IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

Tekstrom, Inc., A Delaware Corporation,	:	C.A. No. 03-06-0033
Plaintiff/Counterdefendant,	:	
vs.	:	
Sameer K. Savla,	:	
Defendant/Counterclaimant,	:	
vs.	:	
Charan Minhas,	:	
Individually, Counterdefendant.	:	

Upon Tekstrom and Minhas' Motion to Quash Subpoena *Duces Tecum*

Submitted: October 24, 2007

Decided: October 25, 2007

The Motion is denied.

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Trader, J.

This case involves discovery in aid of execution after judgment. On September 28, 2007, Plaintiff Tekstrom, Inc. (Tekstrom) and third-party Defendant Charan Minhas (Minhas) filed a motion to quash the subpoena *duces tecum* served on PNC Bank at the request of the defendant, Sameer Savla (Savla). I deny the motion to quash because the information sought is reasonably calculated to lead to admissible evidence and it is not privileged information.

The Posture of the Case

The posture of this case is as follows: on September 9, 2005, this Court entered judgment on behalf of Savla and against Tekstrom and Minhas for $91,200.00, plus prejudgment interest, and reasonable attorney's fees. *See Tekstrom v. Savla,* 2005 WL 3073671 (Del. Com. Pl. Ct. Sept. 5, 2005). After a hearing held on November 21, 2005, I granted attorney's fees in the amount of $73,711.25, plus costs. *See* 2005 WL 3589401 (Del. Com. Pl. Ct. Nov. 22, 2005). On appeal to the Superior Court, the Superior Court affirmed this Court's decision in part and reversed in part. *See* 2006 WL 2338050 (Del. Super. Ct. Jul. 31, 2006). Upon subsequent appeal to the Supreme Court, the Delaware Supreme Court affirmed the holding of the Superior Court. *See* 918 A.2d 1171 (table), 2007 WL 328836 (Del. 2007). On remand, Savla's judgment was modified by this Court based on the opinion of the Delaware Supreme Court. In April 2007, an attachment *fieri facias* was served on Tekstrom requiring the garnishee to withhold wages, salaries, and commissions, from Minhas. On May 25, 2006, Tekstrom's attorney filed a response to the writ of attachment stating that Tekstrom would begin deducting a portion of wages and salary paid to Minhas in accordance with 10 *Del. C.* Sec. 4913(a) (eighty-five percent of wages are exempt from mesne attachment). Since no attached wages have been

received by the judgment creditor, Savla had a subpoena *duces tecum* issued and served on PNC Bank to obtain financial information concerning income paid to Minhas. Minhas and Tekstrom have moved to quash the subpoena *duces tecum* served upon the bank.

Discovery in Aid of Execution

Savla's Civil Rule 45(b) Subpoena *Duces Tecum* is in essence an effort to make use of Civil Rule 69(aa) of this Court. *See Court of Common Pleas Civil Rule* 69(aa). Civil Rule 69(aa) provides that a judgment creditor, in aid of a judgment or execution, "may take discovery by depositions, interrogatories, and requests for production, in the manner provided in [the Court of Common Pleas Civil] Rules." *Id*. The applicable discovery rules would be Civil Rules 26 through 37 of this Court, but primarily Civil Rule 26 pertaining to the general provisions governing discovery. *See Id.* Rule 26. These rules, as well as corresponding Superior Court rules, are similar in nature to the Federal Rules of Civil Procedure. *See Williams v. Morris*, 223 A.2d 390, 392 n.2 (Del. Super. Ct. 1966).

The use of Civil Rule 69 provides for a means of relative ease by which a judgment creditor can find out the existence of the assets of the debtor. *Comegys v. Phillips*, 69 A.2d 294, 295 (Del. Super. Ct. 1949). Generally,

> [t]his authority is plainly adequate to the purpose of discovering from the judgment debtor and others . . . information relating to the existence and location of assets that may rightfully be seized in satisfaction of plaintiff's judgment. Those assets may include assets in the hands of persons other than the judgment debtor to which plaintiff's judgment lien may legally attach, such as assets that were fraudulently transferred out of the judgment debtor. Finally, by pursuing discovery in connection with such supplementary proceedings, plaintiff may be able to learn information upon which to predicate a viable claim for piercing the corporate veil.

Gillen v. 397 Properties, L.L.C., 2002 WL 259953, at *2, 2002 Del.Ch. LEXIS 10, at *4-5, (Del. Ch. 2002). In *Gillen*, the plaintiff sought "an order requiring that defendant 397 Properties, L.L.C. give a full and complete accounting of its financial records and allow Plaintiff access to those financial records." *Gillen*, 2002 WL 259953, at *1. The plaintiff in *Gillen* also sought a similar accounting from the other defendants to reveal all of their transactions with 397 Properties, L.L.C. so that the plaintiff could then pierce the corporate veil. *Id.* All of the individuals and entities named in that suit were alleged to either have been involved in some aspect of the development, design, and construction of the project in question, or to have been an entity owned by some of the same individuals and had allegedly had funds from the project diverted into them. *Id.* Given the interconnectivity of the parties and the information sought, the Chancery Court commented that the use of Superior Court Civil Rule 69 supplementary proceedings in aid of execution on the plaintiff's judgment would have been the proper way to proceed in that case. Thus, the Chancery Court broadly traced the applicability and purpose of Superior Court Civil Rule 69. *See Id.* at *2.

The Parties Do Not Have Standing to Object

to the Subpoena Served upon a Non-Party

The plaintiff in *Gillen* sought financial information from the other parties (the defendants) to her suit; in this case before me, Savla seeks discovery in order to acquire financial information from a third party not a party to the suit. The motion before this Court was not filed by PNC Bank, the non-party subject to the subpoena; rather, it is a motion to quash the subpoena made by two of the parties to the action. Furthermore, the documents requested do not pertain to PNC Bank's own financial assets; rather, they

pertain to documents in PNC Bank's possession that would show Tekstrom and Minhas' assets.

In *Cede & Co. v. Joulé,* 2005 WL 736689 (Del. Ch. 2005), "when a subpoena is issued to a non-party, a party does not have standing to object to the subpoena unless production of documents pursuant to the subpoena would violate a privilege held by the objecting party." See also the instructive language found in the Maryland District Court case of *Clayton Brokerage Co. of St. Louis v. Clement*, 87 F.R.D. 569, 571 (D. Md. 1980), referred to in *Snierson v. Chemical Bank*, 108 F.R.D. 159, 162 (D. Del. 1985). "Absent a claim of privilege, a party has no standing to challenge a subpoena to a nonparty." *Clayton*, 87 F.R.D. at 571 (citing 9 *WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE* : Civil § 2457 at 431).

Tekstrom and Minhas have not asserted any of the privileges contained in the Delaware Uniform Rules of Evidence, Rules 501-512. Therefore, their relevancy objection is inappropriate given their lack of standing to challenge this subpoena to the bank. Rule 45(b) governs the subpoenaed party's ability to challenge the subpoena, as such, "[t]he nonparty to whom the subpoena *duces tecum* is directed may challenge the subpoena on the limited grounds of unreasonability or oppressiveness." *Clayton*, 87 F.R.D. at 571 n.3. In this case, the subpoenaed party (PNC Bank) is not raising any claim that the subpoena is unreasonable or oppressive.

The Bank Has No Exemption from the Subpoena *Duces Tecum*

Pursuant to Title 10 Section 3502(b) of the Delaware Code, "[b]anks . . . shall not be subject to the operations of the attachment laws of this State." 10 *Del. C.* § 3502(b). Under Delaware law, bank deposits are exempt, and any attachment directed at a bank is

prohibited. *Amabili v. Antonini*, 1986 WL 2282, at *2 (Del. Super. Ct. 1986)(citing *Bank of Delaware v. Wilmington Hous. Auth.*, 352 A.2d 420, 421-22 (Del. Super. Ct. 1976)); *See Provident Trust Co. v. Banks*, 9 A.2d 260, 262 (Del. Ch. 1939). Both Tekstrom and Minhas are correct in their assertion that "Mr. Savla cannot attach any funds held by PNC Bank to satisfy the judgment." ([*Movants'*] *Mot. Quash* ¶2; *Def.'s Resp. Mot. Quash* ¶ 2.) Savla asserts that the information is necessary "in light of the fact that Tekstrom has blatantly refused to honor the wage attachment served against Minhas on Tekstrom." (*Def.'s Resp. Mot. Quash* ¶ 2.) The purpose of the exemption statute was "not intended to benefit the debtor or assist him in escaping the payment of his debts. It was designed to aid those institutions in the performance of their duties, and mainly by preventing the attachment of their deposits." *Amabili*, 1986 WL 2282, at *2 (citing *Sterling v. Tantum*, 94 A. 176, 182 (Del. Super. Ct. 1915); *See also Wilmington Trust Co. v. Barron*, 470 A.2d 257, 264 (Del. 1983)(exemption statutes are not intended to provide a means of fraud by which debtors escape their obligations)). I hold that the exemption statute does not bar discovery of information reasonably calculated to lead to the discovery of admissible evidence.

The Information Sought is Reasonably Calculated to Lead to the Discovery of Relevant Evidence

In the case before me, Salva may invoke Civil Rule 69(aa) discovery in order to obtain financial information and tax returns from a bank, not a party to the action, pertaining to the assets of a judgment debtor. Civil Rule 26(b)(1) states,

> [i]n general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . . It is not ground for objection that the information sought will

> be inadmissible at the trial if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence.

Court of Common Pleas Civil Rule 26(b)(1). Thus, "[r]elevancy is a crucial test in determining the propriety of requested discovery under Rule 26(b), but it is not sufficient in cases where the discovery is otherwise objectionable on the ground that (1) it involves privileged subject matter or (2) it is neither admissible nor likely to lead to the discovery of admissible evidence." *Brett v. Berkowitz*, 706 A.2d 509, 513 (Del. 1998). In the present case, the subpoena *duces tecum* requests from the bank "all financial statements and records" pertaining to Tekstrom and Minhas, which Savla expects to contain "financial statements and tax returns" for the corporation and individual defendant. (*Def.'s Resp. Mot. Quash* ¶ 2.)

In regards to the income tax returns, "income tax returns usually are not 'evidential per se'; if not 'evidential per se' production and inspection of income returns or records or a document should not ordinarily be ordered,-unless some other good reason is established showing that inspection of the return or the records or the document will lead to other relevant evidence." *Wilkerson v. Newark Diner, Inc.*, 173 A.2d 883, 885 (Del. Super. Ct. 1961)(footnote omitted). Tax returns "do not have an absolute privilege from discovery, and the court may require their production if they are relevant to a claim or defense a party has asserted in the action." 6 *MOORE'S FEDERAL PRACTICE*, § 26.41[8][b] (Matthew Bender 3d ed. 2007).

In the case at bar, Savla is seeking information pertaining to the wages that Tekstrom may regularly pay to Minhas. In addition, Savla is seeking information about other income deposited in the bank that may be subject to execution process in the hands of the garnishee. Therefore, tax returns are relevant to the case before me. In *Tekstrom,*

Inc. v. Savla, 2005 WL 895792, at *1 (Del. Com. Pl. Ct. April 4, 2005), I ordered the sealed disclosure of Tekstrom and Minhas' 2002 and 2003 tax returns. *See Id*. at *2. As to the request for the other financial records, I hold that those records are also subject to the subpoena *duces tecum*. The United States Supreme Court has held that records of bank accounts are the bank's business records, not the customer's private papers. *Snierson v. Chemical Bank*, 108 F.R.D. 159, 162 (D. Del. 1985)(citing *United States v. Miller*, 425 U.S. 435, 436 (1976)). The Court "'perceive[d] no legitimate 'expectation of privacy' in their contents' which might give rise to a protectable fourth amendment interest." *Snierson*, 108 F.R.D. at 162 (citing *Miller*, 425 U.S. at 442). Furthermore, nothing in 12 U.S.C. §3491 *et. seq*. (Financial Privacy Act) "shields the records of a bank customer's transactions from discovery in a civil suit." *Snierson*, 108 F.R.D. at 162 (citing *Clayton Brokerage Co. of St. Louis v. Clement*, 87 F.R.D. 569, 571 (D. Md. 1980)). Therefore, the requested bank documents are of the types of documents that are generally discoverable and I conclude that such documents are discoverable in this case.

The Subpoena is not Unreasonable or Oppressive

Court of Common Pleas Civil Rule 45(b) states,

> [a] subpoena may also command the person to whom it is directed to produce the books, papers, documents or tangible things designated therein; the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive . . . .

Court of Common Pleas Civil Rule 45(b). The proper scope of a discovery subpoena is controlled by Civil Rule 26(c), which states, "[u]pon motion by a party . . . and for good cause shown, the Court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ."

Id. Rule 26(c). Rule 26(c) is in turn interpreted in consonance with Rule 26(b)(1), discussed above, which allows for the discovery "regarding any matter, not privileged which is relevant . . . [and is] reasonably calculated to lead to the discovery of admissible evidence." *Id*. Rule 26(b)(1).

As a rule, the moving party seeking to quash or modify a subpoena bears the burden in obtaining the desired remedy. 9 *MOORE'S FEDERAL PRACTICE,* § 45.50[2] (Matthew Bender 3d ed. 2007). Tekstrom and Minhas contend that the records sought from PNC Bank are unnecessary and irrelevant given that any of Tekstrom and Minhas' assets controlled by PNC Bank are not attachable under 10 *Del. C.* § 3502(b) and that, in light of those assertions, the subpoena is unreasonable and oppressive. ([*Movants'*] *Mot. Quash* ¶2.) Their contention is incorrect. There has been no showing in this case that the subpoena was issued for the purposes of harassment. The modern trend in discovery, and followed by Delaware Courts, "is to encourage production unless privilege is established." *Davis v. Town of Georgetown*, 2001 WL 541471, at *3 (Del. Super. Ct. 2001)(citing *Papern v. Suburban Propane Gas Corp.*, 229 A.2d 567, 570 (Del. Super. Ct. 1967)).

Summary

I conclude that the information sought is relevant to the subject matter involved and is reasonably calculated to lead to the discovery of admissible evidence of assets of Tekstrom and Minhas. The documents sought are customarily required by a bank from its borrower during the ordinary course of commercial banking situations. The issued subpoena *duces tecum* does not appear to be unreasonable, oppressive, or place any

undue burden on either the judgment debtors or the bank. Accordingly, the motion to quash is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge