Kimmel v Schon
2014 NY Slip Op 31605(U)
June 20, 2014
Supreme Court, Kings County
Docket Number: 15633/12(E)
Judge: Lawrence S. Knipel
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At an IAS Term, Part Comm 6 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 6th day of June, 2014.

P R E S E N T:

HON. LAWRENCE KNIPEL,

Justice.

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JAY KIMMEL, as Nominee,

Plaintiff,

- against -

Index No. 15633/12 (E)

JOSEPH SCHON et al.,

Defendants.

----------X

JOSEPH SCHON et ano.,

Counterclaim Plaintiffs,

- against -

JAY KIMMEL et ano.,

Counterclaim Defendants.

----------X

JOSEPH SCHON et ano.,

Plaintiffs,

Index No. 19722/10

- against -

HERBERT TEPFER, ESQ., et al.,

Defendants.

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The following papers numbered 1 to 10 read herein:	Papers Numbered
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1-2, 4-6
Opposing Affidavits (Affirmations)	7, 8
Reply Affidavits (Affirmations)	3, 9, 10

Upon the foregoing papers, defendants-counterclaim plaintiffs Joseph Schon and Pnina Schon (the Schons) move: (1) for a permanent injunction enjoining "the proposed" Rabbinical arbitration of the issues currently pending before this court in connection with the above-captioned consolidated actions; and (2) pursuant to CPLR 2304 and 3103, to quash six subpoenas tecum served on non-parties by defendants Herbert Tepfer, Esq. (Tepfer), and Tepfer & Tepfer, P.C. (the Law Firm) (collectively, the Tepfer defendants).

BACKGROUND

The foregoing motions arise out of two actions which were consolidated by Order of Justice Bernard Graham dated September 23, 2013. The "Consolidated Action" is comprised of (1) an action commenced by the Schons in or about September of 2010 against Herbert Tepfer, Esq., the Law Firm, Eliyahu Weinstein (Weinstein) and Heshy Stern, a/k/a Shtern (Stern), in which the Schons allege that these parties, working together, provided the Schons with fraudulent information in order to induce them to use their real property as collateral for a loan that funded Weinstein's Ponzi scheme; and (2) a foreclosure action with related counterclaims, commenced by plaintiff Jay Kimmel (Kimmel) on or about August 12, 2012, in which Kimmel, as Stern's nominee, seeks to foreclose on the Schons' family home located in Brooklyn.[1]

[1] By the same Order, Justice Graham denied Kimmel's motion pursuant to CPLR 3211 to dismiss the counterclaim, and for summary judgment.

I. The Schons' Motion for Injunctive Relief

In their first motion, the Schons state that the Tepfer defendants seek to transfer the Consolidated Action to a Rabbinical Court (the Beth Din) for arbitration, and in furtherance thereof, caused a summons of the Beth Din of Borough Park (Brooklyn) to be served on them which contains, as a claim, language stating that Jews are forbidden to litigate in the secular courts and directing them to suspend any further actions therein. By a second summons, the Schons were advised that "R[abbi] Heshy Stern and Mr. Jay Kimmel have agreed to adjudicate the issues" raised in the Consolidated Action.

In support of this motion, the Schons refer to the aforementioned Order of Justice Graham which, inter alia, denied Kimmel's motion for dismissal of the Schons' counterclaims under various sub-sections of CPLR 3211, and further held that, "were it necessary to do so, the court would find that defendants have met their burden of raising an issue of fact in opposition to plaintiff's motion through their particularized showing, in admissible form, that the underlying transaction was permeated with, and arose out of, fraudulent conduct." In this context, they assert that the Tepfer defendants, Stern and Kimmel are attempting to thwart discovery regarding the underlying transaction and the relationship between the parties. They further aver that there exists no binding agreement to submit the Consolidated Action to Rabbinical Arbitration, and that the basis for jurisdiction of the Beth Din is merely a "carefully orchestrated and coordinated attempt . . . to recover a monetary award against the Schons, without . . . due process. . . ." Thus

contending that they have not agreed to arbitrate, the Schons claim that they cannot be compelled to do so, and that they have met the requirements needed to be shown in order to obtain a permanent injunction, including, without setting forth the likelihood of such a result ensuing (*see Grunwald v Bornfreund,* 696 F Supp2d 838 [1988]), a discussion of the consequences attendant upon a decree of excommunication which may follow a refusal to submit to the authority of a Rabbinical court after receipt of a summons.

In opposition, the Tepfer defendants agree that there is no binding agreement in place, and, while somewhat disingenuously minimizing their own role in commencing a proceeding before the Rabbinical court by contending that the target of the Schons' dispute is in reality the Beth Din which has not been made a party herein, advance an argument that no injunction should issue under the facts at bar, relying on *Grunwald* (696 F Supp at 838).

The Schons fail to explain why a permanent injunction, as opposed to the lesser, but still drastic, equitable remedy of a preliminary injunction, is sought. Even in the case of the latter, a party seeking preliminary injunctive relief has the burden of demonstrating (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) that a balancing of equities favors the movant's position (*see Walter Karl, Inc. v Wood*, 137 AD2d 22, 26 [1988]); *see also W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981]). A preliminary injunction is a drastic remedy, which should be exercised "sparingly" (*Town of Porter v Chem-Trol Pollution Servs., Inc.,* 60 AD2d 987, 988 [1978]) and the moving party's burden of proof is "particularly high"

(*Council of City of N.Y. v Giuliani,* 248 AD2d 1, 4 [1998], *lv dismissed in part, denied in part* 92 NY2d 938 [1998]). In any event, the Schons have failed to make a showing of entitlement to injunctive relief

In *Grunwald*, as in the instant matter, the plaintiff asked the court "to do something it is not able to do either as a matter of federal jurisprudence or under the first amendment: decide whether plaintiff should be excommunicated from his religious community for prosecuting this suit against defendants" (*id.* at 840). While pointing out that a remedy might be available should the plaintiff be threatened with cognizable legal harm by a Rabbinical court, the *Grunwald* court, citing *Paul v Watchtower Bible and Trust Soc. of New York, Inc.* (819 F 2d 875 [1987] [9th Cir], *cert denied* 484 US 926 [1987]), went on to hold that "[t]he mere expulsion from a religious society, with the exclusion from a religious community, is not a harm for which courts can grant a remedy" (*id.* at 841).

As noted, the Schons deny that they have entered into an agreement to arbitrate. Moreover, they fail to set forth the issues to be so arbitrated, and the pair of summonses annexed as exhibits, which contain both Hebrew and English text, do not set forth with any particularity the subject matter to be considered by the Beth Din, thus failing to lend support to plaintiffs' burden of demonstrating a likelihood of success on the merits. In addition, the court will not reach the issue of excommunication as a valid consideration in determining whether irreparable harm has been demonstrated, as the Schons have failed to support any such claim with more than assertions in an attorney's affidavit which are unaccompanied by

any showing of expertise in the area of Jewish ecclesiastical law. Thus, based upon the foregoing, where it is clear that the court lacks any authority to enjoin the actions of the Rabbinical court, and where plaintiffs have failed to make the requisite showing of entitlement to injunctive relief, the court denies the motion for same in its entirety.

II. The Schons' Motion to Quash

On or about October 24, 2013, the Tepfer defendants served six non-parties with Subpoenas Duces Tecum in connection with the Consolidated Action. These parties included JP Morgan Chase Bank (Chase), The Berkshire Bank (Berkshire), HSBC Bank (HSBC), Sterling National Bank (Sterling) Miami Beach Kollel (the Kollel) and the Schon Family Foundation (the Foundation) and related entities. Following counsel's written objection, the Tepfer defendants agreed to modify, in certain respects, the subpoenas to Chase and Berkshire. Notwithstanding same, the Schons contend that the subpoenas are of boundless scope, and are being used unlawfully in lieu of court-ordered discovery, that they are nothing more than a bad-faith fishing expedition and are designed to cause embarrassment to the Schons, and that all are facially defective in that they fail to set forth notice containing the reasons for seeking the documents. Thus, they seek an order quashing same, as well as a protective order.

Specifically as to each subpoena, the Schons make the following arguments:

– ***The Chase and Berkshire Subpoenas***

The Schons allege that they maintain business and personal accounts at Chase and Berkshire. They argue that even as modified, the subpoenas are overly broad, as they seek material from 147 different persons or entities, most of whom have nothing to do with the present action, and they do not limit disclosure to any specific time frame nor list a single specific document. Further, they assert that the subpoenas fail to inform the non-parties as to what should be produced, and that the demands are facially unreasonable. Finally, they aver that the subpoenas falsely convey the impression that Weinstein was a business associate, and not a swindler, of the Schons.

– ***The Schon Family Foundation and Kollel Subpoenas***

Plaintiffs aver that defendants know from affirmations filed in the actions that the Schon Family Foundation is run by one Henry Schon, a cousin of Joseph Schon, and has nothing to do with the Schons herein. They further submit that the subpoena served on the Foundation is as overly broad and unreasonable as those served on Chase and Berkshire, differing only in that it (1) eliminates those documents and communications concerning all family members of the Schons and the Foundation, and (2) requests "all materials produced in the "*Meisels v Schon Family Foundation* litigation." They further state that the *Kollel* subpoena also demands documents and communications from the same persons and entities, except that it excludes the Kollel, and includes a demand for documents concerning a loan

transaction involving a certain parcel of property located in Lakewood, New Jersey. They maintain that the defendants' purpose is simply to embarrass the Schons.

– The HSBC and Sterling Subpoenas

While agreeing that the HSBC and Sterling subpoenas are limited to particular transactions, the Schons contend that neither transaction is involved in the instant litigation, as they concern properties located in Lakewood, New Jersey and Kissimmee, Florida. They aver that by way of an affirmation executed by Joseph Schon on June 5, 2013 in response to a prior motion, it has been shown that the Kissimmee property was an investment having nothing to do with the action or with Weinstein, and the transaction involving the Lakewood property, while it involved Weinstein, who benefitted at Joseph Schon's expense, is otherwise irrelevant.

With regard to all of the subpoenas, the Schons argue that their true purpose is to seek unlimited information beyond the scope of the issues in the present action.

Kimmel's Opposition

In opposition, Kimmel, who joins in opposing the instant motion and asserts that the Schons' objections are meritless because they "knew exactly what they were doing" when acting as a "straw-man" for Weinstein by putting up their real property as collateral, notes that none of the six subpoenaed entities have moved to quash the subpoenas. He submits that the subpoenas seek information about the extent monies moved between Weinstein and the entities he controlled, and to test the Schons' claims, as responsive documents should show

whether the Schons received the $100,000 consideration promised for their agreeing to act as Weinstein's straw-man and the extent of their involvement with Weinstein. Obviously, such a contention flies in the face of that of the Schons, that they were victims, not cohorts, of Weinstein.

Thus, as to the Chase and Berkshire subpoenas, Kimmel asserts that the documents sought relate exclusively to the Schons' accounts, and pertain to (1) Weinstein, (2) Weinstein businesses, (3) certain business entities owned by the Schons, which speaks to their sophistication in real estate matters; (4) "charities" used by Weinstein to launder money; and (5) the Kollel, a "charity" that loaned the Schons $200,000 and recorded a second mortgage on the property in Lakewood, NJ and for which, according to Kimmel, Joseph Schon, in his affirmation of February 13, 2011, admits to being a "middle-man" for Weinstein.[2] Thus, he asserts that the subpoenaed records from Chase and Morgan are necessary to test the Schons' claims of victimization.

As to the HSBC and Sterling subpoenas duces tecum, Kimmel, noting that Schon is silent on how much Weinstein might have paid him, points to Schon's own statement that Weinstein asked him to take nominal title to the property in Lakewood together with a mortgage that Weinstein would pay, but that Weinstein subsequently defaulted, and posits that the down-payment in the amount of $170,000 came from Weinstein. Further asserting that the actual timing of the transaction and the loan raises further questions, Kimmel

[2] Kimmel also claims that investigation has revealed that Schon also acted as a straw-man for Weinstein in connection with a condominium property located in Dade County, Florida.

represents that Sterling was the lender for both the Lakewood and Kissimmee properties, and that the mortgages on both were assigned to HSBC. He further points out that the Schons listed their address in the Kissimmee mortgage and deed as "666 14th Street, Lakewood, New Jersey," and suggesting that given Schon's admission that he was the straw-man for Weinstein on that property, this directly connects the Kissimmee property with Weinstein's Ponzi scheme.

Thus asserting that Schon has made an "admission" that he was a straw-man for Weinstein in a transaction that mirrors the role he played in connection with the Loan, Kimmel claims that documents related to the two properties, how the purchases were funded, and accounts and checks used to make payments of those mortgages, will shed light on what Schon understood he was doing in connection with the Loan and Schon's "extensive" relationship with Weinstein.

As to the subpoenas served on the Weinstein "charities" and related entities, Kimmel refers to and annexes an attorney letter, dated October 30, 2009, written to the presiding judge in connection with one of many fraud actions commenced against Weinstein,[3] wherein at least 69 alleged "charities" that were purportedly used by Weinstein to perpetrate his frauds were identified. He points out that the "charities" identified in the subpoenas as the Weinstein charities are the same as those named in said letter to Judge Douglas E. Arpert. He further asserts that the identities of the Weinstein entities are publically available

[3] The action, *Wolinetz v Weinstein* (No. 08-CV-5046-MLC-DEA), was filed in the United States District Court for the District of New Jersey.

information that can be obtained through court records and Internet databases, and that the Schons do not dispute that the Weinstein Entities and Weinstein Charities are related to Weinstein.

Kimmel further alleges that on August 20, 2007, the Miami Beach Kollel[4] loaned Schon $200,000 and recorded a mortgage on the property located at 666 14th Street in Lakewood, NJ. He asserts that the Kollel's goals are incompatible with such a transaction, and given Weinstein's documented history of using "charities" to commit fraud, documents related to the Schon's dealings therewith are material and necessary to the defense of this action.

Finally, Kimmel alleges that on July 29, 2004, the Schon Family Foundation (the Foundation) recorded a mortgage securing a loan to a Weinstein-controlled entity (401 Madison Avenue LLC). The loan was for six months, interest-only. Two years later, in July and August of 2007, the Foundation received $250,000 in payments and attempted to characterize these payments as charitable contributions. Kimmel thus contends that these transactions demonstrate that the Foundation was involved with Weinstein's business dealings in a similar fashion as was Schon, and further disputes Schon's denial of having any connection with the Foundation, noting that he was identified as the "purchaser" in documents involving 401 Madison Avenue. He thus argues that the Foundation's records

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[4] According to Kimmel, the Miami Beach Kollel is a self-described "Makom [place of] Torah" whose "goal is to attract Rabbinical talent to Miami, and to provide educational resources for all members of the Jewish faith."

are sought to shed light on the extent to which the Schons were active participants in Weinstein's business dealings and that they were therefore fully cognizant of what they were doing when they acted as Weinstein's "straw-man." Kimmel avers that in seeking to quash the subpoenas, the Schons do not deny that the Schon Entities are associated with the Schons, and that this state of affairs is supported by publically available information.

Opposition of the Tepfer Defendants

On behalf of the Tepfer defendants, Tepfer provides an affirmation in opposition to the motion to quash. Claiming to have known Joseph Schon for over 50 years, Tepfer denies any involvement with Weinstein as a fund-raiser or as a broker, and up until the actual closing of the September 2004 real estate transaction, claims that he did not know Weinstein was at all connected therewith, alleging that he was simply asked to represent Schon at a mortgage closing in which he was told that Schon was borrowing money from Stern. He alleges that Schon told him at the closing table that Weinstein would be coming to the closing and he (Tepfer) would be sending the net mortgage proceeds to a Weinstein account, that he "effectively shut down [Tepfer's] inquiries about what the investment involved," and that he did not hear from Schon for several years after the September 2004 transaction.

Tepfer further avers that sometime in 2007 or 2008, he coincidentally met Schon, who told him that he was having trouble with Weinstein, and that he was experiencing marital strife because his wife Pnina, who attended the closing briefly and did not reveal any

hesitancy or objections to the transaction, had been against his mortgaging their house for the September 2004 transaction.

At subsequent chance meetings, Tepfer claims that Schon told him that the only reason he was suing him was because his attorney told him to "sue everyone." At another chance meeting, Schon purportedly told Tepfer that prior to the 2004 transaction he had referred many investors to Weinstein and always earned commissions. Tepfer claims that he seeks to corroborate such facts as Schon "confessed" to him through the instant subpoenas.

In response to an allegation by Schon that Tepfer had ordered a title search on the Schon home more than 2½ years before the actual closing, Tepfer alleges that such search was done at Schon's behest when he sought to obtain a loan against his home, but that Schon later declined the loan. Further, in support of his contention that Schon is a sophisticated investor in real estate, Tepfer annexes a printout from ACRIS showing him as a party to 68 real estate transactions in New York City alone, dating back to 1983.

DISCUSSION

Disclosure in New York is guided by the principle of "full disclosure of all matter material and necessary in the prosecution or defense of an action" (CPLR 3101 [a]; *see Kooper v Kooper,* 74 AD3d 6 [2010]). It is well settled, however, that a subpoena duces tecum may not be used for the purpose of discovery, or to ascertain the existence of evidence (*see People v Gissendanner*, 48 NY2d 543, 551 [1979]; *Murray v Hudson*, 43 AD3d 936

[2007]; *Oak Beach Inn Corp. v Town of Babylon*, 239 AD2d 568 [1997]). Rather, its purpose is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding (*see Matter of Terry D.*, 81 NY2d 1042 [1993]; *Valdez v Sharaby,* 258 AD2d 458 [1999]; *Pernice v Devora*, 238 AD2d 558 [1997]). When addressing a motion to quash a subpoena duces tecum, the standard to be applied is whether the requested information is "utterly irrelevant to any proper inquiry" (*Ayubo v Eastman Kodak Co., Inc.*, 158 AD2d 641 [1990]). Thus, "[w]here a request for discovery from a nonparty is challenged solely on the ground that it exceeds the permissible scope of matters material and necessary in the prosecution or defense of the action, a motion to quash is properly denied if that threshold requirement is satisfied, or properly granted if the discovery sought is not material and necessary" (*Kooper,* 74 AD3d at 10-11 [citations omitted]). The burden of establishing that the requested records are utterly irrelevant is on the person being subpoenaed (*see Gertz v Richards*, 233 AD2d 366 [1996]).

As a threshold matter, the court rejects Kimmel's oppositions based upon the fact that none of the parties actually subpoenaed have raised any objection herein. "A person other than one to whom a subpoena is directed has standing to move to quash the subpoena where he or she has a proprietary interest in the subject documents or where they involve privileged communications" (*Hyatt v State Franchise Tax Board,* 105 AD3d 186, 195 [2013]). Although they are not the entities served with the subpoenas, with regard to the issue of standing, it would appear that CPLR 2303 (a) and 3120 (3) afford the Schons such standing.

"Pursuant to CPLR § 3120 (3): 'The party issuing a subpoena duces tecum . . ., shall at the same time serve a copy of the subpoena upon all other parties. . .', and CPLR § 2303 (a) provides: ' . . . so that it is received by such parties promptly after service on the witness and before the production of books, papers, or other things.' This procedure is tantamount to statutory standing, since '[T]his allows a party to move for a protective order, CPLR § 3103 (a), or to move to quash the subpoena, CPLR § 2304,' in advance of the actual production of the nonparty, if that is the desired course" (Patrick M. Connors, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR C3120:12, at 231). "Finally, even though the nonparty provider . . . has not sought herein to quash the subject subpoena served on it, nevertheless, it has been held that a 'motion to quash may be made on behalf of a non-party witness or the witness' lawyer, or by one of the parties or a party's lawyer'" (*Morano v Slattery Skanska, Inc.*, 18 Misc 3d 464, 472 [2007] [citations omitted]; *see also* CPLR 3101 [a] [3], [4]).

At the same time, the court rejects the Schons' unconvincing argument alleging premature use of the subpoenas to obtain discovery (*see* CPLR 3120 ["(a)fter commencement of an action, any party may serve on any other party a notice or on any other person a subpoena duces tecum . . . to produce and permit the party seeking discovery, or someone acting on his or her behalf, to inspect, copy, test or photograph any designated documents or any things which are in the possession, custody or control of the party or person served. . ."]).

Thus, the fact that examinations before trial have yet to be conducted has no bearing on the Tepfer defendants' use of the subpoenas to obtain relevant documents from non-parties.

However, the Schons' objection to the enforceability of the subpoenas as facially defective because they fail to conform to the statutory requirement that they set forth the circumstances why disclosure is sought from a non-party, is, under a recent Court of Appeals' holding, entitled to consideration.

Although, prior to *Kooper* (74 AD3d at 6), such an omission was held to be a fatal defect under CPLR 3101 (a) (*see Wolf v Wolf,* 300 AD2d 473 [2002] ["(t)he subpoena duces tecum that was served upon the nonparty-appellant was facially invalid and unenforceable, because it neither contained nor was accompanied by a notice setting forth the reason why such disclosure was sought"] [citations omitted]; *see also In re Ehmer*, 272 AD2d 540 [2000]), the Appellate Division, Second Department, in *Kooper,* indicated its agreement with the rationale expressed by the Appellate Division, First Department, in *Velez v Hunts Point Multi-Service Ctr., Inc.,* (29 AD3d 104, 111 [2006]) ["(a)lthough the better practice, indeed the mandatory requirement of CPLR 3101 (a) (4), is to include the requisite notice on the face of the subpoena or in a notice accompanying it, the lack of notice in the subpoena at issue in that case did not constitute grounds to quash it given the sufficiency of the showing in opposition to the motion"] [citations and internal quotation marks omitted]). The *Kooper* court further noted (29 AD3d at 13-14) that it had previously indicated, in *dicta* found in *Kaufman v Red Ground Corp.* (170 AD2d 484 [1991]), that such a facial defect might be

remedied by the showing of circumstances and reasons made in response to a motion to quash the subpoena.[5] However, pointing out that the circumstances before it did not call upon it to consider the issue ("[w]e have not, however, had occasion to consider whether a motion to quash for lack of the required notice may be successfully defeated upon an adequate showing of circumstances and reasons for the requested disclosure, nor do we have occasion to do so now") because the question before it concerned the adequacy of the proffered reasons (*id.*), the court declined to determine the issue of compliance with the requirements of CPLR 3101 (4).

Nevertheless, the question concerning the notice requirement under CPLR 3104 as discussed in *Kooper* was recently addressed by the Court of Appeals in *Kapon v Koch* (2014 N Y Slip Op 02327 [2014]). There, the Court unequivocally held, at the outset of its discussion of the burdens imposed on upon a subpoenaing party and the proponent on a motion to quash, that:

> "the subpoenaing party must first sufficiently state the 'circumstances or reasons' underlying the subpoena (either on the face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is 'utterly irrelevant' to the action or that the 'futility of the process to uncover anything legitimate is inevitable or obvious.' Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought

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[5] In addition, the *Kooper* court stated that "in *Velez*, the underlying rationale, in part, is that the statutory scheme places the burden on the party or nonparty challenging a subpoena served pursuant to CPLR 3120 to come forward with objections within 20 days or else waive them," and further noted that the Appellate Division, Fourth Department, in dicta, has followed the First Department's reasoning on this issue (*see Hauzinger v Hauzinger*, 43 AD3d 1289, 1290 [2007], *affd* 10 NY3d 923 [2008]).

> is "material and necessary" to the prosecution or defense of an action, *i.e.*, that it is relevant."

The Court further stated that "[t]he subpoenaing party must include that information in the notice in the first instance . . ., lest it be subject to a challenge for facial insufficiency. . . [as the obligation] was meant to apprise a stranger to the litigation the 'circumstances or reasons' why the requested disclosure was sought or required." (*Id.*).[6]

In thus considering the remaining arguments of the parties, as set forth above, it is irrelevant (1) whether the Schons have met or failed to meet their burden of showing that the material sought through the use of the challenged subpoenas is devoid of relevance or materiality, (2) whether their characterization of the subpoenas is "overbroad," is speculative, (3) whether their argument that the subpoenas are being solely for the purpose of a fishing expedition is rebutted by respondents' detailed explanation setting forth the need for the subpoenaed material in the context of what are sharply disputed facts and relationships which underlie both the original lawsuit and the counterclaims; or (4) whether respondents have cured the subpoenas' facial defects by providing the requisite information in their opposition papers. Pursuant to the clear mandate set forth in *Kapon,* the court finds all subpoenas facially defective and (1) grants the Schons' motion to quash, and (2) directs that respondents

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[6] The *Kapon* court found that the subpoenas in question "plainly satisfy the notice requirement."

provide notice of same to all entities upon whom subpoenas were served, with a copy of this Decision and Order attached, within 10 days following date of entry.

The foregoing constitutes the decision and order of the court.

E N T E R,

J. S. C.

HON. LAWRENCE KNIPEL
SUPREME COURT JUSTICE