

[\*1]

<b>Tsunis Gasparis LLP v Ring</b>
2022 NY Slip Op 50070(U)
Decided on January 26, 2022
Supreme Court, Suffolk County
Emerson, J.
Published by <a href="#">New York State Law Reporting Bureau</a> pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on January 26, 2022

Supreme Court, Suffolk County

<b>Tsunis Gasparis LLP, Plaintiff,</b>
<b>against</b>
<b>Christopher P. Ring, CHERYL A. BLISS AND CHRISTOPHER P. RING ESQ. P.C., Defendants.</b>

Index No. 614480-19

TSUNIS GASPARIS LLP

Plaintiff Pro Se

CAMPOLO, MIDDLETON & McCORMICK, LLP

Attorneys for Defendants

4175 Veterans Memorial Hwy., Suite 400

Ronkonkoma, New York 11779

Elizabeth H. Emerson, J.

**Upon the following papers read on this motion to quash ; Notice of Motion and supporting papers 33-43 ; Notice of Cross Motion and supporting papers; Answering Affidavits and supporting papers 44-75 ; Replying Affidavits and supporting papers 76 ; it is,**

**ORDERED** that this motion by the defendants for a protective order and for an order [\*2] quashing subpoenas served on Jones, Little & Co. CPAs LLP, M & T Bank, and T.D. Bank is granted insofar as the defendants seek disclosure of income tax returns, of documents prior to July 26, 2013, and of documents related to Attonito & Ring; and it is further

**ORDERED** that the motion is otherwise denied.

The court finds that, contrary to the defendants' contentions, the plaintiff satisfied the notice requirement found in **CPLR 3101 (a) (4)**.

Contrary to the plaintiff's contentions, the defendants have standing to challenge the subpoenas. **CPLR 3103 (a)** was amended in 2013 to allow any party or any person "about whom discovery is sought" to move for a protective order (*see, Connors, Practice Commentaries*, McKinney's Cons Laws of NY, Book 7B, CPLR C3103:1 at 94). **AQ Asset Mgt. LLC v Levine** (111 AD3d 245 [1st Dept]), upon which the plaintiff relies, is not binding on this court. Moreover, it relies on **Matter of Shapiro v Chase Manhattan Bank, N.A.** (53 AD2d 542 [1st Dept]), a case that was decided in 1976, well before the 2013 amendment to CPLR 3103 (a), and which involved a subpoena issued by a Special Assistant Attorney General. While New York courts have held that bank customers have no proprietary interest in the records kept by the banks with which they do business, the vast majority of those cases involved subpoenas issued in conjunction with grand-jury investigations, or they were incidental to a government entity's investigatory activities (7C **Carmody-Wait 2d** § 54:141 [online version]). **Hyatt v State of Cal. Franchise Tax Bd.**, (105 AD3d 186), upon which the plaintiff also relies, involved administratively issued subpoenas that were served in New York in connection with a California tax proceeding. The Second Department found that Hyatt had standing to challenge the subpoenas because he had a proprietary interest in the materials they sought. The Second Department also found that, as a party to the underlying tax proceeding, he had standing under CPLR 3103 (a). As parties to this proceeding, the

defendants have standing under CPLR 3103 (a). Accordingly, the court declines to follow **AQ Asset Mgt. LLC v Levine**(*supra*).

A subpoena should not be quashed when the documents sought are "material and necessary" to the prosecution or defense of an action (**El-Gamal v Sikander**, Sup Ct, NY County, Sept. 30, 2014, Oing, J. [2014 WL 4952073], *citing Matter of Kapon v Koch*, 23 NY3d 32, 38). It is well-settled, however, that a subpoena duces tecum may not be used for the purpose of discovery or to ascertain the existence of evidence. Rather its purpose is to compel the production of specific documents that are relevant and material to facts at issue in a pending judicial proceeding (**Id.**, *citing Matter of Terry D.*, 81 NY2d 1042, 1044). An overly broad subpoena may not be used as a substitute for pretrial discovery (**Id.**, *citing Soho Generation of New York, Inc. v Tri-City Ins. Brokers, Inc.*, 236 AD2d 276, 277).

The court finds that the plaintiff's subpoenas are overly broad insofar as they seek documents beyond the six-year statute of limitations, documents related to Attonito & Ring (the defendant Christopher Ring's former law firm), and tax returns. In addition, the plaintiff has failed to make a strong showing that the information contained in the tax returns is indispensable to its claims and cannot be obtained from other sources (*see, Levine v City Med. Assoc., P.C.*, 108 AD3d 746, 747). Accordingly, the motion is granted to the extent indicated.

**Dated: January 26, 2022**

**J.S.C.**

[Return to Decision List](#)