

GSB Gold Std. Corp. AG v Google LLC

2023 NY Slip Op 33907(U)

November 1, 2023

Supreme Court, New York County

Docket Number: Index No. 160880/2022

Judge: J. Mabelle Sweeting

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
 NEW YORK COUNTY**

<p>PRESENT: <u>HON. J. MACHELLE SWEETING</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>GSB GOLD STANDARD CORPORATION AG, Petitioner,</p> <p style="text-align: center;">- v -</p> <p>GOOGLE LLC, GODADDY INC., Respondents.</p> <p>-----X</p>	<p>PART 62</p> <p>INDEX NO. <u>160880/2022</u></p> <p>MOTION DATE <u>06/26/2023, 08/25/2023</u></p> <p>MOTION SEQ. NO. <u>002 003</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 25, 26, 28, 30, 32, 33
 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40
 were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

In Motion Sequence #001, petitioner GSB Gold Standard Corporation AG sought orders for pre-action disclosure to compel respondents Google LLC (“Google”) and GoDaddy Inc. (“GoDaddy”) to produce complete and accurate copies of all documents containing information as to the identity of the unknown individual or individual(s) that have registered the website www.behindmlm.com (the “Website”). Petitioner alleges that the Website had posted numerous defamatory and false statements about GSB, including labelling GSB as a fraud and ponzi scheme.

On February 24, 2023, Motion Sequence #001 was granted as unopposed (NYSCEF Doc. No. 18). Subsequently, petitioner served a subpoena *duces tecum* on respondents.

Pending now before the court are two motions: In Motion Sequence #002, the Website seeks an order, pursuant to Civil Practice Law and Rules 2304, and the United States Constitution, Amendment I, quashing the subpoena *duces tecum* dated May 22, 2023, directed to respondent

GoDaddy.com, LLC. In Motion Sequence #003, the Website seeks the same order with respect to a subpoena *duces tecum* dated March 23, 2022, directed to defendant Google LLC.

In both motions, the Website contends, *inter alia*, that discovery that seeks to deprive an anonymous internet poster of their anonymity implicates the First Amendment of the United States Constitution, and for that reason must be supported by a strong evidentiary showing which was not satisfied here.

In opposition, petitioner argues that the subpoenas seek disclosure that would identify the individuals responsible for engaging in admitted defamatory conduct; that the subpoenas are not a mere “fishing expedition,” as the Website’s very appearance in this proceeding proves that Google and/or GoDaddy have information that is relevant to petitioner’s defamation claims; and that there is no privilege to defame others anonymously to aid efforts in extortion. Petitioner also argues that:

[...] multiple German Courts have found these very statements to be defamatory and have permanently enjoined Google from disseminating these very statements in Germany. The German Courts not only went out of their way to direct Google to pay the majority of GSB’s costs in obtaining the injunction, but specifically held that “*the statements that [GSB] operate a ‘Ponzi scheme’ are false*” (See NYSCEF Doc. No. 2) (emphasis added).

This court has reviewed the record, including the preliminary injunctions against respondent Google dated March 22, 2022, and August 17, 2022 issued by the Regional Court of Hamburg, Division 24 for Civil Matters (the “German court”). The record shows that a court has already determined that the statements made are defamatory *per se*; thus they are not subject to protection and anonymity under the First Amendment.

See also Cohen v Google, Inc., 25 Misc 3d 945 (Sup Ct 2009):

In this special proceeding, petitioner seeks an order pursuant to CPLR 3102(c) to compel pre-action disclosure directing respondents Google, Inc. and/or its subsidiary Blogger.Com (hereinafter "Google") to identify the person or persons (hereinafter the "Blogger" or the "Anonymous Blogger") who posted weblogs on websites under Google's operation and control, which contained allegedly defamatory statements about petitioner (hereinafter the "Blog") [...].

[...]

The law in New York governing pre-action discovery is well settled. CPLR 3102(c) requires a court order for pre-action disclosure to aid in bringing an action or to preserve information. A petition for pre-action discovery should only be granted when the petitioner demonstrates that he or she has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong. As a general rule, the adequacy of merit rests within the sound discretion of the court [...].

Here, petitioner is entitled to pre-action disclosure of information as to the identity of the Anonymous Blogger, as she has sufficiently established the merits of her proposed cause of action for defamation against that person or persons, and that the information sought is material and necessary to identify the potential defendant or defendants [...]

[...]

Thus, in light of the merits of petitioner's proposed cause of action for defamation, and the materiality and necessity of the requested information, petitioner is entitled to an order pursuant to CPLR 3102(c) directing respondent Google to disclose the information as to the identity of the Anonymous Blogger [...].

[internal citations omitted]

For the reasons cited herein, it is:

ORDERED that both Motion Sequence #002 and Motion Sequence #003 filed by the Website, to quash the subpoenas are **DENIED**.

<u>11/1/2023</u> DATE		 _____ J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE