

**Rahav v Dreambuilder Invs., LLC**

2018 NY Slip Op 31382(U)

June 27, 2018

Supreme Court, New York County

Docket Number: 656438/2017

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 15

-----X  
JOAN PRICE RAHAV

Plaintiff,

Index No.: 656438/2017

-against-

Mot. Seq. No. 01

DREAMBUILDER INVESTMENTS, LLC

Decision and Order

Defendant.  
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MELISSA A. CRANE, J.S.C.:

In this action on a judgment, plaintiff Joan Price Rahav (“Rahav” or “Judgment Creditor”) moves to compel defendant Dreambuilder Investments, LLC (“Dreambuilder” or “Judgment Debtor”) to make certain post-judgment disclosures.

**BACKGROUND**

Through a complaint, dated August 3, 2015, Plaintiff commenced a lawsuit in this court (*Joan Price Rahov v Dreambuilder Investments, LLC*, Index No. 157941/2015), against Dreambuilder arising out of Dreambuilder’s purported failure to pay Rahav the principal and interest due under a matured promissory note (the “Original Action”). In the Original Action, the parties quarreled over their discovery obligations. This court, in orders by Judge Eileen Rakower, required discovery compliance (*Id*). Dreambuilder’s failure to comply with three discovery orders prompted Justice Rakower to sanction Dreambuilder by striking its answer to plaintiff’s Original Action complaint (*Rahav v. Dreambuilder Investments, LLC*, 2016 WL 4162256 [NY Sup]).

In or around July 2016, the parties settled the Original Action for \$526,270.00 (the “Settlement Agreement”) (Hirsch Affirmation in Support of Judgment of Confession, Ex. B). As part of the Settlement Agreement, Dreambuilder signed an Affidavit of Confession of Judgment

in favor of Rahav to be entered if Dreambuilder ever failed to meet its payment obligations under the settlement agreement (*Id.*, Ex. A). Dreambuilder appears to have complied with the settlement agreement for approximately four months (Hirsch Affirmation in Support of Plaintiff's Motion to Compel Post-Judgment Disclosure, 2). Rahav commenced this action (under Index No.: 656438/2017) after Dreambuilder allegedly ceased making installment payments under the Settlement Agreement leaving an unpaid balance of \$392,222.36 (*Id.*). On or about October 16, 2017, Rahav filed the Affidavit of Confession of Judgment, and subsequently Judgment was entered in favor of Rahav and against Dreambuilder, for \$392,222.36 (*Id.*, Ex. C).

On October 24, 2017, Rahav sent a restraining notice and information subpoena to Dreambuilder by certified mail, return receipt requested (the "Information Subpoena"). Rahav also emailed a copy of these documents to Dreambuilder's counsel (*Id.*, 3; Ex. D). Rahav asserts that multiple attempts to obtain a response to the subpoena from Dreambuilder have failed (*Id.*, 3-4).

On November 28, 2018, through her motion to compel (Mot. Seq. No. 01), Rahav requested this court to issue an order, pursuant to CPLR § 3124, compelling Dreambuilder to provide complete responses to the Information Subpoena immediately. Dreambuilder filed opposition papers to this motion. However, on April 4, 2018, Dreambuilder failed to appear when this court heard oral argument on Rahav's motion (Transcript, Edoc #27).

### **DISCUSSION**

Pursuant to CPLR § 3124, "[i]f a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article ... the party seeking disclosure may move to compel compliance or a response." Judgment creditors are permitted broad discovery in aid of enforcing their judgment (*U.S. Bank Nat. Ass'n v APP Intern. Fin. Co.*, 100

AD3d 179, 183 [1st Dept 2012]; *ICD Group, Inc. v Israel Foreign Trade Co. (USA) Inc.*, 224 AD2d 293 [1st Dept 1996]). On a motion brought under to CPLR § 3124, the burden is on the party seeking the disclosure to establish a basis for the production sought (*Rodriguez v Goodman, MD.*, 2015 NY Slip Op 31412 (U), 2015 WL 4554460, at 5 [Sup Ct, NY County 2015]). A party seeking documents must not impose an undue burden or conduct a fishing operation, and should request documents that are relevant and described with reasonable particularity (*Konrad v 136 E. 64<sup>th</sup> St. Corp.*, 209 AD2d 228, 228 [1st Dept 1994]). "[O]verly broad or unnecessarily burdensome demands may be considered palpably improper" (*Haller v North Riverside Partners*, 189 AD2d 615, 616 (1st Dept 1993)). Trial courts are vested with broad discretion when deciding how to resolve such motions (*Jadron v 10 Leonard St., LLC*, 124 AD3d 842, 843 [2d Dept 2015]).

In its opposition papers, Dreambuilder argues, *inter alia*, that Rahav's demands are: overly broad, unduly burdensome and oppressive, and outside the scope of permissible discovery. However, despite asserting these general objections for most interrogatories, Dreambuilder failed to articulate why the requests are overly burdensome. Moreover, Dreambuilder failed to appear at oral argument thereby squandering its chance to explain further to the court the purported burdensome nature of the interrogatories. Here, the record indicates that Dreambuilder in the Original Action and now in this action has taken steps to hinder Rahav's attempts to conduct timely discovery.

Dreambuilder argues that Rahav's "demands are overly broad, unduly burdensome and oppressive" (Dreambuilder Memorandum of Law, 1-2). However, where a judgment-debtor has not been forthcoming about finances, courts have permitted the use of tax returns, in addition to other financial documents, to assist the judgment creditor efforts to uncover any hidden and/or

concealed assets of a judgment debtor (*see Matter of Aaron v Patrick McIntyre, CPA, P.C.*, 15 AD3d 475, 476 [2nd Dept 2005]; *see also Rozzo v Rozzo*, 274 AD2d 53, 55-56 [2nd Dept 2000]). Moreover, the Information Subpoena seeks information within the scope of permissible discovery because Rahav requests matter “relevant to satisfaction of [a] judgment” (CPLR § 5223).

Dreambuilder, through its papers, only expresses detailed objections to sixteen of Rahav’s interrogatories. It is not the function of the court to rewrite interrogatories for counsel. The court finds interrogatories: 6, 8, 32, 36, and 38 to be overly broad and therefore strikes them without prejudice.

Any named party that fails meet its legal obligation to respond an information subpoena can be held in contempt of court pursuant to CPLR § 5251 and Judiciary Law Section 753(a)(5). A party found in contempt of court may be punished by fine or imprisonment.

Accordingly, it is,

ORDERED that Rahav’s motion seeking to compel post-judgment disclosure pursuant to CPLR 3124 is GRANTED, to the extent that Dreambuilder is to answer the interrogatories delineated in the Information Subpoena, dated October 24, 2017, except for those the court has stricken, and it is further

ORDERED that Dreambuilder is to respond to all remaining interrogatories from the Information Subpoena within thirty (30) days of the e filing date of this order; and it is further

ORDERED that Dreambuilder shall pay Rahav motion costs (*see, infra*) within 30 days of entry of this order; and it is further

ORDERED along with serving this order, Rahav is to provide Dreambuilder with a list itemizing all of the costs associated with this motion. The list must be accompanied by an

attorney's affirmation, representing that the costs stated were actually incurred in connection with the contempt motion. The list and affirmation are to be provided to this Court at the same time as proof of service is submitted (see, *infra*); and it is further

ORDERED that if Dreambuilder fails to comply with the foregoing, Rahav may move for any appropriate additional relief; and it is further

ORDERED Rahav must serve a copy of this Order, with notice of entry, upon Dreambuilder and its counsel within twenty (20) days of the e filing date of this order.

Dated: New York, New York  
June 27, 2018

ENTER

  
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Hon. Melissa Crane

**HON. MELISSA A. CRANE**  
J.S.C.