher (the “Individual Plaintiffs”), shareholders in Promenade, filed the underlying proceeding in 2020 against the estate of Promenade’s director William Miller<sup>1</sup>, Miller’s company Cadogan Corporation, and Miller’s son Max Miller (collectively, “Defendants”). The main thrust of Plaintiffs’ allegations center around an alleged oral agreement between Mr. Sprecher and Mr. Miller regarding the payment of management fees, alleged misuse

<sup>1</sup> The action was initially instituted against Mr. Miller, who passed away during the pendency of this action.

of Promenade funds, and other mismanagement of Promenade by Mr. Miller and later the executors of Mr. Miller's estate.

Relevant for this motion, in August of 2022, Defendants William Miller and the Business Defendant served Plaintiffs with a request for the production of documents and a set of interrogatories (the "Initial Discovery Requests"). Plaintiffs shortly thereafter served their written responses and objections to the Initial Discovery Requests. Then in January of 2025, a new law firm was substituted in as counsel for Defendants. Defendant Max Miller then served a set of interrogatories on Plaintiffs, and the other defendants served a second request for the production of documents (collectively, the "Second Discovery Requests"). Plaintiffs responded to these via written responses, to which Defendants have served various deficiency notices. In August of 2025, Defendants also served subpoenas on four non-party entities, including a Florida law firm Manice Budd & Baggett, LLP ("MBB") that represents the estate of William Miller in a separate Florida probate action, and Capital One, National Association ("Capital One").

### **Discussion**

In this motion, Defendants are seeking to compel discovery with respect to five categories: 1) identification of "any alleged oral agreement between Bennett Sprecher and William Miller" including the complete terms of said agreement and any supporting documentation; 2) the identification of any tax preparers for Plaintiffs from 1983 to present; 3) the production any financial or tax records for Mr. Sprecher that reflect any payments to or from Promenade from 1983 to present; 4) native versions of certain documents that relate to an Excel spreadsheet of damages calculations prepared by Mr. Sprecher; and 5) the production of documents related to counsel fees paid by Plaintiffs in connection with this litigation or any other proceeding for which Plaintiffs might claim to be entitled to reimbursement from Defendants.

Plaintiffs oppose the motion, and cross-move to quash the subpoena issued to MBB in its entirety and the subpoena issued to Capital One to the extent that it seeks the personal financial information of the Individual Plaintiffs and non-party entity the Sprecher Organization. For the reasons that follow, the motion to compel is granted as to the production of Promenade's tax records, or the names of the preparers or custodians of said records, dating back to 2005, and denied as to the rest. The cross-motion is granted.

*Discovery Standard of Review*

The test for material discoverable pursuant to CPLR § 3101(a) is “one of usefulness and reason, measured by whether the information sought is sufficiently related to the issues in litigation to make the effort to obtain it in preparation for trial reasonable.” *Williams Real Estate Co. v. Viking Penguin*, 216 A.D.2d 27, 28 [1st Dept. 1995]. The CPLR provides that if a party fails to comply with a discovery request, the party seeking disclosure may move to compel compliance or a response. CPLR § 3124.

*The First Category of Request Discovery Is More Proper for Deposition*

Plaintiffs object to the discovery requests relating to the recitation of the alleged 1983 oral agreement contained in the Interrogatory as overbroad and duplicative. They also argue that any information Defendants seek regarding the alleged oral agreement is more properly sought through the deposition of Mr. Sprecher, which has not occurred yet. Given the fact that the information sought involves oral discussions between Mr. Sprecher and the deceased Mr. Miller, the Court agrees that the best course would be to elicit the information from Mr. Sprecher in a deposition, with Defendants reserving the right to seek further discovery based on what is produced in said deposition. In such a case, denial of the motion to compel as to this category of discovery is proper. *See, e.g., Williams* at 28.

*The Tax, Financial, and Bank Records Sought from Mr. Sprecher Cannot Currently Be  
Compelled*

Defendants move to compel the production of the identification of tax preparers and other custodians of tax records for Plaintiffs going back to 1983. They seek this information, along with the actual records themselves and any personal financial and bank records for Mr. Sprecher, in order to determine whether there is a course of conduct regarding the management fee payments at issue in this proceeding. More specifically, Defendants seek to establish whether or not any potential payments made to Mr. Sprecher from Promenade were categorized as shareholder disbursements or management fees. During discovery discussions, Defendants agreed to narrow the financial records sought to documents that reflect any payment to or from Promenade to Mr. Sprecher from 1983 to present. Plaintiffs object to this request on the grounds that 1) they have provided the corporate tax records for Promenade going back to 2012, which is as far back as they claim to have said tax records in their possession<sup>2</sup>; and 2) the personal tax and financial records for the Individual Plaintiffs are irrelevant and the request is overly broad.

Generally, requests that seek tax returns and financial information that are “not relevant to the issues or [are] overbroad and palpably improper” should be stricken. *Aetna Ins. Co. v. Mirisola*, 167 A.D.2d 270, 271 [1st Dept. 1990]. Such a restriction is particularly true for tax returns, which can only be required to be produced if “the record presents a strong necessity for such disclosure in order for the party to prove its cause of action or defense.” *Lukowsky v. Shalit*, 160 A.D.2d 641, 642 [1st Dept. 1990]. Here, Defendants are seeking to establish whether there was a course of conduct of Promenade making management fee payments to Mr. Sprecher. They

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<sup>2</sup> In a previous order, this Court limited the recovery for the overpayment of management fees in this matter to 2014 onwards.

argue that a lack of evidence that any payments to Mr. Sprecher were categorized as management fees would go towards establishing their defense to that claim.

This issue involves interest balancing. Given the confidential and private nature of the individual tax and financial records sought, production of them is generally disfavored under New York law, as established above. *See also Nanbar Realty Corp. v. Pater Realty Co.*, 242 A.D.2d 208, 209 [1st Dept. 1997] (holding that “disclosure of tax returns is disfavored, and defendants are required to establish that the information contained in the returns they seek ‘is indispensable to this litigation and unavailable from other sources’”). On the other hand, evidence of a course of performance post-agreement is, as Defendants point out, germane to claims and defenses based on the agreement. *See, e.g., China Privatization Fund (Del.), L.P. v. Galaxy Entertainment Group Ltd.*, 187 A.D.3d 596, 597 [1st Dept. 2020].

Crucially, any payments made to Mr. Sprecher from Promenade would most likely be reflected in the financial and banking records of the company, as well as Mr. Sprecher’s personal records. Defendants point out that such payments may be ambiguous and could have been characterized as shareholder disbursements rather than management fee payments. But they do not identify any such payments as ambiguous, nor do have they stated that the Promenade financial and tax records contain any (or no) indication of management fee payments. Whether Mr. Sprecher reported any particular payment in a specific way on his taxes is not, in and of itself, relevant information. Whether Promenade routinely did or did not issue funds to Mr. Sprecher that were characterized as management fee payments is, however, a relevant line of inquiry. In other words, while Defendants are correct that the personal tax records of Mr. Sprecher would be *a way* of determining whether there was or was not a series of management fee payments, it is not the *only* way. Without making a showing that there is no available means

of determining a course of conduct on this issue from the tax and financial records of the corporation, Defendants have not met their burden necessary in order to compel the personal financial and tax records for Mr. Sprecher at this time. Therefore, the portion of the motion to compel as regarding the personal tax and financial records of Mr. Sprecher is denied without prejudice, with leave to refile in the future should it be shown that the relevant information sought is unavailable from other sources.

*The Promenade Tax Returns Are Relevant*

As addressed above, the tax and financial records of Promenade are relevant to the claims and defenses in this matter. Defendants seek to obtain these going back to 1983, in order in large part to determine the course of conduct between Promenade and Mr. Sprecher. Plaintiffs claim to only have records dating back to 2012 in their possession, and that regardless they should not be compelled to produce tax records before the cutoff date for the maintenance fee claim. They also point to the burden on them of attempting to produce records dating as far back as 1983. But as addressed above, establishing a course of conduct between Promenade and Mr. Sprecher would be relevant to Defendants' defenses in this case. While it would not be necessary to reach all the way back to the start of the alleged oral agreement, particularly given the burden on Plaintiffs this would entail, it would be relevant and reasonable for Defendants to access tax and financial records for Promenade going back before the recovery cutoff date in order to establish course of conduct. Therefore, it would be proper to grant the motion to compel to the extent that it covers the production of Promenade's tax records, or the names of the custodians or preparers of those records, going back to 2005.

*The Native Versions Do Not Need to Be Produced at This Time*

In their discovery production, Plaintiffs disclosed a PDF that contained an amalgamation of Excel spreadsheets and other documents. This document consisted of Mr. Sprecher's personal estimation of monies that could be generated from the Promenade leasehold interest. Defendants are seeking production of the native files that were used in generating this spreadsheet. Plaintiffs oppose on the grounds that they have already represented that they will rely on expert disclosures for damages assessment in this matter, and not Mr. Sprecher's calculation. In *150 Nassau*, the First Department noted that it is not improper to deny a motion to compel production of native files when it is solely for the purposes of the other party's convenience. *150 Nassau Assoc. LLC v. RC Dolner LLC*, 96 A.D.3d 676, 677 [1st Dept. 2012]. As the final spreadsheet does not appear to be a document that Plaintiffs are relying on in order to establish damages, compelling production of the native files would not be proper at this time.

*The Counsel Fees Information Is Premature*

Finally, in their motion to compel Defendants seek to have Plaintiffs produce documents related to the payment of counsel fees "unless Plaintiffs are willing to abandon their claim for counsel fees." While such information would of course be necessary should Plaintiffs be awarded reimbursement of legal fees, at this time it is irrelevant to establishing Plaintiffs' entitlement to any such fees. Furthermore, given that there is not even a note of issue filed in this matter, such information would necessarily be out-of-date at the time of production, given that there would almost certainly be further fees incurred as this matter progresses. Therefore, this portion of the motion to compel should be denied.

*Plaintiffs' Cross-Motion to Quash Is Granted*

Plaintiffs have cross-moved to quash two non-party subpoenas. The first is a subpoena issued to MBB, the firm that is representing Plaintiffs in the Florida probate action concerning

the estate of Mr. Miller. In the MBB subpoena, Defendants seek to obtain communications between MBB, Plaintiffs, and Plaintiffs' counsel in this matter, as well as documents related to this action. MBB has responded to the subpoena and objected to the requests in their entirety as requesting privileged information. Defendants argue that as two-thirds shareholders in Promenade, they are not precluded from such information by the attorney-client privilege. They are seeking to establish an alleged misuse of corporate funds by the Individual Plaintiffs. But Plaintiffs admit that they are using Promenade funds to pay MBB in that action. Furthermore, in this matter Defendants are adverse to Promenade, despite their shareholder interest. Granting them access to privileged information between their opponent and their opponent's counsel would be improper, and the cross-motion to quash the MBB subpoena is granted.

Plaintiffs have also cross-moved to quash the Capital One subpoena to the extent that it requests the personal financial information of the Individual Plaintiffs and non-party the Sprecher Organization. Defendants are seeking this information to establish why corporate funds were transferred to a Capital One account. Plaintiffs seek to quash this subpoena for the same reasons that they opposed the motion to compel Mr. Sprecher's private financial records. For the reasons given above, Defendants have not at this time made the necessary showing for the production of the personal financial information of the Individual Plaintiffs. Therefore, the cross-motion to quash this portion of the Capital One subpoena should be granted. Accordingly, it is hereby

ADJUDGED that the motion to compel is granted in part; and it is further

ORDERED that Plaintiff Promenade Theatre Corporation is directed to provide their corporate tax records dating back to 2005, or the identification of the appropriate tax preparers and/or custodian of tax records for said years; and it is further

ADJUDGED that the cross-motion to quash is granted; and it is further  
 ORDERED that the subpoena in this matter issued to Manice Budd & Baggett, LLP,  
 dated July 22, 2025, is quashed in its entirety; and it is further  
 ORDERED that the subpoena in this matter issued to Capital One, National Association,  
 dated August 7, 2025, is quashed to the extent that it seeks the personal financial information of  
 Bennett Sprecher, Amy Sprecher, and the Sprecher Organization.

  
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10/10/2025  
 DATE

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 LYLE E. FRANK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE