

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

Harold Levinson Associates, Inc. v. Wong

128 A.D.3d 566 (1st Dep't 2015) · No. 15186 · Decided May 21, 2015

SUMMARY

The Appellate Division, First Department reversed an order quashing a third-party subpoena served by Harold Levinson Associates, Inc. on Robin Wong and Jade Kee Wholesale LLC. The court held that the defendants failed to show that the requested records were utterly irrelevant and had sufficient notice of the circumstances or reasons for the subpoena; it also held that a prior denial of broader discovery did not require quashing the narrower subpoena.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Tom, J.P.; Friedman, J.; DeGrasse, J.; Richter, J.; Kapnick, J.
JURISDICTION	New York
DECIDED	May 21, 2015
DOCKET	15186
DISPOSITION	reversed
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, granting defendants Robin Wong and Jade Kee Wholesale LLC's motion to quash plaintiff's third-party subpoena.
STANDARD OF REVIEW	The Appellate Division reviewed the order for legal error and reversed on the law.
PRECEDENTIAL VALUE	Published intermediate appellate decision; binding precedent within the First Department unless overruled or otherwise limited.
PARTIES	Harold Levinson Associates, Inc. v. Robin Wong, Jade Kee Wholesale LLC

TOPICS

- discovery dispute
- appellate procedure
- commercial litigation
- civil procedure

PRACTICE AREAS

civil procedure

commercial litigation

discovery

QUESTIONS PRESENTED

1. Whether defendants established that the records sought by plaintiff's third-party subpoena were utterly irrelevant to the action.
2. Whether the subpoena provided sufficient notice of the circumstances or reasons underlying the request under CPLR 3101(a)(4).
3. Whether the prior denial of plaintiff's overbroad motion to compel discovery required the court to quash the narrower subpoena at issue.

HOLDINGS

1. Defendants did not establish that the subpoenaed records were utterly irrelevant to the action; therefore, the motion to quash should not have been granted on that basis.
2. The subpoena was not subject to quashing for inadequate notice because defendants had sufficient notice of the circumstances or reasons underlying the request.
3. The prior denial of plaintiff's motion to compel discovery as overbroad did not require quashing the subpoena because the discovery sought in the subpoena was narrower than the material previously sought.

FACTUAL BACKGROUND

Harold Levinson Associates sought records through a third-party subpoena in the underlying action. Robin Wong and Jade Kee Wholesale LLC moved to quash the subpoena, arguing that the requested records were irrelevant and that the subpoena did not provide sufficient notice of the circumstances or reasons for the request. The subpoena at issue sought narrower discovery than material previously requested by plaintiff, which had been denied as overbroad.

PROCEDURAL HISTORY

Supreme Court, New York County, entered an order on April 7, 2014 granting defendants' motion to quash a third-party subpoena. The Appellate Division unanimously reversed on the law, awarded costs, and denied the motion.

DISPOSITION

reversed

CASES CITED

- Matter of Kapon v Koch, 23 NY3d 32, 34 [2014]
- Nacos v Nacos, 124 AD3d 462, 463 [1st Dept 2015]

OPINION

PER CURIAM.

Harold Levinson Assoc., Inc. v Wong (2015 NY Slip Op 04391) Harold Levinson Assoc., Inc. v Wong 2015 NY Slip Op 04391 Decided on May 21, 2015 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on May 21, 2015 Tom, J.P., Friedman, DeGrasse, Richter, Kapnick, JJ. 15186 150969/13 [*1] Harold Levinson Associates, Inc., Plaintiff-Appellant, — vChristopher Wong, et al., Defendants, Robin Wong, et al., Defendants-Respondents.

Baker Botts L.L.P., New York (Joseph Perry of counsel), for appellant. Wickham, Bressler & Geasa, P.C., Mattituck (Eric J. Bressler of counsel), for respondents. Order, Supreme Court, New York County (Joan M. Kenney, J.), entered April 7, 2014, which granted the motion of defendants Robin Wong and Jade Kee Wholesale LLC to quash plaintiff's third-party subpoena, unanimously reversed, on the law, with costs, and the motion denied.

Defendants failed to establish that the records sought were "utterly irrelevant" to the instant action (Matter of Kapon v Koch, 23 NY3d 32, 34 [2014]), and they had sufficient notice of "the circumstances or reasons" underlying the subpoena request (CPLR 3101[a][4]; see Nacos v Nacos, 124 AD3d 462, 463 [1st Dept 2015]). Contrary to defendants' contention, the motion court's prior denial of plaintiff's motion to compel discovery as overbroad does not require granting the motion to quash, as the discovery sought in the subpoena at issue was narrower than the material previously sought.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: MAY 21, 2015 CLERK