

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Etage Real Estate LLC v. Stern

2025 NY Slip Op 06897 (N.Y. Ct. App. 2025) · No. Index No. 656322/19; Appeal No. 5375-5376; Case No. 2024-07087 2024-07311 · Decided December 11, 2025

SUMMARY

The Appellate Division, First Department, modified two Supreme Court orders by denying leave to amend the pleadings and limiting the time period covered by subpoenas to 2012 through 2019. The court held that the proposed veil-piercing, fraudulent-conveyance, and Penal Law causes of action would not survive a motion to dismiss, while upholding enforcement of subpoenas to DJJMS LLC's bank and accountant and permitting the request for tax returns.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Kern, J.P.; Friedman; Rodriguez; Pitt-Burke; Rosado
JURISDICTION	New York Appellate Division, First Department
DECIDED	December 11, 2025
DOCKET	Index No. 656322/19; Appeal No. 5375-5376; Case No. 2024-07087 2024-07311
DISPOSITION	modified and affirmed
PROCEDURAL POSTURE	Appeal from two orders of the Supreme Court, New York County (Arthur R. Engoron, J.): one granting plaintiffs' motion for leave to amend pleadings and so-ordering subpoenas; another denying defendants' motion to modify subpoenas and for a protective order, and granting plaintiffs' motion to enforce subpoenas.
STANDARD OF REVIEW	Law
PRECEDENTIAL VALUE	Published
PARTIES	Michael Stern, et al. v. Etage Real Estate LLC, et al.

TOPICS

- pleadings
- motion to amend
- discovery dispute
- corporate veil piercing
- civil procedure

PRACTICE AREAS

civil procedure

corporate law

commercial litigation

QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted plaintiffs' motion for leave to amend the pleadings.
2. Whether the Supreme Court properly compelled compliance with subpoenas issued to nonparties.
3. Whether the time period covered by the subpoenas should be limited.
4. Whether the Supreme Court properly refused to strike the request for tax returns.
5. Whether defendants' request to review third-party productions for confidential information was properly denied.

HOLDINGS

1. The Supreme Court improperly granted the motion for leave to amend the pleadings because none of the proposed causes of action would survive a motion to dismiss.
2. The Supreme Court properly compelled compliance with the subpoenas because the requested assets and transfers are relevant to the veil piercing and fraudulent conveyance causes of action.
3. The time period covered by the subpoenas should be limited to 2012 through 2019.
4. The Supreme Court properly refused to strike the request for tax returns because plaintiffs met the heavy burden required.
5. The Supreme Court properly denied defendants' request to review third-party productions for confidential information.

FACTUAL BACKGROUND

Plaintiffs are creditors of DJJMS LLC, a corporate debtor, and sought to amend their complaint to add causes of action against DJJMS's owners (defendants) for piercing the corporate veil, fraudulent conveyance, and a violation of Penal Law § 175.45. Plaintiffs also sought subpoenas from nonparty bank JPMorgan Chase and accountant Cywiak & Company for DJJMS's records. The underlying judgment against DJJMS was based on a transaction from December 2012, with an allegedly improper transfer in 2013 and litigation from 2017-2019.

PROCEDURAL HISTORY

Plaintiffs moved for leave to amend pleadings and to so-order subpoenas. The Supreme Court granted both. Defendants then moved to modify the subpoenas and for a protective order; the court denied the motion but granted plaintiffs' motion to enforce the subpoenas. The Appellate Division modified both orders on appeal.

DISPOSITION

modified and affirmed

CASES CITED

- *Durst Pyramid LLC v. Silver Cinemas Acquisition Co.*, 222 AD3d 431, 432 (1st Dep't 2023)
- *Etage Real Estate LLC v. Stern*, 211 AD3d 632, 633 (1st Dep't 2022)
- *Eberhard v. Marcu*, 530 F3d 122, 131 (2d Cir. 2008)
- *Niagara Mohawk Power Corp. v. Testone*, 272 AD2d 910, 911 (4th Dep't 2000)
- *Moran v. Grand Slam Ventures, LLC*, 221 AD3d 994, 996 (2d Dep't 2023)
- *Matthews Indus. Piping Co. v. Mobil Oil Corp.*, 114 AD2d 772, 772 (1st Dep't 1985)

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