SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS
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CHAIM MILLER, **Index No.: 512723/2015**

Plaintiff,

-against-

ANMUTH HOLDINGS LLC

Defendant.

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MEMORANDUM OF LAW IN SUPPORT OF A MOTION TO DISMISS PLAINTIFF'S COMPLAINT AND TO QUASH SUBPOENAS

Defendant Anmuth Holdings ("Anmuth") respectfully submits this Memorandum of Law, together with the Notice of Motion, dated December 7, 2015, and Affirmation of Alexander Tuttle, dated December 7, 2015 ("Tuttle Aff."), with exhibits annexed thereto, in support of Anmuth's motion to dismiss Plaintiff Chaim Miller's ("Plaintiff" or "Miller") Complaint, pursuant to CPLR Rule 3211(a)(1), on the grounds that the documentary evidence precludes Plaintiff from proceeding with this action, and to quash all Subpoenas *Duces Tecum* issued by Plaintiff to Investors Bank (the "Bank") (collectively, the "Subpoenas"), pursuant to CPLR § 2304, on the grounds that they are moot, overbroad, and seek irrelevant information.

PRELIMINARY STATEMENT

It is no surprise that Plaintiff's Complaint is an elaborate and baseless fabrication. Indeed, this is yet another example of Plaintiff and his business partner, Sam Sprei, treating frivolous[1] and fraudulent[2] conduct as their common course of dealing in their business transactions. In July

[1] Since 2014, Plaintiff and Mr. Sprei have been sued by over 29 individuals and entities in over 18 different lawsuits. *See* Exhibits D and E to Tuttle Aff., http://therealdeal.com/blog/2015/10/13/chaim-miller-finds-himself-sued-up-tight/, and 10 lawsuits filed against Miller in the past year in New York.

[2] Plaintiff and Mr. Sprei have openly admitted to fraudulently signing someone else's name to a replicated contract with a different price for submission to prospective flip purchasers and/or lenders. The contract can be made

2015, Plaintiff and Mr. Sprei sent out a series of subpoenas, seeking similar information as sought in the Subpoenas, in connection with a federal bankruptcy proceeding, captioned *In the Matter of HS John LLC*, Case No. 15-10368-shl. Judge Sean Lane, presiding over the case, ordered that the subpoenas be quashed, noting:

> Listen, I -- there's so much litigation involving your clients [Plaintiff and Mr. Sprei] in all sorts of different places, that I can scarcely keep count. And in fact, doing a search for cases involving injunctive relief in the state court, and your clients [Plaintiff and Mr. Sprei] names keep popping up, which is fairly alarming. (See Pg. 18 of Court Transcript).

In that very hearing, the law firm of Herrick Feinstein presented evidence to the Court that Mr. Sprei had in fact illegally obtained Herrick's bank account information to track the flow of its escrow accounts, and used that information to proceed with various Court actions. Plaintiff's sharp practices know no bounds, and he should be held accountable.

With respect to this matter, Plaintiff's lone breach of contract claim against Anmuth hinges on a single erroneous allegation—that a letter of credit issued in favor of Dupont Street Developers LLC ("Dupont") in the amount of $4,700,000, has been released to Anmuth and that Anmuth has failed to honor its agreement with, and pay, Plaintiff Chaim Miller ("Miller") $4,353,500 out of the $4,700,000 released to Anmuth. This is patently false and fully contradicted by documentary evidence.

At the outset, the letter of credit alleged by Plaintiff is actually three (3) letters of credit (the "Letters of Credit") issued by the Bank. As authenticated and verified by the Bank, the Letters of Credits have, at all times, remained in full force and effect and never been released. Nor has any money ever been released under the Letters of Credit. Accordingly, neither Dupont, Anmuth, nor any other affiliate of Dupont are in breach of any agreement with the Plaintiff, and

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available to the Court or other interested parties related to such conduct. Plaintiff is also known for selling, as part of a pattern of fraudulent and potentially criminal conduct, interests in properties that he does not own.

the Complaint should be dismissed as a matter of law.

Plaintiff's allegations, conduct, and veiled threats are a blatant attempt to sully the character and reputation of a well-known and respected businessman in the community. Instead of simply inquiring from Anmuth or Dupont about the Letters of Credit, Plaintiff elected to (i) file his baseless lawsuit against Anmuth, while smearing and harming an innocent person's name in the Complaint; and (ii) in a second attempt after being denied, leverage the lawsuit to issue Subpoenas to the Bank, without copying Anmuth, seeking irrelevant, overbroad, and private financial documents from parties unrelated to this action. This is the essence of frivolous conduct.

New York law requires subpoenas to seek information relevant to the lawsuit, including the circumstances and reasons for the disclosure, especially when served on a non-party. Here, however, the sole relevant piece of information is whether the Letters of Credit have ever been released, which, as confirmed by this motion, has never happened. The Subpoenas should otherwise be quashed as moot, as Plaintiff's Complaint, which serves as the basis for the Subpoenas, is entirely invalid and should be dismissed as a matter of law.

Accordingly, Plaintiff's Complaint should be dismissed and the Subpoenas should be quashed as a matter of law.

STATEMENT OF FACTS

The relevant facts, for purposes of this motion, are as follows:

i. On May 20, 2014, the Bank established and issued three (3) letters of credit in the aggregate face amount of $4,700,000.00 in favor of Dupont, identified as #SBLC-1B-2014-107, #SBLC-1B-2014-108, and #SBLC-1B-2014-109 (the "Letters of Credit"), expiring May 20, 2015. (Exhibit A to Tuttle Aff.). These Letters of Credits represent the letter of credit referenced in Plaintiff's Complaint.

ii. It is undisputed that Anmuth entered into an agreement with Plaintiff on September 18, 2014.

iii. On May 1, 2015, the Letters of Credit were extended until May 20, 2016. (*Id.*).

iv. At all times, the Letters of Credit have remained in full force and effect and have not been released. (*Id.*).

v. No money has been withdrawn or returned to any party in connection with the Letters of Credit. (*Id.*).

BACKGROUND

The Real Deal has it exactly right--Plaintiff is a "magnet for litigation". A quick search of New York e-filed state court cases in the past year reveals ten (10) lawsuits in which Miller has been sued as a defendant, accused of, *inter alia*, fraud, conversion, breach of contract, concealing assets, and defaults on commission agreements, loan obligations, and judgments, totaling claims north of $20 million. (*See* Exhibit A to Tuttle Aff.; *Reliable Abstract Co., LLC v. 45 John Lofts, LLC et. al.*, Index #653850/2014; *Vasilios Vasiliu v. Chaim "Harry" Miller et al.*, Index #653419/2015; *Aaron Drazin v. Chaim Miller a/k/a Harry Miller, et. al.*, Index #512405/2014; *Abraham Leser v. Chaim a/k/a Harry Miller*, Index #513868/2015; *Chun Peter Dong et al. v. Chaim Miller a/k/a Harry Miller*, Index #650502; *SDF45 5th Avenue 1, LLC v. Besad 5th LLC et al.*, Index #509322/2015; *203-205 N 8th Street LLC v. 203-205 North 8th Street Loft LLC et al.*, Index #509303/2015; *SDF50 Sea Breeze 1 LLC v. 271 Sea Breeze Avenue LLC et al.*, Index #507874/2015; and *SDF37 Sullivan Place LLC v. Sullivan 90 Holdings LLC et al.*, Index #507851/2015). A few highlights are worth noting:

a. In *Reliable Abstract*, Miller is accused of fraudulently inducing Reliable Abstract into providing $1.97 million to enable Miller's entity, in which he was a managing member, to purchase a $60 million condominium building at 45 John Street in Manhattan, only to renege on the obligation to repay that amount to Reliable Abstract upon closing on the property. This action is in addition to three (3) separate lawsuits seeking to (i) recover money that plaintiffs had loaned to Miller; (ii) enforce plaintiffs' claims to Miller's interests in 45 John Lofts LLC;

and (iii) enjoin the impending sale of 45 John Lofts LLC's real property to another entity, HS 45.

b. In *Vasilios*, Miller is accused of leveraging off-market information provided exclusively by Vasilios concerning the sale of Beekman Towers in Manhattan for $140 million to close on the premises and, as part of a "shell game", refuse to pay Vasilios an agreed upon 2% brokerage commission in the amount of $2.75 million.

c. In *Drazin*, Miller is accused of aiding and abetting a fraudulent scheme by his business partner Sprei to avoid a judgment by serving as a "front" to engage in real estate transactions on behalf of Sprei, whereby the ownership interests and proceeds for such real estate transactions would not be traceable to Sprei but instead would be received by Miller and funneled to Sprei through hidden and fraudulent transactions.

d. Miller is included as a defendant in four (4) separate foreclosure actions involving properties in which he personally guaranteed Notes and Mortgages on the properties.

As recently as December 3, 2015, Justice Carolyn Demarest granted a Turnover Order and Judgment jointly and severally against Miller and co-defendant Sprei in the amount of $1.56 million, holding that Plaintiff Drazin clearly and convincingly proved willful and intentional fraudulent conveyances of Sprei's interests by the defendants in that action and requiring $1.56 million be disbursed to Plaintiff Drazin from the pending sale of 97 Grand Avenue, a 62-unit Clinton Hill rental building that Miller and Sprei purchased in 2013. (*See Drazin*, *supra*, Index #512405/2014). The Order further awarded attorneys' fees in favor of Plaintiff Drazin from Miller and each of the other defendants. (*Id.*).

These lawsuits, which are just the tip of the iceberg as against Miller, all involve a single resounding theme—Miller uses deceit and misrepresentations to bilk others out of money. Now, in presumably a paranoid fear that any party he deals with acts with similar scruples, Miller has shamelessly purported to bring his own contrived and baseless lawsuit here against Anmuth, alleging conduct that is a complete fiction.

ARGUMENT

I. ANMUTH'S MOTION TO DISMISS SHOULD BE GRANTED

Anmuth moves to dismiss the Plaintiff's Complaint pursuant to CPLR Rule 3211(a)(1), which states, in relevant part:

> (a) Motion to dismiss cause of action. A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:
>
> (1) a defense is founded upon documentary evidence…

A motion to dismiss pursuant to CPLR Rule 3211(a)(1) should be granted if documentary evidence utterly refutes the plaintiff's factual allegations and conclusively establishes a defense to the asserted claims as a matter of law. *See Capogrosso v. Landsman*, 83 A.D.3d 638, 919 N.Y.S.2d 899 (2d Dep't 2011). This is exactly the case here.

Plaintiff claims that the Letters of Credit were released to Anmuth and that Anmuth breached an agreement to pay Plaintiff upon such release. As authenticated and verified by the Bank, the Letters of Credit were issued on May 20, 2014, and are set to expire on May 20, 2016. (*See* Exhibit B to Tuttle Aff.). At all times, the Letters of Credit have remained in full force and effect and at no time has any money in connection with the Letters of Credit been released to any party, including Anmuth. This documentary evidence conclusively refutes Plaintiff's sole claim.

Accordingly, as a matter of law, there is no breach, nor can there be, of any agreement between Anmuth and Plaintiff, and Anmuth is entitled to an immediate dismissal of this action.

II. PLAINTIFF'S SUBPOEANA SHOULD BE QUASHED

The Subpoenas to the Bank, stating simply that the "reason that this subpoena is served is to obtain information and documents material and necessary to the prosecution and defense of this action", are utterly irrelevant and moot, and should be quashed.

In determining whether to quash a subpoena, particularly to a non-party witness, the court must determine, among other things, whether the documents sought by the subpoena are relevant to the action before it. *See Matter of Abrams v. Thruway Food Mkt. & Shopping Center*, 541 N.Y.S.2d 856 (2d Dept. 1989). A subpoena may not, as is the case here, be used to conduct an unlimited and general inquisition into a matter solely on the prospect of discovering wrongdoing in general. *See Matter of A'Hearn v. Committee on Unlawful Practice of Law of N.Y. County Lawyers' Assn.*, 298 N.Y.S.2d 315 (Ct. App. 1969) (applying even in the case of the broad authority of the Attorney General), cert denied, 395 US 959 (1969); *Myrie v. Shelley*, 655 NYS 2d 66 (2d Dept. 1997).

Additionally, more than mere relevance is required. For disclosure purposes "a party is distinguished from a non-party and where disclosure is sought against a nonparty more stringent requirements are imposed on the party seeking disclosure." *Velez v. Hunts Point Multi-Serv. Ctr., Inc.*, 811 N.Y.S.2d 5, 8 (1st Dept. 2006).

Here, simply by virtue of the fact that Plaintiff has no sustainable claim against Anmuth, the Subpoenas have no relevance and are moot, as their sole purported reason for requesting the documents is to prosecute and defend this case. Further, Plaintiff requests documents that have previously been requested and ordered to be quashed by Judge Lane *In the Matter of HS John LLC*, Case No. 15-10368-shl. Plaintiff should not be afforded a second bite at the apple simply because he manufactured his 19th lawsuit in the past year. Finally, the only relevant piece of information is the actual and governing Letters of Credit, which are attached to this motion.

Accordingly, this Court should quash the Subpoenas.

CONCLUSION

For the reasons set forth above and in the accompanying Tuttle Aff., Anmuth respectfully

requests that the Court enter an Order:

(a) dismissing the Complaint, pursuant to CPLR Rule 3211(a);

(b) quashing the Subpoenas, pursuant to CPLR § 2304; and

(c) such other relief as the Court deems proper.

Dated: New York, New York
December 7, 2015

TUTTLE YICK LLP

By: _____

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