

**Yes I Can Licensed Behavior Analyst PLLC v
Green Tree Capital, LLC**

2025 NY Slip Op 34298(U)

November 13, 2025

Supreme Court, Kings County

Docket Number: Index No. 511423/2024

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 13th day of November 2025.

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
YES I CAN LICENSED BEHAVIOR ANALYST
PLLC; TRIUMPH BEHAVIOR SUPPORT LLC,
YES I CAN SERVICES INC; YICIF LLC;
METROPOLITAN MENTAL HEALTH PC;
ZAREPHATH INC.; YIC REALTY AZ LLC;
and SIMCHA FELLER

Index No. 511423/2024

Cal. Nos. 24-25 MS 5-6

Decision and Order

Plaintiffs,

-against-

GREEN TREE CAPITAL, LLC, MATTHEW
STAFFORD, ABC CORPORATIONS 1-25
and JOHN DOES 1-25,

Defendants.
-----X

The following e-filed papers read herein:

MS 5

MS 6

NYSCEF Doc Nos.

104-118, 122-152

119-121, 153-186

Defendant Green Tree Capital LLC (“Defendant”) has interposed a motion pursuant to CPLR 2304, 3103, 3101 (a) (4) and 22 NYCRR § 130-1.1 for an order (i) quashing the subpoenas duces tecum and ad testificandum served by plaintiffs Yes I Can Licensed Behavior Analyst PLLC, Triumph Behavior Support LLC, Yes I Can Services Inc., YICIF LLC, Metropolitan Mental Health PC, Zarephath Inc., Yic Realty AZ LLC and Simcha Feller (collectively, “Plaintiffs”), (ii) directing the County Clerk to mark this matter disposed and (iii) sanctioning Plaintiffs and

directing Plaintiffs to provide for Defendant's attorneys' fees and costs (motion sequence 5) (*see* NYSCEF Doc No. 104, notice of motion, at 1).

Plaintiffs have interposed a cross-motion pursuant to CPLR 3025 (b) for an order granting them leave to file a proposed amended complaint and ordering non-party Yehuda Lasry to immediately comply with the subpoenas that were served upon him (cross-motion sequence 6) (*see* NYSCEF Doc No. 119, notice of motion, ¶¶ [b] – [c]).

Plaintiffs instituted this plenary action to vacate a judgment by confession in the amount of \$3,524,598.75 (the "Judgment") obtained by Defendant in a related action styled *Green Tree Capital LLC v Yes I Can Licensed Behavior Analyst PLLC*, Kings County Supreme Court, Index No. 510826/2024 (the "Related Action"). In their amended complaint in the instant action, Plaintiffs, who are the debtors in the Related Action, seek vacatur of the Judgment on the grounds that: (i) a judgment by confession cannot be obtained against out-of-state defendants under CPLR 3218; (ii) Defendant breached the merchant cash agreement at issue herein (the "MCA") by failing to deliver the contracted amount of \$2.5 million; (iii) Defendant breached the MCA and/or engaged in fraud by including more than \$700,000 in attorneys' fees in the Judgment, which sum Defendant was not entitled to recoup; and (iv) Defendant fraudulently induced Plaintiffs to enter into the MCA by misrepresenting that the transaction was a loan (*see* NYSCEF Doc No. 138).

Defendant has moved to quash the subpoenas duces tecum and ad testificandum served by Plaintiffs on non-party Yehuda Lasry (the "Subpoenas"). Defendant opines that, insofar as this matter should purportedly be marked as "disposed," the Subpoenas have been "rendered a nullity," warranting the issuance of an order quashing the Subpoenas (*see* NYSCEF Doc No. 118, memorandum of law, ¶ 1). Defendant's argument on this front is at odds with the record. Defendant undermines its contention that this matter should be marked as "disposed" by conceding

as follows that one of the four causes of action interposed by Plaintiffs in the Amended Complaint has to date not been dismissed:

Here, Plaintiffs' only remaining claim that the Court did not dismiss is that Defendants procured the Confession of Judgment by breaching their contract with Plaintiffs through adding "on more than \$700,000 onto its application for judgment for alleged attorney's fees," thereby warranting vacatur of the Confession of Judgment.

(*id.* ¶ II).

Further vitiating its contention that the Subpoenas should be quashed on the ground that this matter ought to be marked as disposed, Defendant admits as follows in its motion that the court has not dismissed all of Plaintiff's claims in the present action:

Specifically, this Court already dismissed all of Plaintiffs' claims other than its [sic] claim that the attorneys' fees included in the confession of judgment filed by Defendants did not constitute "reasonable attorneys' fees" under the parties' agreement.

(*id.*, p. 4).

Defendant bases its motion to quash the Subpoenas on a second independent ground, namely, that Plaintiffs' subpoenas are not germane to the issues in the instant proceeding, and, hence, should be quashed (*id.*). Defendant asserts that "Plaintiffs' discovery demand have [sic] absolutely nothing to do with the issues in this case or the relief sought and should be quashed" (*id.*). An analysis of the record reveals this argument to be well-founded. Plaintiffs' only remaining claim that the court did not dismiss is that Defendants procured the Confession of Judgment by breaching their contract with Plaintiffs by adding "on more than \$700,000 onto its application for judgment for alleged attorney's fees, for legal work that could not possibly have been more than a few thousand dollars at best," thereby warranting vacatur of the Confession of Judgment (*see* NYSCEF Doc No. 23, amended complaint, ¶¶ 119-122).

Notwithstanding the narrowly circumscribed scope of their last remaining claim in the instant proceeding, Plaintiffs in their Subpoena seek an extensive amount of materials from non-party Yehuda Lasry, to wit:

- 1) All documents relating to Supreme Court, New York County, Index Number 651245/2025, Manna Capital Solutions LLC v. Jonathan Braun et al, including but not limited to all evidence relating to Manna's claims in this action;
- 2) All agreements between you or Manna Capital Solutions LLC and GREEN TREE FUND a/k/a GREEN TREE CAPITAL LLC; SMART FUNDING NOW LLC; DELAWHO HOLDINGS LLC; JONATHAN BRAUN; YITZCHOK WOLF a/k/a ISAAC WOLF; SARA BETYAKOV A/K/A SARAH BEITYAKOV; MATTHEW STAFFORD; ARIEL BOUSKILA; STEVEN BERKOVITCH; and/or BERKOVITCH & BOUSKILA, PLLC, from January 1, 2024 to the present;
- 3) Any settlement agreement relating to Index Number 651245/2025, including but not limited to all drafts and all communications relating thereto;
- 4) To the extent not otherwise provided, any settlement agreement relating to the claims set forth in Index Number 651245/2025, including but not limited to all drafts and all communications relating thereto;
- 5) Copies of all payments sent and received relating to the claims and settlement of Index Number 651245/2025, whether via check, wire, ACH, direct deposit, or any other method of payment;
- 6) All communications, including but not limited to emails, texts, Whatsapp communications, Signal communications, Telegraph communications, or communications from any other messenger application with GREEN TREE FUND a/k/a GREEN TREE CAPITAL LLC; SMART FUNDING NOW LLC; DELAWHO HOLDINGS LLC; JONATHAN BRAUN; YITZCHOK WOLF a/k/a ISAAC WOLF; SARA BETYAKOV A/K/A SARAH BEITYAKOV; MATTHEW STAFFORD; ARIEL BOUSKILA; STEVEN BERKOVITCH; and/or BERKOVITCH & BOUSKILA, PLLC, from January 1, 2024 to the present.

(NYSCEF Doc No. 106, subpoena, ¶¶ 1-6).

The disclosure demands embodied in the Subpoenas bear no plausible nexus to the issue in the present proceeding, namely, whether the parties' contract required Defendant to not file a confession of judgment seeking attorneys' fees exceeding reasonable attorneys' fees. In these circumstances, Plaintiffs' Subpoenas, in which the above-described broad scope of information is sought, are not viable and should be quashed since, pursuant to CPLR 3101 (a), a party may only issue a subpoena to obtain information that is "material and necessary in the prosecution or defense of an action (*see* CPLR 3101 [a]; *see also* *Islip Theaters, LLC v Landmark Plaza Props. Corp.*, 183 AD3d 875, 876 [2d Dept 2020] [the discovery sought in a subpoena must be "material and necessary to the prosecution or defense of [the] action"]).

Defendant's attempt to secure sanctions against Plaintiffs stemming from Plaintiffs' ill-conceived Subpoenas must be denied as Plaintiffs failed to adduce evidence establishing that Plaintiffs' conduct in issuing the Subpoenas qualifies as "frivolous conduct" as defined in 22 NYCRR 130-1.1 (c), which understandably imposes a heavy burden on a party moving for sanctions, as illustrated in a recent Second Department decision denying the imposition of sanctions as follows:

The Supreme Court providently denied that branch of the defendants' cross-motion which was pursuant to 22 NYCRR 130-1.1 to impose sanctions against the plaintiff's counsel. Pursuant to 22 NYCRR 130-1.1, sanctions may be imposed against a party or the party's attorney for frivolous conduct (*Genco v. Genco*, 124 A.D.3d 580, 580, 997 N.Y.S.2d 919). Conduct is frivolous if (1) it is completely without merit in law or fact and cannot be supported by a reasonable argument for the extension, modification, or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false (*Matter of Congregation Ahavas Moische, Inc. v. Katzoff*, 134 A.D.3d 934, 934, 20 N.Y.S.3d 895; *see* 22 NYCRR 130-1.1[c]).

The decision whether to impose costs or sanctions against a party for frivolous conduct, and the amount of any such costs or sanctions, is generally entrusted to the court's sound discretion (*Strunk v. New York State Bd. of Elections*, 126 A.D.3d 779, 781, 5 N.Y.S.3d 498). Here, nothing in the record demonstrates that the conduct of the plaintiff's attorney was frivolous within the meaning of 22 NYCRR 130-1.1(c).

(*Cassagnol v Village of Hempstead*, 214 AD3d 766, 768-769 [2d Dept 2023] [internal quotation marks omitted]).


The branch of Plaintiffs' cross-motion pursuant to CPLR 3025 (b) for an order granting them leave to file the proposed amended complaint (cross-motion sequence 6) is denied in that Plaintiffs failed to include as an exhibit to their cross-motion a copy of the proposed amended complaint, having instead merely annexed to the cross-motion an unsigned redlined version of the proposed amended complaint (*see* NYSCEF Doc No. 121). Indeed, Plaintiffs cannot expect the court to grant a motion for leave to amend a pleading without providing the court and adverse party with an actual copy of the proposed amended pleading (*see G4 Noteholder, LLC v LDC Props., LLC*, 153 AD3d 1326, 1327 [2d Dept 2017] [Second Department denied motion for leave to amend pleading since the movant failed to include a proposed amended pleading along with its motion]).¹ Likewise, the branch of Plaintiffs' cross-motion for an order directing non-party Yehuda Lasry to immediately comply with the Subpoenas served upon him (cross-motion sequence 6) is hereby denied in light of the above determination that the subject Subpoenas are unavailing.

Based on the foregoing, the branch of Defendant's motion (motion sequence 5) for an order quashing the subpoenas duces tecum and ad testificandum served by Plaintiffs is granted. Further,

¹ Plaintiffs' invocation of the bedrock principle that "leave to amend a pleading shall be freely given" (*see* NYSCEF Doc No. 120, Neuman affirm., ¶ 15), albeit accurate, is no panacea in light of Plaintiffs' failure to annex to their cross-motion a copy the proposed amended complaint (*see Muro-Light v Farley*, 95 AD3d 846, 847 [2d Dept 2012] [Second Department affirmed Supreme Court's denial of plaintiff's cross-motion for leave to amend the complaint since "[i]n support of her cross motion, the plaintiff failed to submit a proposed amended complaint"]).

the branch of Defendant's motion (motion sequence 5) for an order directing the County Clerk to mark this matter disposed is hereby denied. Moreover, the branch of Defendant's motion (motion sequence 5) for an order sanctioning Plaintiffs and directing Plaintiffs to provide for Defendant's attorneys' fees and costs is hereby denied. Additionally, Plaintiffs' cross-motion pursuant to CPLR 3025 (b) for an order granting them leave to file the proposed amended complaint and ordering non-party Yehuda Lasry to immediately comply with the subpoenas that were served upon him is hereby denied (cross-motion sequence 6). Any relief not expressly addressed herein has been considered and is denied.

ENTER:



Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.