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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Kim Cramton, Plaintiff, v. Grabbagreen Franchising LLC, et al., Defendants.	No. CV-17-04663-PHX-DWL **ORDER**

Plaintiff Kim Cramton ("Cramton") recently issued three subpoenas to non-parties, pursuant to Rule 69 of the Federal Rules of Civil Procedure, in an attempt to track down assets that might be used to satisfy the judgment in this action. In response, the entities whose financial information is being sought have filed an expedited motion to quash and motion for protective order. (Doc. 535.) For the following reasons, the motion is denied.

RELEVANT BACKGROUND

The background details of this case are summarized at length in prior orders and are well known to the parties, so only a brief recap is necessary here. Cramton initiated this action in December 2017 and eventually asserted an array of claims against an array of defendants, who in turn asserted various counterclaims against Cramton.

In November 2021, after years of hard-fought litigation, the Court entered judgment in Cramton's favor against two defendants, Keely Newman ("Keely") and Eat Clean Operations, LLC ("ECO"); further ordered that Cramton recover nothing on her claim(s) against three other defendants, Grabbagreen Franchising, LLC ("GFL"), Eat Clean

Holdings, LLC ("ECH"), and Kelli Newman ("Kelli"); and further ordered that GFL, ECO, ECH, Keely, Kelli, and Gulf Girl Squared, Inc. ("GGS") recover nothing on their counterclaim(s) against Cramton and Cramton's spouse. (Doc. 461.) Later, the Court issued a pair of orders ordering Keely and ECO to pay some of Cramton's attorneys' fees and costs. (Docs. 518, 531.) Between the judgment, those orders, and the amended taxation judgment (Doc. 521), Cramton is now owed over $300,000 by Keely and ECO.

Keely and ECO have appealed to the Ninth Circuit, where the briefing process is ongoing, but did not post a bond (or, apparently, take any other steps) to stay execution of judgment pending appeal. As a result, Cramton is currently attempting to collect on the outstanding judgment and other awards despite the pending appeal.

In October 2022, as part of this collection effort, Cramton served three subpoenas on non-parties. The first subpoena, which was served on JPMorgan Chase Bank ("JPMorgan"), seeks all of the bank statements from January 1, 2017 to the present for Keely, ECO, ECH, and GFL. (Doc. 535-1 at 5-10.) The second subpoena, which was served on Western State Bank ("Western State"), again seeks all of the bank statements from January 1, 2017 to the present for Keely, ECO, ECH, and GFL. (*Id.* at 12-17.) The third subpoena, which was served on MTY Franchising USA ("MTY"), seeks all agreements entered into on or after March 14, 2018 and reflecting wire instructions or other payments made to all "Vendor Parties," which is defined to encompass Keely, ECO, ECH, and GFL. (*Id.* at 19-24.)

On October 25, 2022, ECH and GFL filed the motion now pending before the Court—a motion to quash the subpoenas and to prohibit Cramton from utilizing any information she may have already received via the subpoenas. (Doc. 535.)

On October 27, 2022, Cramton filed an opposition. (Doc. 537.) Neither side requested oral argument.

On October 28, 2022, ECH and GFL filed a reply. (Doc. 538.) That same day, the Court issued a minute order temporarily relieving the subpoena recipients of any obligation to respond pending the resolution of the motion to quash. (Doc. 539.)

DISCUSSION

I. Legal Standard

Rule 69(a)(2) of the Federal Rules of Civil Procedure provides that "[i]n aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located."

The Supreme Court has characterized Rule 69(a)(2) as "quite permissive." *Republic of Argentina v. NML Cap., Ltd.*, 573 U.S. 134, 138-39 (2014). Among other things, "[d]iscovery into a third-party's assets is permissible" under Rule 69(a)(2) "when the relationship between the judgment debtor and the third-party is sufficient to raise a reasonable doubt about the bona fides of the transfer of assets between them." *Brown v. Sperber-Porter*, 2017 WL 10409840, *8 (D. Ariz. 2017) (cleaned up). *See also Raymond James & Assocs., Inc v. Terran Orbital Corp.*, 2020 WL 6083433, *2 (C.D. Cal. 2020) (discovery into third-party assets permissible where there is "a reasonable suspicion as to the good faith of asset transfers between the judgment debtor and the nonparty," which is "a low standard" that "merely entails some minimal level of objective justification") (citations and internal quotation marks omitted). As other courts in this District have summarized:

> [Rule 69] entitles a judgment creditor to a very thorough examination of the judgment debtor. That is because a judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor. The scope of postjudgment discovery is very broad to permit a judgment creditor to discover assets upon which execution may be made. Not only is the scope of such discovery broad, but the presumption should be in favor of full discovery of any matters arguably related to the creditor's efforts to trace the debtor's assets and otherwise to enforce the judgment.

Gagan v. Monroe, 2012 WL 5868975, *2 (D. Ariz. 2012) (cleaned up). *See also* 2 Gensler, Federal Rules of Civil Procedure, Rules and Commentary, Rule 69, at 404-05 (2022) ("[T]he lower courts have interpreted Rule 69 to permit broad post-judgment discovery in the search of executable assets. But it is not unlimited; courts may limit post-judgment

discovery on grounds applicable to regular discovery like relevance, privilege, and proportionality.").

II. The Parties' Arguments

ECH and GFL move to quash the subpoenas and to prohibit Cramton from utilizing any information she may have already received via the subpoenas. (Doc. 535.) As an initial matter, ECH and GFL contend they have standing to challenge the subpoenas because they have personal and confidentiality interests in the information being sought. (*Id.* at 4.) On the merits, ECH and GFL argue that the subpoenas issued to JPMorgan and Western State, which seek their bank records, are improper for several reasons. First, ECH and GFL argue that because they are not judgment debtors and "Cramton has made no showing to this Court that Keely or ECO transferred any assets to ECH or GFL," Cramton has not made the sort of showing that is necessary under Rule 69 to obtain discovery from a non-party under a fraudulent transfer theory. (*Id.* at 4-5.) Second, ECH and GFL argue these subpoenas are cumulative and duplicative because any evidence of transfers would be contained in the bank statements of ECO and Keely. (*Id.*) Third, ECH and GFL argue these subpoenas are overbroad because they seek bank statements dating back to January 1, 2017, which "predat[es] this lawsuit by nearly a year." (*Id.*) Finally, as for the subpoena to MTY, ECH and GFL argue it is improper for the same three reasons: (1) "[t]here is no evidence that any 'agreement' or payment from MTY to ECH or GFL relates in any way to the assets of Keely or ECO"; (2) "the information sought from MTY is cumulative and duplicative and can be more conveniently obtained from another source, i.e., Keely or ECO"; and (3) the subpoena "is unnecessary and overbroad on its face" because it is not "limit[ed] . . . to certain categories of documents involving payments to Keely or ECO." (*Id.* at 6.)

Cramton opposes the motion. (Doc. 537.) Cramton's overarching argument is that ECH's and GFL's challenges are unavailing because they "largely rely on the inapplicable Rule 26(b) discovery standard," as opposed to "Rule 69's permissive" standard. (*Id.* at 2, 6-9.) Cramton argues that, under Rule 69, she simply needs to possess "reasonable

suspicion" or "reasonable doubt" that ECH or GFL received fraudulent transfers of funds and identifies various reasons why such suspicion/doubt exists here, including: (1) "[Keely] is the direct and indirect owner of these two entities"; (2) "[n]ot surprising among entities that were ultimately owned by the same person, the business transactions among these entities were intertwined"; (3) under the Asset Purchase Agreement with MTY, various payments were supposed to be allocated to ECO, GFL, and ECH; and (4) defense counsel made a representation to the Court during a December 16, 2019 hearing concerning the disposition of the proceeds from the MTY asset purchase that has now been shown to be false. (*Id.* at 3, 5-9.) Cramton also contends that ECH's and GFL's arguments about privacy interests are "nonsense" because Keely is the ultimate owner of those entities, so "[t]he only person whose privacy interests are impeded is [Keely]—who has a significant judgment against her." (*Id.* at 9.) Finally, Cramton contends that the subpoenas would be permissible even if evaluated against a more stringent "necessity and relevance" standard and explains that the cutoff date of January 2017 for the bank records was chosen because both of the debts that gave rise to the judgment (*i.e.*, the failure to pay minimum wages and the failure to repay the ECO note) "started around that time." (*Id.* at 9-10.)

In reply, ECH and GFL argue that all of Cramton's arguments fail because they are based on the inaccurate premise that Keely is their sole owner, when in fact Keely owns 99% of ECH and a different person owns the other 1% (Doc. 538 at 1-3); that Cramton fails to justify the breadth of the subpoena to MTY (*id.* at 2-3); that Cramton already had an opportunity to conduct the type of discovery she is seeking here, via ECO's bankruptcy proceeding, and any new theories of recovery being advanced here are therefore "waived" (*id.* at 4); that despite Cramton's proffer of detailed information regarding various accounting entities and transfers, there is still "no evidence . . . that Keely made any transfer of funds to ECH or GFL" (*id.*); and that the subpoenas are overbroad (*id.* at 5).

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III. Analysis

ECH's and GFL's objections to the subpoenas lack merit. Although ECH and GFL are not judgment debtors of Cramton—as noted, Cramton lost on all of her claims against those entities, which in turn lost on all of their counterclaims against Cramton—Cramton has identified various reasons to suspect the requested financial records may lead to the discovery of assets she could use to collect on her unpaid judgment and other awards against Keely and ECO. It is undisputed that Keely is at least a majority owner of all of the entities at issue and Cramton has identified an array of transfers (or, at least, accounting entries denoting intracompany transactions) between these closely related entities.

Under Rule 69(a)(2)'s permissive standards, Cramton is not required to prove, with certainty, that a fraudulent transfer from Keely (or ECO) to ECH or GFL has already occurred. Some courts have suggested that "reasonable suspicion" or "reasonable doubt" is all that is required before Rule 69 discovery into third-party assets should be allowed. *Brown*, 2017 WL 10409840 at *8; *Raymond James*, 2020 WL 6083433 at *2. Other courts have suggested that discovery should be allowed on "any matters arguably related to the creditor's efforts to trace the debtor's assets and otherwise to enforce the judgment." *Gagan*, 2012 WL 5868975 at *2 (D. Ariz. 2012) (cleaned up). This approach is consistent with the notion that "a judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor." *Id.* (cleaned up). Regardless of the precise formulation of the applicable standard, the Court is satisfied that Cramton has made the necessary showing to justify her pursuit of the financial records at issue here. This is not some random request for the financial records of an unrelated third party but a tailored request, limited to a relevant time frame, for the records of entities that are closely related to the judgment debtors, are owned at least in part by one of the judgment debtors, and were previously parties to this action.

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Accordingly,

IT IS ORDERED that the motion to quash and/or for protective order (Doc. 535) is **denied**.

IT IS FURTHER ORDERED that the order temporarily relieving the subpoena recipients of their duty to respond (Doc. 539) is **vacated**.

Dated this 3rd day of November, 2022.

Dominic W. Lanza
United States District Judge