

**Can IV Packard Sq. LLC v Schubiner**

2026 NY Slip Op 30106(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 151544/2020

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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CAN IV PACKARD SQUARE LLC

Plaintiff,

- v -

CRAIG SCHUBINER,

Defendant.

-----X

INDEX NO. 151544/2020

MOTION DATE 12/22/2025

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140

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

Upon the foregoing documents, defendant's motion to quash plaintiff's third-party subpoena and for attorney's fees is denied.

Background

Plaintiff received a judgment against defendant in a Michigan court in the amount of \$13,992,936.05. Since defendant said he resided at 260 Park Avenue South, Unit 5B in Manhattan, plaintiff brought this case and successfully domesticated the Michigan judgment here; the New York judgment was entered on June 6, 2022 in the amount of \$17,125,820.25, which represents the amount plaintiff was awarded in the Michigan judgment plus statutory interest (NYSCEF Doc. No. 40). Since then, plaintiff has been trying to collect on its judgment.

Defendant details that he purchased the property at 260 Park Avenue in 2006 and that in 2007 it was conveyed to non-party 304 Associates, LLC ("304"). 304 is an entity organized under the laws of Delaware and was owned 90% by CES 2007 Trust, of which US Trust Company of Delaware served as Trustee, and 10% by Harbor Investments. Defendant details that

he was only one of the beneficiaries of the 2007 CES Trust. Defendant further details that 304 has been owned entirely by three irrevocable trusts since 2010.

On August 18, 2022, plaintiff levied a writ of execution on defendant's residence, and the New York County Sheriff's Department entered the property and inventoried assets within the unit for potential seizure. Defendant claimed that all of the property in the unit belonged to corporate entities and his daughter. In an attempt to seize the property in the unit to satisfy its judgment, on October 13, 2022, plaintiff filed a motion for the turnover of defendant's personal property which was denied (NYSCEF Doc. No. 74). Plaintiff then successfully moved to reargue, and the prior decision was vacated to the extent that the matter was held in abeyance pending a hearing on what interest defendant has in the property in his custody and possession (NYSCEF Doc. No. 90). That hearing has not yet taken place.

In September of 2025, plaintiff ran a title search on defendant's residence and discovered that 304 took out a mortgage on defendant's residence. Plaintiff contends that the mortgage form is a standard Fannie Mae/Freddie Mac form which is used for personal loans and that there is no corresponding assignment of leases and rents which would be standard in a commercial transaction. Plaintiff therefore contends that the defendant must have taken this mortgage as a personal loan against 304's asset.

Plaintiff then served a subpoena upon the mortgagee, New American Funding, LLC ("New American") seeking loan agreements and documents and communications related to the transaction. Plaintiff details that the subpoena was personally delivered to New American on September 30, 2025 and that notice upon the parties was served the following day at NYSCEF Doc. No. 129.

Defendant then filed the instant motion seeking to quash the subpoena and for attorney's fees related to making this motion. Defendant contends that the subject subpoena is nothing more than a vexatious attempt to pierce the corporate veil, which plaintiff has already attempted to do both in its turnover motion in this case as well as in a case before the Delaware Chancery Court. Defendant argues that plaintiff is going on a fishing expedition based upon the unsubstantiated belief that defendant used the proceeds of the loan secured by the mortgage, but that plaintiffs have no evidence or reason to believe that this is the case.

Defendant also argues that the subpoena is procedurally deficient for two reasons. First, defendant details that the subpoena was dated September 25, 2025, but that defendant was not notified until October 1, 2025. Defendant argues that this puts plaintiff out of compliance with the contemporaneous notice requirement of CPLR 3120 (3). Defendant then argues that the subpoena was untimely, as the subpoena was served three months after the parties' deadline to exchange witnesses and exhibits in advance of the upcoming hearing.

In its opposition, plaintiff first addresses the contemporaneous notice issue and points out that despite the September 25 date on the subpoena, it was served by personal delivery on September 30 and then upon defendant the next day at NYSCEF Doc. No. 134. With respect to the argument that the subpoena was untimely in the context of the hearing, plaintiff argues that the subpoena was issued in relation to its attempt to collect on the judgment, not just the hearing. However, plaintiff contends that it should also be permitted to obtain the documents sought in the subpoena and use them at the referee inquest.

Turning to plaintiff's argument that the subpoena is baseless, vexatious, and just another attempt to pierce the corporate veil, defendant contends that the subpoena will likely reveal assets that plaintiff may seize to collect on its judgment and that the loan documents could reveal

defendant's personal financial benefit from the loan and the commingling of his personal assets with corporate assets. Plaintiff argues that lenders routinely require personal guaranties in connection with mortgage agreements and that the use of a consumer form of mortgage leads to the conclusion that this was not a commercial transaction.

In reply, defendant states that plaintiff has failed to show that the mortgage document shows that defendant took the mortgage as a personal loan – only one borrower is shown, 304, a separate legal entity. Defendant continues that plaintiff itself acknowledges that defendant does not own or control 304, as plaintiff's papers state that 304 is owned by three irrevocable trusts. Lastly, defendant claims that the allegations of commingling have no factual basis and that plaintiff has not identified one transaction or any other example of the alleged commingling. Defendant continues that any interest that defendant has in the property in his residence will come to light in the upcoming hearing before the special referee. Defendant concludes by stating the subpoena is speculative and harassing, so it should be quashed and plaintiff should have to pay attorney's fees and costs related to the instant motion.

### **Discussion**

“An application to quash a subpoena should be granted ‘[o]nly where the futility of the process to uncover anything legitimate is inevitable or obvious’ . . . or where the information sought is ‘utterly irrelevant to any proper inquiry’” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014] [internal citations omitted]). Here the Court does not find that the subpoena issued by plaintiff is futile or irrelevant and therefore denies defendant's motion to quash.

While it is true that the law of this case and the decisions out of the Delaware Chancery Court appended at NYSCEF Doc. Nos. 132 & 133 declined to pierce the corporate veil, what plaintiff seeks here is different. “Piercing of the corporate veil is not a cause of action

independent of that against the corporation; it is established when the facts and circumstances compel a court to impose a corporate obligation on its owners, who are otherwise shielded from liability” (*Tap Holdings, LLC v Orix Fin. Corp.*, 109 AD3d 167, 170 [1st Dept 2013]). A subpoena seeks information and does not in itself impose any liability or obligations.

The decision of Justice James, the justice assigned to this case before it was transferred to the undersigned on December 18, 2025, held that plaintiff did not meet its prima facie burden to establish it is entitled to piercing the corporate veil of 304 (NYSCEF Doc. No. 74). The Delaware Chancery Court, for its part, declined to void a provision in the CES 2007 trust, which was the majority owner of 304, or to invalidate the trust altogether (NYSCEF Doc. No. 132).

Here, with the subpoena, plaintiff does not seek to pierce the corporate veil and does not seek to satisfy its judgment from money that is properly within the trust. Plaintiff is only seeking information, it is following up on its reasonable theory that defendant may have personally benefited from the loan and may have comingled his assets with those of 304. If the subpoenaed information shows that there was no wrongdoing – that the assets were not comingled and do in fact belong only 304, then plaintiff will have hit a dead end; it certainly will not be able to recover anything from 304. If the information shows otherwise, then plaintiff may use that information in an attempt to satisfy its judgment. Plaintiff is owed over \$17,000,000. Of course it must make its best efforts to follow the money and collect whatever it can, so the information it seeks in the subpoena might be highly relevant.

The Court has also considered defendant’s procedural arguments and finds them unavailing. Plaintiff showed that it notified defendant of the subpoena one day after it was served, and the Court agrees that the subpoena is proper as it goes toward plaintiff’s judgment collection efforts, not just to the upcoming hearing. Since the Court denies defendant’s motion to

quash, it therefore also denies the part of defendant’s motion which seeks attorney’s fees related to making the motion.

Accordingly, it is hereby

ORDERED that the Court denies defendant’s motion to quash and for sanctions in its entirety.

1/5/2026  
DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE