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| F&R Goldfish Corp. v Furleiter |
| 2020 NY Slip Op 32143(U) |
| July 2, 2020 |
| Supreme Court, Kings County |
| Docket Number: 521162/18 |
| Judge: Leon Ruchelsman |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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F&R GOLDFISH CORP., AND NEW YORK CITY
FISH, INC.,

Plaintiffs, Decision and order

- against -

Index No. 521162/18

VLADIMIR FURLEITER, Individually and on
behalf of ROYAL BALTIC, LTD., N.Y. FISH,
INC., AND ROYAL DEVELOPMENT, INC.,
ALEXANDER KAGANOVSKY, Individually and
on behalf of ROYAL BALTIC, LTD.,
N.Y. FISH, INC., AND ROYAL DEVELOPMENT, INC.,

Defendants, July 2, 2020

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ROYAL DEVELOPMENT, INC.,
Third-Party Plaintiff,

-against-

MYM SMOKED FISH, INC., MAXIM KUTSYK,
YEFIM KUTSYK AND PAVEL ROYTKOV,
Third-Party Defendants,

-----x
PRESENT: HON. LEON RUCHELSMAN

The defendants/third party plaintiffs have moved seeking to quash subpoenas served upon Eisner & Associates, the accounting firm of Furleiter and Royal Baltic pursuant to CPLR §2304 and for a protective order. The plaintiffs oppose the motion. Papers were submitted by the parties and arguments were held. After reviewing all the arguments, this court now makes the following determination.

As recorded in prior orders this lawsuit concerns an entity called Royal Baltic Ltd. that ceased operations at a fish smoking

facility located at 738 Chester Street in Kings County. The property was owned by an entity called Royal Development Inc., that was owned by Vladimir Furleiter and Alexander Kaganovsky. New York City Fish instituted the within lawsuit against Furleiter and others alleging various causes of action including an account stated and fraud. The defendants asserted various counterclaims. Royal Development Inc., filed a third party action against the third party defendants and has alleged ejectment, unjust enrichment, a constructive trust, conversion, an injunction and breach of contract. The plaintiff served non-party subpoenas upon the accounting firm and the defendants have moved seeking to quash those subpoenas.

Conclusions of Law

In Kapon v. Koch, 23 NY3d 32, 988 NYS2d 559 [2d Dept., 2014] the court held that third party subpoenas may be served whenever the information sought is 'material and necessary' "of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (id). The court noted that "so long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty" (id). Thus, "disclosure from a nonparty requires no more than a showing that the requested

information is relevant to the prosecution or defense of the action" (see, Bianchi v. Galster Management Corp., 131 AD3d 558, 15 NYS3d 189 [2d Dept., 2015], CPLR §3103(a)). A party seeking to vacate or quash a third party subpoena has a burden establishing the information is "utterly irrelevant" or "the futility of the process to uncover anything legitimate is inevitable or obvious" (Anheuser-Busch Inc., v. Abrams, 71 NY2d 327, 525 NYS2d 816 [1988]).

Therefore, considering the propriety of the motion the defendants have failed to present the material sought is utterly irrelevant. Indeed, the plaintiffs seek information concerning the rent paid on the premises, surely an important issue in this case. Further, the remainder of the information sought is helpful to narrow the issues in this lawsuit. Specifically, the information sought is helpful to further explore the relationship if any, between the various parties in this lawsuit and the related lawsuit. Moreover, to the extent the defendants argue the request is burdensome, it must be noted that the accounting firm has not objected to the burdensomeness of the request. Without a demonstration from the entity itself regarding the burdens imposed by the subpoenas, the defendants cannot so argue on their behalf (see, Rankine v. Roller Bearing Company of America Inc., 2013 WL 12096448 [Southern District of California

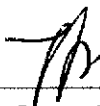
2013)).

However, it should be noted that Demand Numbers 31, 42 and 43 are privileged and need not be provided.

So ordered.

ENTER:

DATED: July 2, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC