

Itria Ventures LLC v Provident Bank

2019 NY Slip Op 33606(U)

December 9, 2019

Supreme Court, New York County

Docket Number: 653667/2018

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

ITRIA VENTURES LLC,
Plaintiff,

- v -

PROVIDENT BANK,
Defendant.

-----X

PROVIDENT BANK
Plaintiff,

-against-

BIZ2CREDIT INC., RAMIT AURORA, HIGHCREST CAPITAL,
LLC, JIFFER SMALL BUSINESS LENDING FUND, LP,
MARKETPLACE SPV, LLC, PRIME MERIDIAN CAPITAL
MANAGEMENT, LLC, RANGER DIRECT LENDING FUND
TRUST

Defendant.

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INDEX NO. 653667/2018
MOTION DATE 09/13/2019
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

Third-Party
Index No. 595127/2019

The following e-filed documents, listed by NYSCEF document number (Motion 005) 94, 95, 96, 97, 98,
99, 100, 101, 104, 105
were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents and for the reasons set forth on the record (12/6/2019), Itria
Ventures LLC, Biz2Credit Inc., and Ramit Arora (the Movants)'s motion to quash the subpoena
(NYSCEF Doc. No. 100, the Subpoena) issued by Provident Bank (Provident) to non-party
witness DALCO Reporting, Inc. is denied.

In motion sequence 004, the Movants previously brought a motion to quash certain subpoenas,
including a subpoena issued to Victoria Akperov, a former employee of Biz2Credit, Inc. In a

decision and order (NYSCEF Doc. No. 91, the **July Decision**), dated July 23, 2019, the court denied without prejudice the motion to quash regarding the subpoena issued to Ms. Akperov, which subpoena also sought her deposition. The Movants now seek to quash a subpoena duces tecum issued to DALCO Reporting, Inc. regarding the deposition transcript of Ms. Akperov (the **Transcript**) in the action captioned *Biz2Credit, Inc. v. Neeraj Tulshan and Hudson Capital Advisors LLC* (Index No. 653718/2013).

A party may move to quash a subpoena pursuant to CPLR § 2304. The court may grant a motion to quash a subpoena duces tecum “only where the materials sought are utterly irrelevant to any proper inquiry” (*Velez v Hunts Point Multi-Serv. Ctr., Inc.*, 29 AD3d 104, 112 [1st Dept 2006]). The burden of establishing that the subpoenaed documents are utterly irrelevant lies with the person that is subpoenaed (*id.*).

The Movants argue that the Subpoena should be quashed because the Transcript (i) is irrelevant to the claims in this action concerning conduct after May 2016, and (ii) contains confidential information whereby production of the same would violate certain confidentiality agreements between non-parties to the action and disclose proprietary trade secrets to Provident. In its opposition papers, Provident argues that the motion to quash should be denied because the July Decision is the law of the case and that the Subpoena seeks relevant information. The court agrees.

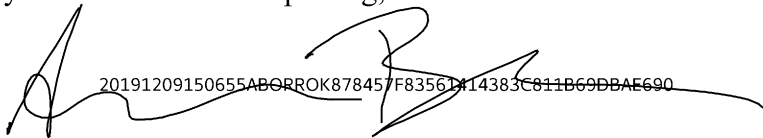
In the July Decision, the court refused to quash the subpoena Provident previously issued to Ms. Akperov, which required her subsequent deposition. The court reached this conclusion, in part,

because Ms. Akperov's testimony on the Movants' prior business practices was relevant to those counterclaims asserted by Provident regarding tortious interference with contract and fraud (NYSCEF Doc. No. 37). Notwithstanding the Movants' motion to dismiss Provident's counterclaims (Mtn. Seq. 003), Ms. Akperov's testimony remains relevant because Provident's counterclaim for tortious interference with contract was sustained against the Movants. As such, Ms. Akperov's testimony regarding the alleged business practices of Biz2Credit, Inc. and Mr. Arora are particularly relevant to the issue of whether the Movants used improper means to interfere with the loan agreement between Provident and Lotus Exim. The Movants have thus failed to establish that the Transcript is utterly irrelevant to this action (*see Velez*, 29 AD3d at 112). In addition, to the extent that the Transcript involves non-parties to this action that are bound by a separate confidentiality agreement, these non-parties have not moved to quash or obtain a protective order regarding the Transcript. Accordingly, the motion to quash the Subpoena is denied. For the avoidance of doubt, the branch of the motion for a protective order precluding Provident from seeking discovery from DALCO Reporting, Inc. is also denied.

After oral argument and at the court's suggestion, the parties agreed to enter into a confidentiality agreement, including the designation that the Transcript is for attorneys eyes only.

Accordingly, it is

ORDERED that Itria Ventures LLC, Biz2Credit Inc., and Ramit Arora’s motion to quash the subpoena issued by Provident Bank to non-party witness DALCO Reporting, Inc. is denied.



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12/9/2019

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE