

**Gratitude Capital LLC v West 134 St. Harlem LLC**

2026 NY Slip Op 31828(U)

April 10, 2026

Supreme Court, New York County

Docket Number: Index No. 650779/2021

Judge: Francis A. Kahn III

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. FRANCIS A. KAHN, III PART 32

Justice

-----X

INDEX NO. 650779/2021

GRATITUDE CAPITAL LLC,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 006

- v -

WEST 134 STREET HARLEM LLC, THEODORE
FELDHEIM, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD,

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 006) 129, 130, 131, 132,
133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153,
154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

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

Upon the foregoing documents, motion is decided as follows:

This was an action concerned to foreclose on two mortgages encumbering improved commercial
real property, located at 255-257 West 134 Street, New York, New York, arising out of a construction
project undertaken by Defendant/Judgment Debtor West 134 Street Harlem LLC ("West 134") to
renovate the building on the property. Promissory notes dated May 25, 2017, June 26, 2017, January 24,
2019, and December 26, 2019, were given by West 134 to Plaintiff Gratitude Capital LLC which
document loans totaling \$5,809,000.00 and were each secured by a mortgage. These notes were
combined in a consolidated, restated and extended promissory note dated December 26, 2019, and was
secured by a modified and consolidated mortgage on the property which is one of the mortgages
Plaintiff seeks to foreclose. The other, a building mortgage, secures a building note which evidences a
loan of \$400,000.00, both given by West 134 to Plaintiff. The above notes and mortgages, all dated
December 26, 2019, were executed by Defendant Theodore Feldheim ("Feldheim") in his capacity as
the Sole Member of West 134. Feldheim concomitantly executed personal guarantees of the above
promissory notes.

Plaintiff's motion for summary judgment and an order of reference was granted without
opposition. Plaintiff's motion for a judgment of foreclosure and sale was also granted on default, and a
judgement of foreclosure and sale was entered on October 19, 2023. The mortgaged property was sold
pursuant to the judgment on May 10, 2023, to Plaintiff for the sum of \$10,000.00. Plaintiff's motion for
a deficiency judgment was granted without opposition, and Plaintiff entered a money judgment for
\$6,030,820.86 against Defendants West 134 and Theodore Feldheim. Thereafter, Plaintiff apparently
served Yitzchok Feldheim ("Yitzchok"), the purported son of Defendant Feldheim, with a non-party
subpoena, dated December 19, 2025, seeking various information and records, and for Yitzchok to
appear for a deposition.

Now, non-party Yitzchok moves for an order pursuant to CPLR §2304 quashing the subpoena, pursuant to CPLR §3103, for a protective order and per 22 NYCRR §130-1.1 for costs and sanctions. Plaintiff opposes the motion.

At the outset, the subpoena is “null and void” as it seeks information from Yitzchok, who is not a judgment debtor, and the subpoena does not include a certification from the judgment creditor or its counsel as mandated (*see* CPLR §5224[a][3][i] and [ii]).

Notwithstanding this defect, the subpoena should be quashed as overly broad and burdensome. Pursuant to CPLR §5223, a judgment creditor may seek disclosure of “all matter relevant to the satisfaction of the judgment” by service of a subpoena. The subpoena “... shall specify all of the parties to the action, the date of the judgment, the court in which it was entered, the amount of the judgment and the amount then due thereon.” (CPLR §5223). “A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order ‘to determine whether the judgment debtor[ ] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment’” (*Lisogor v Nature's Delight, Inc.*, 189 AD3d 1386, 1388 [2d Dept 2020]; *quoting Young v Torelli*, 135 AD2d 813, 815 [2d Dept 1987]; *see also ICD Grp., Inc. v. Israel Foreign Trade Co. (USA) Inc.*, 224 AD2d 293, 294 [1<sup>st</sup> Dept 1996]).

Non-party subpoenas have been found appropriate where “[t]he subpoenas are targeted at the individuals and entities that are likely to have this information, and there is no indication that the information would be unduly burdensome to collect” (*Berisha v Tosca Cafe, Inc.*, 202 AD3d 531, 532, [1<sup>st</sup> Dept 2022]). However, where a subpoena goes beyond seeking information concerning the defendant’s assets and seeks financial information from non-parties regardless of whether such information involved the defendant’s assets, or unrelated funds, it may be quashed (*see Stern v Carlin Commc'ns, Inc.*, 210 AD2d 110, 111 [1<sup>st</sup> Dept 1994]). The subpoena may also be quashed if the requests “... will cause unreasonable annoyance, disadvantage, and prejudice to those nonparties.” (*Riverside Cap. Advisors, Inc. v First Secured Cap. Corp.*, 28 AD3d 457, 460 [2d Dept 2006]).

Here, Plaintiff seeks extensive information and voluminous financial records from non-parties, including Yitzchok, 968 Lakewood Irrevocable Trust, YF Lakewood Charitable Remainder Unitrust, 101 Equities LLC, Oy Holdings Corp. Plaintiff’s subpoena goes so far as to demand information concerning any entity that Yitzchok “...has an ownership interest or is a trustee”, as well as from several individuals who are not fully identified. The subpoena seeks the most recent monthly statement for any “financial accounts, including mortgage, bank and credit cards” from TD Ameritrade/ Charles Schab Corporation, Chase (15 separate accounts), Merrill Lynch/Bank of America, Capital One, Robin Hood and Provident Bank. The subpoena also seeks income tax returns, W-2s and 1009s; “Trust documents”; EIN numbers, articles of incorporation, ownership document, the “general ledger”, sales tax returns, the “accountant’s year-end trial balance and journal entries”, deeds to all properties and declarations of insurance. Lastly, Plaintiff seeks “all documents which refer and/or related to any of the Entities’ business dealings and/or the exchange of money/assets with...” 56 separate entities and individuals. Records are sought from September 1, 2019, to the present.

In support of the motion, Yitzchok submits an affirmation wherein he affirms that he is not”... an owner, member, officer, manager, or employee of any entity owned or controlled by Theodore Feldheim...” and that he “... never participated in Theodore Feldheim’s business affairs, real estate dealings, or investment activities, and [has] never held any role—formal or informal—in any of his companies.” Yitzchok also affirms that he does “... not share bank accounts, investment accounts,

credit facilities, real property, or trust interests with [his father] or with any judgment debtor.” However, Yitzchok acknowledges that over several years, he has provided his father personal financial support, in the amount of \$30,000 to \$50,000, out of charity. Yitzchok affirms that the assistance was to help his father cover expenses, and was not “... capital contributions, loans in the commercial sense, or investments and [he] did not receive financial statements, returns, or other information about [his] father’s businesses in connection with these payments.”

In opposition, Plaintiff does not claim that Yitzchok is an alter ego of any of the judgment debtors. Rather, Plaintiff argues that in connection with a separate action against the judgment debtors in Superior Court of New Jersey, Ocean County, it obtained and served two subpoenas to further its investigation in to Feldheim’s finances. Plaintiff argues that the records obtained show a number of transactions where assets were transferred between Feldheim, or entities associated with Feldheim, and Yitzchok, or entities purportedly associated with Yitzchok. It appears that the records already obtained by Plaintiff appear to show what Yitzchok acknowledged as several transactions in which he provided his father with financial support, and that such support was not repaid in full.

Contrary to Plaintiff’s assertions, the financial account, tax, insurance, operations and trust information and documents sought from Yitzchok in the subpoena are unlikely to aid in the enforcement of this judgment, are overly broad and unduly burdensome. Moreover, the subpoena does not limit the requested information to records concerning the assets of the judgment debtors or to transactions between Yitzchok and the judgment debtors. Rather, the subpoena seeks the records concerning Yitzchok’s transactions with 56 separate entities and individuals, who are also not judgment debtors. Yitzchok has met his burden of showing that the subpoenaed records and information would not lead to any relevant information enabling Plaintiff to satisfy the judgment and the subpoena should be quashed (*see Riverside Cap. Advisors, Inc. v First Secured Cap. Corp.*, supra).

The branch of the motion for a protective order under CPLR §3101 and to preclude Plaintiff from issuing further subpoenas upon him and his financial institutions and to limit discovery to specifically identified transfers of assets from a judgment debtor is granted. Protective orders may be appropriate where the requests are overly broad, or seeks information related the non-party’s assets and operations (*see Carlyle, LLC v Beekman Garage LLC*, 157 AD3d 509, 510 [1<sup>st</sup> Dept 2018]). In this case, the Plaintiff’s requests are overly broad, and the information sought primarily concerns Yitzchok’s, and the other non-party’s financial transactions, not that of the judgment debtor. Therefore, the motion is granted to the extent that Plaintiff is prohibited from serving a subpoena upon Yitzchok seeking documents and/or information to satisfy the judgment against Feldheim or his deposition without first seeking Court approval.

That branch of Yitzchok’s for the imposition of sanctions and attorneys’ fees is denied as it has not been demonstrated that Plaintiff acted frivolously, in bad faith or in a manner designed to “harass or maliciously injure another” (*see* 22 NYCRR 130-1.1[c]; *Zappin v Comfort*, 146 AD3d 575 [1<sup>st</sup> Dept 2017]). “Although the advancement of a meritless position may serve as the basis for a finding of frivolity, the standard for such a showing is high: the rule provides that a position will be deemed frivolous only where it is ‘completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law’” (*Stone Mountain Holdings, LLC v. Spitzer*, 119 AD3d 548, 550 [2d Dept 2014], *quoting* 22 NYCRR 130-1.1[c][1]; *see also HSBC Bank USA, Nat’l Ass’n, v. Samuel Ehrenthal, et al.* \_\_\_AD3d\_\_\_, 2026 NY Slip OP 01949 [1st Dept 2026]).

Accordingly, it is

ORDERED that the branch of Yitzchok’s motion for an order quashing Plaintiff’s December 15, 2025, subpoena is granted; and it is further

ORDERED that the branch of Yitzchok’s motion for a protective order is granted to the extent that Plaintiff must obtain court approval before serving Yitzchok with a subpoena seeking documents, information and/or a deposition in order to satisfy the judgment against Theodore Feldheim; and it is further

ORDERED that the branch of Yitzchok’s motion pursuant to 22 NYCRR §130-1.1 for costs and sanctions is denied.

4/10/2026  
DATE

CHECK ONE:  CASE DISPOSED  DENIED

APPLICATION:  GRANTED  NON-FINAL DISPOSITION

CHECK IF APPROPRIATE:  SETTLE ORDER  GRANTED IN PART  OTHER

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE

*Francis A. Kahn III*  
FRANCIS A. KAHN, III, J.S.C.  
**HON. FRANCIS A. KAHN III**  
J.S.C.