

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

MPC INVESTORS, LLC, DOMINIC MOCERI,
GERALD CARNAGO, FRANCIS V. MOCERI,
MARIANO MOCERI, PETER K. BURTON,
ROBERT M. KATZMAN, LAURENCE R.
GOSS, STEVEN BENTLEY, SALVATORE J.
PALAZZOLO, SEBASTIAN D. PALAZZOLO,
GREGORY A. CARNAGO, and DOMINIC J.
MOCERI,

Defendants,

v.

CHARLES SCHWAB & CO., INC., and BANK
OF AMERICA, NA,

Garnishees,

and

GREGORY A CARNAGO and GERALD
CARNAGO,

Cross-Plaintiffs,

v.

LAURENCE R GOSS, STEVEN BENTLEY,
SALVATORE J PALAZZOLO, SEBASTIAN
D PALAZZOLO, PETER K BURTON, and
ROBERT M KATZMAN,

Cross-Defendants.

_____ /

Case No: 09-11249

Honorable David M. Lawson
Magistrate Judge Mona K. Majzoub

**ORDER ADOPTING REPORT
AND RECOMMENDATION,
GRANTING PLAINTIFF'S
MOTION TO CONTINUE
HEARING AND
EXPEDITE HEARING, AND
GRANTING IN PART AND
DENYING IN PART
DEFENDANTS' MOTIONS TO
QUASH SUBPOENAS**

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING PLAINTIFF'S
EMERGENCY MOTION TO CONTINUE HEARING ON OBJECTIONS TO
GARNISHMENT AND FOR EXPEDITED HEARING ON MOTIONS TO QUASH, AND
GRANTING IN PART AND DENYING IN PART DEFENDANTS GERALD AND
GREGORY CARNAGO'S MOTIONS TO QUASH SUBPOENA**

Presently before the Court is the report issued on August 2,, 2010 by Magistrate Judge Mona K. Majzoub pursuant to 28 U.S.C. § 636(b). Judge Majzoub recommended granting this plaintiff's emergency motion to continue the hearing on the defendants' objections to the garnishment and for an expedited hearing on the defendants' motions to quash, and granting in part and denying in part defendants Gerald and Gregory Carnago's motions to quash the subpoenas. The magistrate judge concluded that the defendants had failed to demonstrate a potential violation of privilege sufficient to quash the subpoena. However, Judge Majzoub did conclude that several of the requests in the subpoenas were overly broad and recommended several modifications to narrow the plaintiffs' document requests. Rep. & Rec. at 5-7. Judge Majzoub also recommended that the defendants be required to produce these documents by August 23, 2010, that defendant Gregory Carnago be ordered to sit for his creditor's examination by August 30, 2010, and that defendant Gerald Carnago be ordered to sit for his creditor's examination by September 6, 2010.

Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, no objections have been filed. The parties' failure to file objections to the report and recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motion. *Thomas v.*

Arn, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the Magistrate Judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 319] is **ADOPTED**.

It is further **ORDERED** that the plaintiff's emergency motion to continue the hearing on the objections to garnishment and to expedite the hearing on the defendants' motions to quash [dkt # 300] is **GRANTED**.

It is further **ORDERED** that defendants' Gerald and Gregory Carnago's motions to quash [dkt # 297 & 298] are **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that the plaintiffs' subpoenas are modified to require defendants Gerald and Gregory Carnago to produce the following documents **on or before August 23,**

2010:

1. All records since January 1, 2009 of all bank accounts and money market accounts, including, but not limited to, account statements, deposits, checks and wire transfers, of every kind in which you have any ownership or any financially beneficial interest, including checking accounts, savings accounts, trust accounts and certificates of deposit.

2. All records of all real estate you own or in which you reside full-time or part-time.

3. [Gerald Carnago subpoena] All records since January 1, 2004 of the Gerald J. Carnago Trust dated April 25, 1972, as amended, along with initiating and amending documents of the original Trust, and all records since January 1, 2004 of any and all trusts in which you have or claim an actual or potential financial interest, either as trustee or beneficiary or remainderman or otherwise, including irrevocable trusts, totten trusts, trust accounts and land trust.

[Gregory Carnago subpoena] All records since January 1, 2004 of the Gregory A. Carnago Trust dated October 11, 2000, as amended, along with initiating and amending documents of the original Trust, and all records since January 1, 2004 of any and all trusts in which you have or claim an actual or potential financial interest, either as trustee or beneficiary or remainderman or otherwise, including revocable trusts, totten trusts, trust accounts and land trust. . .

5. All records of your accounts receivable - i.e., all records with regard to parties who owe you or the other judgment debtors in this action any money, including, but not limited to, any disposition of such accounts receivables.

...

7. All records of personal property you currently own or in which you claim a financial interest in excess of \$1,000.

8. All records of any and all other assets of any kind you currently own or in which you claim a financial interest in excess of \$1,000.

9. Your Federal Income Tax Returns for 2008 and 2009; and if any extension has been requested and/or granted for 2009, all records of the same. . . .

12. Any and all records pertaining to gifts or other transfers of property in which you held a financial interest in excess of \$1,000 to any person in the last six years.

13. Any and all documents pertaining to loans made in the last six years to you or secured by real or personal property owned by you. . . .

17. [Gerald Carnago subpoena] Any and all records of the Bank of America Account No. XXXXXXXXX8104, including, but not limited to all bank statements and records showing all deposits into the account, since January 1, 2008.

19 [Gerald Carnago Subpoena] and 14 [Gregory Carnago subpoena]. Any and all financial statements given by you or someone on your behalf to any financial institution or brokerage house, since January 1, 2007.

It is further **ORDERED** that defendant Gregory Carnago shall sit for a creditor's examination **on or before August 30, 2010**, at a date and time to be agreed upon by the parties.

It is further **ORDERED** that defendant Gerald Carnago shall sit for a creditor's examination **on or before September 6, 2010**, at a date and time to be agreed upon by the parties.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: August 18, 2010

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 18, 2010.

s/Teresa Scott-Feijoo
TERESA SCOTT-FEIJOO