

**Neighborhood Restore Hous. Dev. Fund Corp. v
Surti**

2021 NY Slip Op 32621(U)

December 8, 2021

Supreme Court, New York County

Docket Number: Index No. 158276/2016

Judge: Phillip Hom

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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. PHILLIP HOM **PART** **02M**
Justice

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NEIGHBORHOOD RESTORE HOUSING DEVELOPMENT
FUND CORPORATION,

Plaintiff,

- v -

DINESH SURTI, JANE FOSS, TAPINDER KAUR, RICHARD
BIEL, ROGER MATUTE, BETRIZ PULIDO, MARY JANE
DEFROSCIA, JUANA ADORNO, GEORGE RIVERA, ERIC
LOWENKRON, LEELA NADAR, NEW YORK CITY
DEPARTMENT OF BUILDINGS, NEW YORK CITY
DEPARTMENT OF HOUSING PRESERVATION AND
DEVELOPMENT

Defendant.

INDEX NO. 158276/2016
MOTION DATE November 30,
2021
MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents, and after having conducted oral argument on the record, it is ORDERED that Plaintiff's Order to Show Cause to quash Defendants' subpoena addressed to the Community Preservation Corporation ("CPC") is granted to the extent of quashing all requests sought in paragraphs one, two, three, four, six, seven and eight as overbroad, irrelevant and burdensome. It is further ORDERED that Plaintiff shall comply with paragraph number five of the subpoena within ten days after service of a copy of this Order with Notice of Entry.

The branch of Plaintiff's order to Show Cause for a protective order is similarly granted.

Background

Plaintiff Neighborhood Restore Housing Development Fund Corporation ("Neighborhood Corporation") a not for profit corporation seeks an order: (1) quashing

Defendants' subpoena addressed to the CPC under CPLR §2304, dated August 17, 2021 and extended through November 15, 2021 (NYSCEF Doc. No. 146); (2) granting Neighborhood Corporation a protective order under CPLR § 3103(a); (3) suspending disclosure of the subpoena pending determination of the protective order under CPLR §3103(b); and for such other relief this Court may deem proper.

A complete recitation of the facts of this lawsuit is in the May 31, 2017 Order of Hon Kathryn Freed, JSC (Ret.) for Motion Sequence Number 1 (NYSCEF Doc. No. 26). On November 15, 2021, after oral argument, this Court granted the third branch of Plaintiff's application by suspending the disclosure of the subpoena pending the determination of the protective order under CPLR §3103(b) (NYSCEF Doc. No. 168).

This Court once again heard oral argument on the scope of the subpoena on November 30, 2021 and finds that the subpoena is overbroad and burdensome and seeks private financial information of the developer Larry Hirschfield which is not germane to the issues in this litigation. However, upon careful review this Court finds that paragraph five of the subpoena is relevant and material and necessary to the defense of this lawsuit since paragraph five seeks loan commitments and related documents relating to the renovation project of the subject building (NYSCEF Doc. No. 146 p. 2).

CPLR §2304

CPLR §2304 states that a motion to quash a subpoena "shall be made promptly in the court in which the subpoena is returnable." The CPC's subpoena was efiled on NYSCEF on August 18, 2021 and the return date on the subpoena was adjourned to November 15, 2021. Therefore, the instant application is timely.

Moreover, it is well settled that a motion to quash a subpoena should be granted “where the subpoena is overly broad in that it seeks matter that is clearly irrelevant, and where the demands contained in the subpoena were prefaced by the words ‘any and all,’ so that the subpoena would require the production of potentially privileged materials” (*Grotaliio v Soft Drink Leasing Corp.*, 97 AD2d 383 (1st Dept 1983)). In the “Items to be Produced” Section of the CPC subpoena, there are several references to “all documents” “any such application” and other “reports” and “applications” which this Court finds are completely irrelevant and overbroad and may lead to revealing privileged financial information of Larry Hirschfield. Defendants’ argument that redacting some items will eliminate privacy concerns is unavailing.

Nevertheless, the Court finds that paragraph five seeking “Documents comprising any loan commitment, or modification or extension or revocation thereof, for financing as to the Subject Building” is material and necessary to the defense of this lawsuit. Accordingly, Plaintiff shall provide the documents relating to the loan commitment within ten days after service of a copy of this Order with Notice of Entry.

CPLR Section 3103(a)

CPLR §3103(a) states that

“Prevention of abuse. The court may...make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

The Court finds that Plaintiff has already provided a voluminous number of documents to Defendants and this matter must proceed expeditiously so that Plaintiff may upgrade the building and Defendants can return to a safe, updated rehabilitated building. As such, Defendants are


hereby precluded from demanding any further irrelevant and overbroad documentation from Plaintiff.

Conclusion

For the reasons stated herein, it is ORDERED that the CPC subpoena is quashed except for paragraph five seeking information regarding the loan commitment. Plaintiff shall furnish Defendants with the information sought in paragraph five, within ten days after service of a copy of this Order with Notice of Entry. It is further ORDERED that the stay imposed on the legal effect of the subpoena in the November 15, 2021 Order to Show Cause is lifted solely as to paragraph five.

Finally, it is ORDERED that Plaintiff is awarded a protective order precluding Defendants from delaying this matter further by demanding any further irrelevant and overbroad documents.

The foregoing constitutes the Decision and Order of this Court.



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12/8/2021
DATE

PHILLIP HOM, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: