

Capital Stack LLC v Sahara Rest. Corp.
2018 NY Slip Op 33308(U)
December 17, 2018
Supreme Court, Kings County
Docket Number: 504652/18
Judge: Leon Ruchelsman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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CAPITAL STACK LLC,

Plaintiff,

Decision and order

- against -

Index No. 504652/18

MS # 1

SAHARA RESTAURANT CORP., D/B/A SAHARA
RESTAURANT & JOHN ISIKLI,

Defendants,

December 17, 2018

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PRESENT: HON. LEON RUCHELSMAN

The defendants have moved seeking to quash subpoenas served on non-party Sahinde Isikli the mother of defendant John Isikli. The plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments, this court now makes the following determination.

In this case the plaintiff has obtained a confession of judgement and now has served a subpoena upon the non-party seeking additional information. Specifically, the plaintiff asserts the "deponent may well have relevant information in furtherance of judgement enforcement, including, but not limited to, resolving questions Isikli would not answer, such as who presently operates Sahara Restaurant and who the credit card processor is" (see, Plaintiff's Opposition to Defendant's Motion, page 3). The defendants assert the subpoenas are improper and therefore should be quashed.

Conclusions of Law

It is well settled that a trial court maintains broad discretion concerning the supervision and extent of all discovery (Conte v. County of Nassau, 87 AD3d 558, 929 NYS2d 741 [2d Dept., 2011]). Thus, it is proper to deny a discovery request where the items sought are neither material or necessary for the prosecution of the action (Young v. Baker, 21 AD3d 550, 799 NYS2d 913 [2d Dept., 2005]). Furthermore, concerning discovery sought from a non-party the general rule within the Second Department required a showing of 'special circumstances' (Tannenbaum v. Tannenbaum, 8 AD3d 360, 777 NYS2d 769 [2d Dept., 2004]). The requirement demonstrating 'special circumstances' originally only concerned a showing whether the witness would appear for trial. In Town of Hancock v. First National Bank of Oxford, 93 NY 82, 48 Sickels 82 [1883] the court explained that special circumstances "evidently mean such as will make the presence and evidence of the witness at the trial doubtful and uncertain, and relate to his personal condition and purposes as bearing upon the probability of his future attendance" (id). Thus, the special circumstances requirement did not touch upon the value or nature of the proposed testimony but rather the mere availability of the witness for trial. A showing of special circumstances allowed

securing the participation of the witness in advance should such unavailability materialize. While that original understanding developed into a requirement that special circumstances be demonstrated even for the mere discovery from a non party, recent trends have relaxed those requirements. Indeed, the Second Department adopted a position consistent with other departments (see, Jones v. Maples, 257 AD2d 53, 691 NYS2d 429 [1st Dept., 1999]), and now permits discovery from non-parties without any rigorous showing of special circumstances (see, Kooper v. Kooper, 74 AD3d 6, 901 NYS2d 312 [2d Dept., 2010]). However, Kooper still held that "a motion to quash is, thus, properly granted where the party issuing the subpoena has failed to show that the disclosure sought cannot be obtained from sources other than the nonparty" (id). The Court of Appeals has abrogated that requirement as well. In Kapon v. Koch, 23 NY3d 32, 988 NYS2d 559 [2014] the Court of Appeals specifically stated that the material and necessary requirement that survived legislative amendments did not concern the availability of discovery from other sources but rather should "be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity"...3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot

obtain the requested disclosure from any other source. Thus, so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty" (id).

Therefore, an examination of the subpoena, specifically the relevancy of the requests must be examined. Surely, information that would further the enforcement of the judgement is proper. However, the subpoena does not seek any information that could help obtain payment of the judgement. The subpoena seeks information concerning the deponent's own bank statements, profit and loss statements and tax returns of the deponent. However, the plaintiff has failed to explain how that information is relevant to the judgement against the defendant. As noted, the plaintiff argues it seeks information from the deponent concerning who presently operates the restaurant. Thus, the tax returns, profit and loss statements and other business documents of the deponent are simply not relevant to that inquiry at this juncture. Even if true the deponent works at the restaurant the requests contained in the subpoena do not further the plaintiff's objective. The objective concerns discovering sources to satisfy the judgement and ownership of the restaurant. Neither of those objectives are furthered by the information requests contained in the subpoena.

Therefore, based on the foregoing the motion seeking to
quash the subpoena is granted.

So ordered.

ENTER:



DATED: December 17, 2018
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC

Handwritten signature
KINGS COUNTY CLERK
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