

**Transportation Diversity Council v Jobs to Move
Am.**

2021 NY Slip Op 32746(U)

December 18, 2021

Supreme Court, Kings County

Docket Number: Index No. 510385/2021

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 510385/2021
Motion Date: 10-18-21
Mot. Seq. No.: 1 & 3

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TRANSPORTATION DIVERSITY COUNCIL,

Petitioner,

-against-

DECISION/ORDER

JOBS TO MOVE AMERICA,

Respondent.

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Upon the following e-filed documents, listed by NYSCEF as item numbers 1-54, the petition and motion are decided as follows:

The petitioner TRANSPORTATION DIVERSITY COUNCIL (“TDC”) commenced this proceeding for (1) an Order pursuant to CPLR 2304 and CPLR 3119(e) quashing Respondent Jobs to Move America’s subpoena duces tecum to take the deposition of nonparty TDC, and (2) for such other and further relief as the Court deems just and proper (**Mot. Seq. # 1**).

The respondent JOBS TO MOVE AMERICA (“JMA”) cross-moves for an Order pursuant to CPLR § 2308(b), 3124, and 3119(e): (1) joining the proceeding under Index No. 507349/2021 with this proceeding; (2) enforcing JMA’s March 4, 2021 subpoena duces tecum and ad testificandum of Dwayne Sampson (the “Sampson Subpoena”) by requiring Sampson to appear for the taking of his deposition within two weeks of this Court’s order and to produce the documents requested at that time; (3) enforcing JMA’s March 31, 2021 subpoena duces tecum and ad testificandum of the Transportation Diversity Council (the “TDC Subpoena”) by requiring TDC to produce President and CEO Dwayne Sampson for the taking of his deposition within two weeks of this Court’s order and to produce the documents requested at that time; (4) denying Dwayne Sampson’s Petition to the Quash Out of State Subpoena (“Sampson Petition”) and TDC’s Petition to Quash Out of State Subpoena (“TDC Petition”), (5) imposing a penalty of fifty dollars each on Dwayne Sampson and TDC for JMA for failing to comply with JMA’s authorized Subpoenas, in addition to damages sustained by JMA in the form of legal costs and reasonable attorney’s fees incurred to enforce the Sampson and TDC Subpoenas pursuant to CPLR § 2308; (6) sanctioning Dwayne Sampson, the Transportation Diversity Council, and their counsel for frivolous conduct under 22 NYCRR § 130-1.1; and (7) granting such further and

other relief as this Court deems just, proper, and equitable (**Mot. Seq. # 3**). The petition and cross motion are consolidated for disposition.

JMA filed a lawsuit against New Flyer of America, Inc. (“New Flyer”) on November 27, 2018 in the Superior Court for the County of Los Angeles, California. The Complaint alleges that between 2013 and 2019, New Flyer presented false information to the Los Angeles Metropolitan Transportation Authority (“LA Metro”). Specifically, the Complaint alleges that New Flyer falsely certified that it provided certain wages and benefits to its employees in violation of the California False Claims Act, Government Code §§ 12650 et seq. (“CFCA”).

In connection with the California action, JMA issued a subpoena upon TDC dated April 9, 2021, served April 9, 2021, seeking testimony and documents related to TDC and its work for the New Flyer of America, Inc. In the subpoena, JMA stated it is seeking such disclosure “on the basis that, among other things, Plaintiff has identified Transportation Diversity Council (“TDC”) as having knowledge or information material and necessary to Plaintiff’s prosecution of *State of California ex rel. Jobs to Move America v. New Flyer of Am.* (L.A. Super. Ct.) 18STCV06276. JMA did not state the nature of the alleged knowledge or information that TDC had or how such knowledge or information was relevant to the California action. JMA also stated that Defendant New Flyer of America, Inc. has had a relationship with TDC since at least 2017 wherein TDC has been directly involved in reviewing and auditing Defendant’s compliance and workforce procedures, including those related to the U.S. Employment Plan that is the subject of the events and allegations described in Plaintiff’s Complaint...” JMA did not state how such knowledge relates to the claims alleged in the California action.

TDC now moves to quash the subpoena. In its petition, TDC states:

TDC was not involved on the contract that is the subject of JMA’s Complaint [in the California action]. TDC did not have any role or knowledge of New Flyer’s contract certification procedures. TDC was not involved in auditing any aspect of New Flyer’s contractual obligations with LA Metro including those associated with New Flyer’s requests for payment under the contract at issue. Moreover, TDC did not have any role in providing wages, fringe benefits or other compensation to New Flyer employees related to the contract at issue in the Complaint.

Pursuant to CPLR 3101(a)(4), a party may obtain discovery from a nonparty of “matter material and necessary in the prosecution or defense of an action” in possession of the nonparty, as long as the nonparty is apprised of the reasons such disclosure is sought. “A party or nonparty moving to quash a subpoena has the initial burden of establishing either that the requested disclosure ‘is utterly irrelevant to the action or that the futility of the process to uncover anything legitimate is inevitable or obvious’ ” (*Hudson City Sav. Bank v. 59 Sands Point, LLC*, 153 A.D.3d 611, 612–613, 57 N.Y.S.3d 398, quoting *Matter of Kapon v. Koch*, 23 N.Y.3d 32, 34, 988 N.Y.S.2d 559, 11 N.E.3d 709 [internal quotation marks omitted]; see *Anheuser–Busch, Inc. v. Abrams*, 71 N.Y.2d 327, 331–332, 525 N.Y.S.2d 816, 520 N.E.2d 535). “Should the [movant] meet this burden, the subpoenaing party must then establish that the discovery sought is material and necessary to the prosecution or defense of [the] action” (*Matter of Kapon v. Koch*, 23 N.Y.3d at 34, 988 N.Y.S.2d 559, 11 N.E.3d 709 [internal quotation marks omitted]).

Here, assuming the reasons given by JMA for requesting the disclosure pass muster under CPLR 3101(a)(4), TDC met its initial burden of establishing that the disclosure sought by JMA though the subpoena is utterly irrelevant to the issues in the California action. In this regard, TDC states in the petition that it was not involved with the contract that is the subject of JMA’s Complaint in the California action, that it did not have any role or knowledge of New Flyer’s contract certification procedures; that it was not involved in auditing any aspect of New Flyer’s contractual obligations with LA Metro, including those associated with New Flyer’s requests for payment under the contract at issue, and that it did not have any role in providing wages, fringe benefits or other compensation to New Flyer employees related to the contract.

In opposition, JMA failed to establish that the requested disclosure was material and necessary to the prosecution of the California action (see *Matter of Kapon v. Koch*, 23 N.Y.3d at 34, 988 N.Y.S.2d 559, 11 N.E.3d 709; *Hudson City Sav. Bank v. 59 Sands Point, LLC*, 153 A.D.3d at 613, 57 N.Y.S.3d 398).

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition (**Mot. Seq. # 1**) is **GRANTED**, and TDC's request for an order quashing the subpoena duces tecum and ad testificandum is **GRANTED**; and it is further

ORDERED that **Mot. Seq. # 3** is in all respects **DENIED**.

This constitutes the decision, order and judgment of the Court.

Dated: December 18, 2021



PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020