

**Paramount Mgt. Group, LLC v Fifth Ave. Gourmet
Deli**

2023 NY Slip Op 31446(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 653240/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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PARAMOUNT MANAGEMENT GROUP, LLC,

Plaintiff,

- v -

FIFTH AVENUE GOURMET DELI, MORSHAD H. NAGI,
ALHASSAN A, NAGI A/K/A ALI NAGI, FAWAZ TAREB,
AZIZ TAREB, ATM ACCESS, INC., ATM ACCESS GROUP,
INC.,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

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

**DECISION + ORDER ON
MOTION**

The motion by non-parties Amal A. El Tareb and El Tareb Enterprises, Inc. (collectively, “Movants”) to quash a subpoena and related deposition notices is granted.

Background

Plaintiff brings this case concerning the use of an ATM it provided to defendants, who run a deli in Manhattan. Plaintiff contends that pursuant to an ATM agreement with defendants, an ATM machine was placed in the deli. It argues that defendants breached this agreement in numerous ways, including allowing a competing ATM machine to be placed at the location and by permitting an individual to drill a hole through the cashbox and steal about \$14,700 from the machine.

In this motion, Movants seek to quash a subpoena issued by plaintiff. They claim that Amal A. El Tareb is the wife of named defendant Fawaz Tareb and that the subpoena on her and

the corporate entity is merely a form of harassment. Movants insist that Mrs. Tareb has no part in the business of the corporate non-party.

Movants argue that the subpoena does not comply with CPLR 3101(a)(4) in that it did not state the circumstances or reasons why plaintiff seek documents from these non-parties. They add that the documents requests are overbroad and seek irrelevant information.

In opposition, plaintiff claims that during discovery it sought information about ATM transactions so that plaintiff could assess defendants' income during the relevant time period. Plaintiff details what it claims is an elaborate effort to defraud plaintiff—it argues that Mr. Tareb claimed he never received any payments from the deli after the agreement with plaintiff but plaintiff insists that Mr. Tareb received payments from a competing ATM company (defendant ATM Access, Inc.) which is run by his brother (defendant Aziz Tareb).

Plaintiff claims that the subpoena should not be quashed because El Tareb Enterprises Inc. has a principal place of business at defendant Fawaz Tareb's residential address and received ATM processing payments from the location at issue in this case.

In reply, Movants argue that the corporate entity is not a party to an agreement with plaintiff and so it can conduct business with any party it wishes.

Discussion

“An application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvious ... or where the information sought is ‘utterly irrelevant to any proper inquiry. It is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances” (*Matter of Kapon v Koch*, 23 NY3d 32, 38-39, 988 NYS2d 559 [2014] [internal quotations and citations omitted]).

Setting aside the facial and technical arguments raised under CPLR 3101(a)(4), the Court grants the motion as plaintiff did not adequately explain what material and relevant information can be gleaned from Movants. The complaint details how defendants Fifth Avenue Gourmet Deli, Morshad Nagi and Ali Nagi signed an exclusive ATM agreement in 2017 to place an ATM in the deli for 5 years. It argues that these defendants disconnected the ATM in May 2020 and someone tampered with the machine. Plaintiff argues that the other defendants (ATM Access Inc., ATM Access Group Inc., Aziz Tareb and Fawaz Tareb) tortiously interfered with this exclusive ATM agreement by inducing plaintiff to breach the agreement and put a competing machine in the store.

The Court observes that this is a straightforward legal theory—that these other defendants knew about plaintiff's ATM agreement with the deli and they intervened to get their own ATM in the store. But plaintiff did not sufficiently explain why it needs the deposition of defendant Fawaz Tareb's wife or a corporate entity allegedly controlled by Mr. Tareb. The only connection to Mrs. Tareb seems to be that she incorporated El Tareb Enterprises, Inc. (Movants point out she does not own any shares in this entity). That, standing alone, does not mean she has relevant information about this case. And of course, El Tareb Enterprises, Inc. is not even a party to this case.

It is also unclear what relationship El Tareb Enterprises, Inc. has to this matter other than that its principal place of business is Mr. Tareb's address. Although plaintiff alleges that El Tareb Enterprises, Inc. received payments from ATM Access (a competitor ATM service), plaintiff then jumps to the conclusion that this somehow shows an elaborate fraud. The Court observes that fraud is not a cause of action alleged this case.

Moreover, the document requests in the subpoena are overbroad. For instance, the seventh request seeks “copies of all contracts between El Tareb Enterprises and Fawaz Tareb or any corporate entity he is associated with or that is under his control” (NYSCEF Doc. No. 43). That will undoubtedly include many, many irrelevant documents.

Summary


The Court recognizes that plaintiff raises many issues with the deposition transcripts of defendants and its belief that multiple misrepresentations were made. But that does not permit plaintiff to seek documents and a deposition from an unrelated corporate entity or from a named defendant’s wife who does not have any connection to this case. Plaintiff named parties it believes interfered with its ATM contract; that does not mean it can demand documents from a defendant’s spouse or a corporate entity owed by that defendant.

The Court, however, denies the request for legal fees. Simply because the Court grants the instant motion does not mean that Movants are entitled to recover legal fees and costs.

Accordingly, it is hereby

ORDERED that the motion by non-parties Amal A. El Tareb and El Tareb Enterprises, Inc. to quash a subpoena and for a protective order relations to the notice of depositions is granted.

Note of issue due by May 26, 2023 per NYSCEF Doc. No. 37.

5/1/2023 DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE