At an IAS Term, Comm-11 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 23rd day of January, 2018.

PRESENT:
HON. SYLVIA G. ASH,
Justice.

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MENACHEM FARRO, individually and derivatively as a Shareholder in the right of LM INTERNATIONAL, INC., SELLER1ON1 INCORPORATED, WML COMMUNICATIONS, INC., and as a member in the right of LMEG WIRELESS, LLC,

Plaintiff(s),

- against -

ZALMAN SCHOCHET a/k/a SCHNEUR ZALMAN SCHOCHET, LEVI WILHELM, LM INTERNATIONAL, INC., SELLER1ON1 INCORPORATED, WML COMMUNICATIONS, INC., LMEG WIRELESS, LLC, SELLER WIRELESS, LLC, LM WIRELESS INTERNATIONAL, LLC, LMZT, LLC And LMEG ACQUISITION LLC,
Defendant(s).

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DECISION AND ORDER
Mot. Seq. #9
Index # 518007/2016

The following papers numbered 1 to 3 read herein: Papers Numbered

Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	1
Opposing Affidavits (Affirmations)	2
Reply Affidavits (Affirmations)	3

After oral argument and upon the foregoing papers, Defendant's motion for leave to reargue the decision/order dated October 12, 2017 is hereby GRANTED. Upon reargument, Defendants' motion to quash Plaintiff's subpoenas served on Citibank N.A. and J.P. Morgan Chase N.A. is hereby GRANTED.

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Background

On June 20, 2017, Plaintiff served subpoenas upon Citibank N.A. and J.P. Morgan Chase seeking to obtain information from Defendant Zalman Schochet's (hereinafter "Schochet") IOLA account. In the underlying motion, Defendant moved to quash the subpoenas and to obtain a protective order in favor of Citibank N.A. and J.P. Morgan Chase. In this court's decision dated October 12, 2017, the court held that Plaintiff was entitled to information concerning the loans and denied Defendants' motion to quash. The court reasoned that the parties' dispute over Schochet's ownership of the funds in his IOLA was sufficient to render Plaintiff's subpoenas material and relevant. Defendants then filed a notice of motion (Mot. Seq. #9) seeking to reargue the motion to quash.

Defendants' Motion to Reargue

Defendants argue that the court should grant reargument, and upon reargument, quash the subpoenas in their entirety based on the premise that the court overlooked and misapprehended that the information sought is utterly irrelevant to any proper inquiry. Defendants claims that Schochet previously admitted that he obtained most of the money loaned to LMEG from loans by third parties, and he did not personally own the funds that were derived from the IOLA. Schochet further claims that he had a small group of lenders who loaned him money for investment purposes and that they received a return on their loan in the form of interest. Upon reargument, Defendants ask that the court quash Plaintiff's subpoenas, as they are utterly irrelevant and not related to a disputed issue. In the alternative, Defendants argue that the subpoenas should be limited in scope to the period between July 16, 2009 and December 7, 2011, as this timeframe is the scope of the transactions delineated in the specific loan documents at issue.

In opposition, Plaintiff claims that Schochet's IOLA records are material and necessary to the allegations in their second amended verified complaint. Specifically, Plaintiff claims that Schochet's admissions that he used funds from the IOLA does not eliminate the need to discover the identity of the client funds he took and whether he stole funds or otherwise misrepresented his use of the funds to the clients.

Discussion

A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion (*CPLR § 2221*[d][2]). The standard to be applied on a motion to quash a subpoena duces tecum is whether the requested information is "utterly irrelevant" to any proper inquiry. Moreover, the burden of establishing that the requested documents and records are utterly irrelevant is on the person being subpoenaed (*Gertz v Richards*, 233 AD2d 366 [2d Dept 1996]).

Here, reargument is warranted on the basis that the court misapprehended the fact that Schochet admitted that the funds from the IOLA were loaned to him and he did not personally own most of the funds that he loaned to LMEG. Based on Schochet's admission, the court finds that the probative value of the IOLA subpoenas is substantially outweighed by the confidential nature of the attorney-client information contained in the IOLA. Schochet's IOLA records will only reflect a balance and possibly reveal the specific clients who have contributed to the balance. However, the court believes that there are more effective and less intrusive means of obtaining the relevant information needed at this time to prosecute Plaintiff's claims, i.e. interrogatories and/or depositions. Therefore, Defendant's motion to reargue is hereby GRANTED and upon reargument,

Defendant's motion to quash Plaintiff's subpoenas served on Citibank N.A. and JP Morgan Chase N.A. is hereby GRANTED

This constitutes the decision and order of the court.

E N T E R,

SYLVIA G. ASH, J.S.C.