

Park Premium Enter. Inc. v Kahan

2024 NY Slip Op 32271(U)

June 25, 2024

Supreme Court, Kings County

Docket Number: Index No. 505980/2019

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: CCP

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PARK PREMIUM ENTERPRISE INC.
D/B/A PARK DEVELOPERS & BUILDERS,

Plaintiff, Decision and order

- against -

Index No. 505980/2019

JOSEPH KAHAN, ESTHER KAHAN, WELLS
FARGO N.A. AS MORTGAGEE, WORLD WIDE
PLUMBING,

Defendant, June 25, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #17 & #19

The plaintiff has moved seeking to quash a subpoena served upon non-party JPMorgan Chase. The defendants have cross-moved seeking an order the subpoena served is valid and enforceable. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

On January 9, 2024 the court dismissed the complaint and vacated the Mechanic's Lien which was the subject of this lawsuit. Further, the court awarded costs and disbursements to the defendants in the amount of \$6,232.70. The defendants issued a subpoena upon the plaintiff's bank seeking financial information in efforts to collect upon the judgement. The principled opposition to the motion is that the plaintiff has moved seeking to reargue the determination dismissing the action and has also filed an appeal. Thus, any post-judgement activity should be stayed pending the resolution of those motions. As

noted, the motion is opposed and the defendant seeks a determination the subpoena served is valid.

Conclusions of Law

CPLR §5519(a)(2) states that "service upon the adverse party of a notice of appeal...stays all proceedings to enforce the judgment or order appealed from pending the appeal...where...the judgment or order directs the payment of a sum of money, and an undertaking in that sum is given that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, the appellant or moving party shall pay the amount directed to be paid by the judgment or order, or the part of it as to which the judgment or order is affirmed" (id).

The basis for that statute staying the transfer of money or personal property pursuant to an order or judgement is explained by the Practice Commentaries. "If there were no provision for such a stay, a judgment, such as one for money only, could be collected by a victorious plaintiff by use of the enforcement devices of Article 52 notwithstanding that an appellate court might then overturn the judgment and dismiss the plaintiff's action. That would in turn necessitate restitution...but there would be no guarantee that the plaintiff, having collected the judgment, would not have squandered the proceeds. If the plaintiff should be insolvent, the defendant's restitution

judgment would be valueless. A stay of enforcement avoids that prospect" (id). To secure a stay the plaintiff must provide an undertaking of the amount of the judgement.

Therefore, upon evidence that an undertaking has been secured the request to quash the subpoena is premature. Indeed, the subpoena itself is premature. Further, if the motion to reargue is successful and the lawsuit is reinstated then the subpoena is irrelevant. If the motion to reargue is unsuccessful and the plaintiff wishes to pursue the appeal then the undertaking is a necessary precondition to stay enforcement of the judgement while the appeal is considered. Therefore, at this time, to secure a stay, the plaintiff must secure an undertaking. As noted, upon such undertaking the motion seeking to quash the subpoena is granted to the extent such subpoena is premature.

If the plaintiff fails to provide an undertaking then the court cannot stay the proceeding. In that instance the sufficiency of the subpoena must be addressed.

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)). Further "CPLR 5223 permits a judgment creditor to compel disclosure of all matter relevant to the satisfaction of a judgment. Thus, this statute acts as "a broad criterion authorizing investigation through any person shown to have any light to shed on the subject of the judgment debtor's assets or their whereabouts" (see, David D. Siegel, New York Practice §509 [5th ed. 2011]). It is a generous standard that allows for a broad range of inquiry through either the judgment debtor or any third person with knowledge of the debtor's property" (see, Dragons 516 Ltd., v. GDC 138 E 50 LLC, 75 Misc3d 1216(A), 169 NYS3d 502 [Supreme Court New York County 2022]). 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]).

The defendants argue the subpoena is improper because it seeks information that is not related to whether the plaintiff can satisfy the judgement and is therefore over broad. A review of the subpoena demonstrates that it seeks three categories of

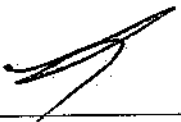
information, documents in connection with opening and maintaining account, all account statements, balances and records of all account activity and all account "records, notes, emails, and servicing notes/records" (see, Subpoena Ad Testificandum and Duces Tecum [NYSCEF Doc. No. 325]). The second category is surely relevant to provide information whether the account can secure the judgement. The first and third categories are not relevant. This is particularly true in this case where the judgement is for costs of a relatively small amount totaling approximately \$6,200.

Therefore, if the plaintiff does not post an undertaking then the second category of materials contained in the subpoena is valid. In the event an undertaking is not made then the motion seeking to quash that portion is denied and the motion seeking to confirm that portion as valid is granted, the motion seeking to quash the remaining portions of the subpoena is granted and the motion to confirm the validity of those portions is denied.

So ordered.

ENTER:

DATED: June 25, 2024
Brooklyn, N.Y.



Hon. Leon Ruchelsman
JSC