

**Dunn v Knightsbridge Props. Corp.**

2019 NY Slip Op 35089(U)

August 22, 2019

Supreme Court, Queens County

Docket Number: Index No. 711872/2019

Judge: Robert I. Caloras

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This opinion is uncorrected and not selected for official publication.

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. ROBERT I. CALORAS

PART 36

Justice

RANA DUNN,

Plaintiff,

-against-

Index No. 711872/2019  
Motion Date: 7/11/19  
Motion Cal. No. 10, 11,  
12, 13  
Seq. No. 6, 7, 8, 9

KNIGHTSBRIDGE PROPERTIES CORP.,

Defendant.

The following papers numbered 1-146 read on these motions by defendant for an order to quash the subpoenas served on Stanatios Saridakis, Virginia Simmons, Michael Qadi, and Rosemarie Ojeda, and for the issuance of a protective order pursuant to CPLR 2304 and 3013; the cross-motion by plaintiff to compel the depositions of Mr. Saridakis and Ms. Simmons, compel defendant to respond to the Information subpoena, dated June 6, 2018 and August 23, 2018, and compel Bridgestone to respond to the Information Subpoena, dated August 23, 2018, compel a further deposition of Jordan Krauss, and for an order for the NYS Insurance Fund investigation files of defendant, Anthony Mile, and KP Design + Construction LLC.; and the cross-motion by plaintiff to compel the non-party depositions of Michael Qadi, and Rosemarie Ojeda.

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NUMBERED

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Upon the foregoing papers, it is ordered that defendant's motions and plaintiff's cross-motions are determined as follows:

Initially, the Court notes that these motions were filed under Index Number 16321/14, and appeared on the motion calendar under this Index Number. Prior to these motions being fully submitted for decision, the parties stipulated to convert this action to an E-File case. Thereupon, the County Clerk changed the Index Number from 16321/14 to No.711872/2019.

On October 20, 2017, the Court issued a judgment in favor of the plaintiff, against the defendant, in the amount of \$1,275,316.44. On August 29, 2018, Don Hinds, who was hired by the defendant as a property accountant in April 2014, was deposed. Thereafter, on October 23, 2018, Jordan Krauss, the President of Knightsbridge Properties Corp. was deposed. Plaintiff served a subpoena for a non-party deposition of Stanatios Saridakis, Virginia Simmons, Michael Qadi, and Rosemarie Ojeda. Defendant has now filed motions seeking to quash each of these non-party depositions, and plaintiff opposes.

"A judgment creditor is entitled to discovery from either the judgment debtor or a third party in order to determine whether the judgment debtor[ ] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment" (Technology Multi Sources, S.A. v Stack Global Holdings, Inc., 44 AD3d 931, 932 [2d Dept. 2007], quoting Young v Torelli, 135 AD2d 813, 815 [2d Dept. 1987]). CPLR 5240 provides the Court with broad discretionary power to control and regulate the enforcement of a money judgment under CPLR article 52 to prevent "unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice" (Paz v Long Is. R.R., 241 AD2d 486, 487 [2d Dept. 1997]). "Nonetheless, 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" (George v Victoria Albi, Inc., 148 AD3d 1119 [2d Dept. 2017]). The party seeking to quash a subpoena has the burden of conclusively establishing that it lacks information to assist the judgment creditor in obtaining satisfaction of the judgment (see Gryphon Dom. VI, LLC v GBR Info. Servs., Inc., 29 AD3d 392, 393 [2d Dept. 2006]).

Defendant's motion seeking to quash plaintiff's subpoena for a nonparty deposition of

Virginia Simmons is granted. A subpoena for a non-party deposition pursuant to CPLR 5224(a)(1) is subject to the ordinary rules governing subpoena service (Richard C. Reilly, Practice Commentaries, McKinney's Cons Laws of NY, CPLR C5224:2 [Note: online version]). Therefore, CPLR 2303 applies, which requires that subpoenas be served in the same manner as a summons (*id.*). As such, CPLR 308 governs the service in the case of an individual deponent (*id.*). In her affidavit, Ms. Simmons claims that “[o]n August 22, 2018, a woman attempted to gain access to my actual place of business to serve legal papers on me, but I refused to accept the documents. I left the room while the woman was still waiting outside, and when I returned a few minutes later, the subpoena had been slid under the door and the woman was gone”. Plaintiff failed to submit an affidavit of service for Ms. Simmons’ subpoena in her opposition papers. Under these circumstances, the Court finds that plaintiff did not properly serve the subpoena upon Ms. Simmons pursuant to CPLR 5224(a)(1). Accordingly, defendant’s motion, filed under sequence number 7, seeking to quash the subpoena for a non-party deposition of Ms. Simmons is granted.

Defendant’s motion to quash the subpoenas for a non-party deposition of Stanatios Saridakis, Michael Qadi, and Rosemarie Ojeda are denied. Defendant claims that depositions of these non-party witnesses are futile, have no legitimate purpose, and are intended to harass these non-parties. In opposition, plaintiff claims that the LinkedIn business page for these parties contradict statements they made in a prior affidavit regarding their employment with defendant.

CPLR 3101(a) provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action” (JPMorgan Chase Bank, N.A. v Levenson, 149 AD3d 1053 [2d Dept. 2017]). The words “material and necessary” are “liberally interpreted to require disclosure, upon request, of any facts bearing on a controversy which will assist in sharpening the issue at trial” (Roman Catholic Church of Good Shepherd v Tempco Systems, 202 AD2d 257, 258 [1st Dept 1994]). Contrary to defendant’s claims, plaintiff properly relied upon the LinkedIn profiles and resume websites for Mr. Saridakis, Mr. Qadi, and Ms. Ojeda in support of the non-party subpoenas. “CPLR 3101 . . . requires the revelation of inadmissible testimony that may lead to discovery of admissible evidence” (Shapiro v Levine, 104 AD2d 800 [2d Dept. 1984]). Consequently, hearsay that is discoverable, may not be admissible (*id.*). Therefore, defendant’s claims that the printouts plaintiff submitted from the LinkedIn websites cannot serve as evidence because they were not authenticated is without merit. Accordingly, the Court finds that the defendant has not satisfied its burden of conclusively establishing that it lacks information to assist the plaintiff in obtaining satisfaction of the judgment. The Court also finds that plaintiff has

demonstrated that the non-party depositions of Mr. Saridakis, Mr. Qadi, and Ms. Ojeda are material and necessary pursuant to CPLR 3101. Under these circumstances, defendant's motion to quash filed under sequence numbers 6, 8, and 9 are denied.

Plaintiff's cross-motion, filed under sequence number 6 and 7, is determined as follows: The first branch of the cross-motion requests that the Court compel the depositions of Mr. Saridakis and Ms. Simmons. As set forth above, plaintiff's request to depose Mr. Saridakis is granted, and her request to depose Ms. Simmons is denied.

In the second branch of the cross-motion, plaintiff requests that the defendant be compelled to respond to the information subpoena, dated June 6, 2018 and August 23, 2018, and that Bridgestone be compelled to respond to the Information Subpoena, dated August 23, 2018. Plaintiff claims that the information requested in these information subpoenas will help her locate defendant's assets. Moreover, plaintiff claims that Mr. Krauss incorporated Bridgestone on March 7, 2017, just six days before the trial commenced on March 13, 2017, and that he re-directed defendant's revenues to Bridgestone. In opposition, defendant claims that it duly objected to these information subpoenas, and that plaintiff has failed to show that they failed to respond or that their responses were insufficient. The Court finds that the information subpoenas seek documents that are material and relevant to the enforcement of the judgment. Accordingly, the branch of the cross-motion seeking to compel defendant to respond to the information subpoenas is granted.

In the third branch of the cross-motion, plaintiff requests that Mr. Krauss be compelled to appear for a further deposition. Plaintiff claims that Mr. Krauss refused to answer questions about self-dealing transactions at his prior deposition. Specifically, plaintiff claims that at his deposition Mr. Krauss refused to answer certain questions regarding his ownership and beneficial interests in affiliate corporations that have received payments from defendant in 2016 and 2017, and about certain assets listed on the defendant's 2016 tax return. In opposition, defendant claims that Mr. Krauss' refusal to answer questions about "potential self-dealing" are not relevant to the issue of defendant's assets, income, and property. Defendant does acknowledge that at Mr. Krauss' deposition, defense counsel objected to plaintiff's questions about defendant's deals with entities owned by Mr. Krauss' family members or himself. Defendant also acknowledges that some of these questions were marked for a ruling by the Court. In reply, plaintiff claims that a further deposition of Mr. Krauss is necessary, because Mr. Krauss provided false and misleading statements at his prior deposition.

The Court finds that plaintiff is entitled to a further limited deposition of Mr. Krauss with respect to defendant's deals with entities owned by Mr. Krauss' family members or

himself. Although the parties did not obtain a ruling from the Court regarding this issue during Mr. Krauss' deposition, plaintiff did not waive her right to inquire about this issue.

In the fourth branch of the cross-motion, plaintiff requests that the Court issue an order for the NYS Insurance Fund investigation files of defendant, Anthony Mile, and KP Design Construction LLC. Defendant opposes. This branch of the motion is denied, because plaintiff failed to submit an affidavit of service for the NYS Insurance Fund.

The Court notes that in her reply plaintiff requests discovery of the federal and state individual tax returns of Mr. Krauss. This was not requested in the cross-motion, and is inappropriately raised for the first time in plaintiff's reply. As such, plaintiff's request for these documents is denied.

Plaintiff's cross-motion, filed under sequence numbers 8 and 9, request that the Court issue an order compelling the non-party depositions of Mr. Qadi and Ms. Ojeda. Defendant opposes. Based upon the above, the cross-motion is granted.

Based upon the foregoing, the motion filed under sequence number 7 is granted, the motions filed under sequence numbers 6, 8, and 9 are denied, plaintiff's cross-motion filed under sequence numbers 6 is granted in part and denied in part, and plaintiff's cross-motion filed under sequence numbers 8 and 9 is granted. Accordingly, it is

ORDERED, defendant shall respond to plaintiff's information subpoenas, dated June 6, 2018 and August 23, 2018, no later than November 1, 2019; and it is

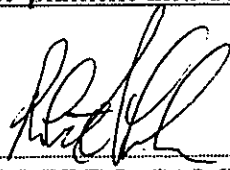
ORDERED, Bridgestone shall respond to plaintiff's information subpoena, dated August 23, 2018, no later than November 1, 2019; and it is

ORDERED, the non-party depositions for Mr. Saridakis, Mr. Qadi, and Ms. Ojeda shall be held no later than December 20, 2019; and it is

ORDERED, Mr. Krauss shall appear for a further deposition no later than December 20, 2019.

A copy of this decision has been e-mailed to counsel for plaintiff and defendant on this date.

Dated: August 22, 2019



ROBERT I. CALORAS, J.S.C.

**FILED**  
**AUG 28 2019**  
**COUNTY CLERK**  
**QUEENS COUNTY**