

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: Part

55F-6817(b)

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INTEGRATED MEDICAL REHAB & DIAGNOSTIC, P.C.
A/A/O RICARDO ST. HILAIRE

Index No.:70377/07
Motion Cal. No.: 40
Submitted: 7/2/08

Plaintiff,

-against-

STATE FARM MUTUAL AUTOMOBILE INS. CO.

Defendants.

DECISION/ORDER

Present:

Hon. SHARON AARONS
Judge, Civil Court

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INTEGRATED MEDICAL REHAB & DIAGNOSTIC P.C.,
A/A/O ALICIA WENDLER,
Plaintiff,

Index No: 70378/07

-against-

Present:

STATE FARM MUTUAL AUTOMOBILE INS. CO. ,

Defendants.

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INTEGRATED MEDICAL REHAB & DIAGNOSTIC P.C.,
A/A/O DENISE RENNIE-ALENYE,
Plaintiff,

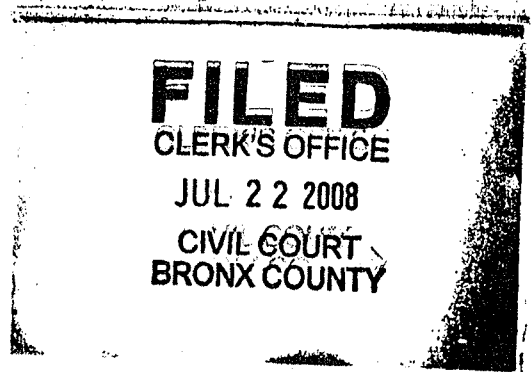
Index No: 70380/07

-against-

Present:

STATE FARM MUTUAL AUTOMOBILE INS. CO. ,

Defendants.



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INTEGRATED MEDICAL REHAB & DIAGNOSTIC P.C.,
A/A/O BANILIS MELO,
Plaintiff,

Index No: 70381/07

-against-

Present:
STATE FARM MUTUAL AUTOMOBILE INS. CO. ,

Defendants.

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INTEGRATED MEDICAL REHAB & DIAGNOSTIC P.C.,
A/A/O ANNE CUNNINGHAM
Plaintiff,

Index No: 70420/07

-against-

Present:
STATE FARM MUTUAL AUTOMOBILE INS. CO. ,

Defendants.

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INTEGRATED MEDICAL REHAB & DIAGNOSTIC P.C.,
A/A/O ANNE CUNNINGHAM,
Plaintiff,

Index No: 70421/07

-against-

Present:
STATE FARM MUTUAL AUTOMOBILE INS. CO. ,

Defendants.

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of motion, as indicated below:

<u>Papers</u>	<u>Numbered</u>
<u>Order to Show Cause and Exhibits Annexed</u>	<u>1</u>
<u>Affirmation in Opposition and Exhibits Annexed</u>	<u>2</u>
<u>Reply Affirmation</u>	<u>3</u>

Upon the foregoing papers, the Decision/Order on this motion is as follows:

REQUESTED RELIEF

Plaintiffs moved by order to show cause to quash the subpoena duces tecum served by defendant on J.P. Morgan Chase (hereinafter "J.P. Morgan"), plaintiff's bank, and for sanctions for abuse of process in the six matters before the Court herein. Plaintiff's motion to quash the subpoena and for sanctions/costs against the defendant are denied in their entirety.

CONTENTION OF THE PARTIES

Plaintiffs argued that the subpoena failed to contain a "notice stating the circumstances or reasons such disclosure is sought or required" as mandated by CPLR §3101 (a)(4). The requisite notice is to be included on the face of the subpoena or in a notice accompanying it.

Defendant claims any defect on the subpoena as to its notice or reason for disclosure is cured in its opposing papers. Also, plaintiffs lacked standing to move to quash the subpoena since it was not served upon them but on J.P. Morgan, a non-party, the possessor and custodian of the documents. As such, the non-party bank did not object to the subpoena and neither it nor plaintiff established that the documents sought were utterly irrelevant.

DISCUSSION AND ANALYSIS

Orders to show cause to quash a subpoena duces tecum are governed by CPLR §2304. A non-party subpoena served pursuant to CPLR §3120 must be objected to within 20 days wherein the non-party would move to quash the subpoena. Where the person to be deposed is a non-party he or she must be served with a subpoena issued pursuant to CPLR § 3106 (b). However, where production of tangible documents such as "books, papers and other things" are also requested along his or her deposition, a notice of subpoena pursuant to CPLR §3111 is the appropriate device. The party serving the subpoena should describe the items sought and be certain to make the subpoena

unambiguous, requiring both attendance by the recipient and production of the item. If the party seeking the disclosure is not interested in taking a deposition, but merely wants a non-party witness to produce discovery, inspection papers or other tangible items in his or her possession, the proper vehicle is an outright subpoena under CPLR §3120. The better practice is to couch subpoenas under one or both of the mentioned sections of the CPLR. If only tangible documents are sought pursuant to CPLR § 3120, then the subpoena should expressly state so. Here, defendant issued a subpoena to J.P. Morgan, to which it did not object, not only requesting a deposition, but also tangible documents for bank records for account No. 736682600.

Albeit that the subpoena served on J.P. Morgan failed to state the reason for disclosure, the motion to quash the subpoena should nevertheless be denied where the papers in opposition to the motion articulate the need for the discovery sought, such discovery is not unduly burdensome to the custodian of the documents, and there is an absence of any apparent prejudice to the non-party served. *See Velez v. Hunts Point Multi-Service Center Inc.* 29 A.D.3d 104, 111-112, 811 N.Y.S.2d 5, 10-11 (1st Dept. 2006). The defendant in this matter has articulated in its opposition papers that the items sought are relevant to its fraudulent incorporation and illegal fee splitting defenses, which support defendant's contention that plaintiff is not entitled to the benefits sought in this litigation. Furthermore, there is an absence of any apparent prejudice and the subpoena requests are not so voluminous as to constitute an undue burden on the custodian of those records.

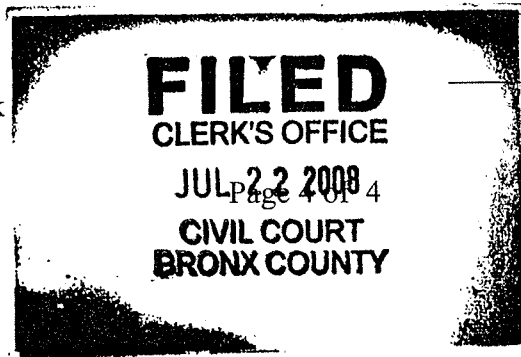
Additionally, a subpoena may also be quashed on the grounds that the requested documents and records are utterly irrelevant. The burden to establish that ground rests upon the non-party bank being subpoenaed. Neither plaintiff nor the non-party bank have met that burden and substantiated that the materials sought were utterly irrelevant to any proper inquiry.

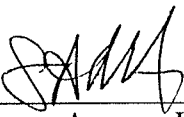
CONCLUSION

Accordingly, the Court finds the motion to quash is denied and the subpoena stands as served. The request for sanctions is denied as unwarranted since defendant established a legitimate need for the documents.

The foregoing constitutes the decision and Order of the Court.

Dated: July 22, 2008
Bronx, New York




Sharon Aarons, J.C.C.