

Grand Pac. Fin. Corp. v Grand Pac. Fin. Corp.

2012 NY Slip Op 33127(U)

March 15, 2012

Supreme Court, New York County

Docket Number: 601164/2009E

Judge: Paul G. Feinman

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PAUL G. FEINMAN

PART 12

Index Number : 601164/2009
GRAND PACIFIC FINANCE
VS.
97-111 HALE, LLC
SEQUENCE NUMBER : 007
COMPEL

INDEX NO. 601164/09
MOTION DATE
MOTION SEQ. NO.

Justice
Motion to/for
No(s)
No(s)
No(s)

Upon the foregoing papers, it is ordered that this motion is

MOTION AND CROSS MOTION(S) ARE DECIDED
IN ACCORDANCE WITH ANNEXED DECISION AND ORDER.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 3/15/2012

[Signature], J.S.C.

- 1. CHECK ONE: CASE DISPOSED, NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED, DENIED, GRANTED IN PART, OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER, SUBMIT ORDER, DO NOT POST, FIDUCIARY APPOINTMENT, REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

-----X

GRAND PACIFIC FINANCE CORP.,
Plaintiff,

Index No. 601164/2009E
Mot. Seq. No. 007

-against-

DECISION and ORDER

97-111 HALE, LLC, 100-114 HALE, LLC, HALE
CLUB, LLC, ELI BOBKER, BEN BOBKER and
JOE BOBKER,

Defendants.

-----X

97-111 HALE, LLC, 100-114 HALE, LLC, HALE
CLUB, LLC, ELI BOBKER, BEN BOBKER and
JOE BOBKER,

Counterclaim-Plaintiffs/
Cross claim-Plaintiffs,

-against-

GRAND PACIFIC FINANCE CORP.,
Counterclaim-Defendant,

-and-

FINANCIAL ONE GROUP, GLOBAL ONE CORP.,
GRAND PACIFIC HOLDINGS, N.V., 366
MADISON, INC., UNITED ASIAN FUNDS, LLC,
ROBERT W. HEINEMANN, JOHN HUANG,
KENNY HUANG, ANDRE J.L. KOO, C.C. LIN,
and MICHAEL LIN,

Crossclaim-Defendants.

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Appearances:

For the Plaintiff:

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For Defendants:

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Papers considered in review of this motion and cross motion:

Notice of motion, Engelstein affirmation and annexed exhibits A - L
Notice of cross motion, Coupey affirmation (corrected)
Reply affirmation in further support
Oral argument transcript

E-File Document Numbers:

86 - 87-12
89 - 90
91
106

PAUL G. FEINMAN, J.:

Plaintiff, Grand Pacific Finance Corp., moves pursuant to CPLR 2308 and 5224 to compel defendants, 97-111 Hale, LLC, 100-114 Hale, LLC, Hale Club, LLC, Eli Bobker, Ben Bobker and Joe Bobker (collectively “defendants”), and non-parties, Bluebell Assets LLC and Checkmate Holdings, LLC, (collectively “non-parties”), to fully respond to information subpoenas served upon them by plaintiff in connection with plaintiff’s efforts to enforce the judgment entered against defendants on May 23, 2011, and for an order awarding plaintiff costs and disbursements incurred in bringing this motion. Defendants and non-parties oppose and cross-move to quash the information subpoenas pursuant to CPLR 2304, for an order of protection under CPLR 3103, and for an order awarding costs to defendants and non-parties. Plaintiff opposes the cross motion. For the reasons set forth below, both the motion is granted to the extent indicated and the cross motion is denied in its entirety.

By decision and order dated June 7, 2010, plaintiff’s motion for summary judgment was granted as to the issue of liability on the first, second, fourth, fifth, seventh and eighth causes of action asserted in the complaint, and a referee was appointed to compute the amounts owed upon the notes at issue (*Grand Pacific Finance Corp. v 97-11 Hale, LLC, et. al.*, Sup Ct, NY County, June 7, 2010, Feinman, J., index no. 601164/2009). Subsequently, on May 23, 2011, judgment was entered in plaintiff’s favor against defendants in the total amount of \$13,710,123.36, plus interest (Doc. 87, Engelstein affirm. at ¶ 2). On May 24, 26 and 27, 2011, plaintiff served information subpoenas on the six defendants and two non-parties (*see* Docs. 87-1 - 87-3, exs. A-K, Subpoenas with shipping information). Each subpoena directed the recipient to provide responses within 7 days after receipt. Although there is some dispute between the parties’

attorneys as to whether defendants' and non-parties' attorney ever verbally communicated his objections to the scope of the subpoenas, it is not disputed that formal, written responses were never provided, even after plaintiff's attorney sent a letter on June 21, 2011, notifying defendants and non-parties that their continued noncompliance would result in plaintiff seeking judicial intervention.

CPLR 5223 compels disclosure of "all matter relevant to the satisfaction of the judgment," and sets forth "a generous standard which permits the creditor a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property" (*Gryphon Domestic VI, LLC v GBR Information Svcs., Inc.*, 29 AD3d 392, 394 [1st Dept 2006] [quoting *ICD Group v Israel Foreign Trade Co. [USA]*, 224 AD2d 293, 294 [1st Dept 1996])). Under CPLR 5224, an information subpoena may be served on a judgment debtor or third persons who may have some knowledge about the extent or whereabouts of the judgment debtor's assets (*see* Siegel, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C5224:2). However, the person serving an information subpoena must have a reasonable belief formed after an inquiry reasonable under the circumstances, that the person served knows something which will assist in collection of the judgment (*id.*).

In opposition to plaintiff's motion and in support of their cross motion, defendants and non-parties argue that the information subpoenas are overly broad to the extent they seek information and documents pertaining to "any transaction the Judgment Debtors ever had with any other third party or corporation, whether or not related to the underlying transactions, even though there is no judgment piercing the corporate veil," and that the time period covered by the subpoenas, from January 1, 2005, to the present, is improper (Doc. 90, Coupey affirm. at ¶¶ 9-10).

In addition, they claim that the information subpoenas served on the non-parties, “besides being overbroad [sic] and palpably improper, are also unreasonably burdensome, designed to cause [d]efendants and [n]on-[p]arties unreasonable annoyance, disadvantage, expense and prejudice, and, as such, are required to be quashed as a matter of law” (*id.* at ¶ 18). They further contend that the demands numbered 8, 9, 11, 13-20, 22, 25-34, 37, 39-44, 46, 49-52 and 56-61, which “necessarily require [d]efendants to seek information from third-parties, collate this information and collect documents from these third-parties ...and/or seek such information directly from third parties who are not judgment debtors herein ...are unnecessarily burdensome and expensive ...” (*id.* at ¶ 21). Finally, defendants and non-parties argue that if the information subpoenas are not quashed or appropriately stricken, defendants are entitled to a protective order protecting the confidentiality of the financial information sought by plaintiff, “strictly limiting i[ts] use to collecting on the judgment at issue in this case, and shifting to [p]laintiff the financial burden of assembling this vast information” (*id.* at ¶ 23).

Each of the information subpoenas served upon a defendant or non-party that are the subject of the instant motion and cross motion contains 61 separate questions pertaining to the judgment debtors’ assets. It is not disputed that none of the defendants or non-parties formally responded in writing within the required time period. It also is not disputed that documents or responsive information has never been produced in connection with these subpoenas. The two non-party limited liability companies served with information subpoenas are believed to be affiliated with defendants (Doc. 87, Engelstein affirm. at ¶ 2). This is supported by the fact that both of the non-party subpoenas are addressed to the non-party, care of one of the defendants (Doc. 87-3, ex. C, Non-party subpoenas). Although they raise several other objections to the

information subpoenas, defendants and non-parties do not deny the existence of an affiliation between the non-parties and defendants that would give the non-parties knowledge of defendants' assets.

Contrary to defendants' contentions, the 61 items found in the information subpoena each seek information related to the extent or location of defendants' assets. They do not, as defendants' claim, "seek all documents from non-party corporate entities, including these entities' transactions with third parties ..." (Doc. 90, Coupey affirm. at ¶ 11). Instead, they are tailored only to gather information that would assist plaintiff in enforcing the judgment it has obtained against defendants. Accordingly, plaintiff's motion to compel is granted to the extent that defendants and non-parties are directed to provide responsive documents and information within 20 days from the date that this decision and order is issued, and otherwise denied.

Defendants' and non-parties' cross motion to quash the information subpoenas is, therefore, denied. Furthermore, their cross motion for a protective order under CPLR 5240 is denied because they fail to make a sufficient showing that responding to the information subpoenas will cause them to suffer unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice. To the contrary, the protective order requested by defendants and non-parties would only serve to cause plaintiff unreasonable annoyance, expense and prejudice, who have thus far been frustrated in their attempts to enforce the judgment obtained against defendants almost a year ago. To the extent responding to the information subpoenas will cause defendants to incur expenses, such expenses could be avoided by paying the judgment due to plaintiff.

Accordingly, it is

ORDERED that plaintiff's motion to compel the defendant and non-party entities' compliance with the information subpoenas served on them in May of 2011 is granted solely to the extent that the defendants and non-parties are required to provide any outstanding information requested by the information subpoenas within 20 days of the date this decision and order is entered; and it is further

ORDERED that defendants' and non-parties' cross motion to quash the information subpoenas and other related relief is denied in its entirety.

This constitutes the decision and order of the court.

Dated: March 15, 2012
New York, New York



J.S.C

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