SLARSKEY LLC / 420 Lexington Ave, Suite 2525 / New York, NY 10170

Renee Bea
(646) 893-6083 (o)
rbea@slarskey.com

July 6, 2022

VIA NYSCEF
Hon. Joel M. Cohen
Justice of the Supreme Court
60 Centre Street
New York, NY 10007

Re: Pursuit Credit Special Opportunity Fund, LP v. KrunchCash LLC et al., Index No. 650701/2022 (Sup. Ct. N.Y. Cty.)

Dear Justice Cohen,

We represent Plaintiff Pursuit Credit Special Opportunity Fund, LP ("Pursuit") in the above referenced action, and write to request a telephonic conference pursuant to Commercial Division Rules 7 and 14. Pursuit requires the Court's intervention to deal with defendants' attempt to frustrate a non-party subpoena duly issued in Florida for bank records relating to accounts maintained and controlled by defendants KrunchCash, LLC ("KrunchCash"), KC PCRD Fund, LLC ("KC PCRD"), and Jeffrey Hackman ("Hackman") (together "KrunchCash Parties").

Pursuit's allegations center on defendants' fraud and gross mismanagement of more than $10 million—and ***every dollar and transaction at issue*** flowed through KrunchCash's and KC PCRD's bank accounts. Despite the obvious relevance of the bank records to this action, and the fact that the nonparty bank has no objection to producing them, defendants prematurely declared an impasse and lodged a frivolous motion to quash in Florida to delay production of the records.

Defendants' plainly pretextual objections to the subpoena are that the bank records are "not at issue" because this Court has not yet determined relevance, and that the records contain sensitive information requiring a protective order—which, notably, defendants refused to discuss with Pursuit before filing the motion to quash. (*See* Ex. 1 (Defs' Motion to Quash).) In doing so, defendants are effectively taking the untenable position that discovery in this case, which will largely center on evidence and witnesses in Florida, will first need to be litigated in New York.

Accordingly, Pursuit seeks a determination of the relevance of the bank accounts and entry of the model form protective order to prevent defendants' abuse of the disclosure process. *See* CPLR 3101 and 3103. Both New York and Florida recognize that the trial court presiding over an action has broad discretion to fashion orders relating to the scope of discovery. CPLR 3103(a); *MSCI Inc. v. Jacob,* 120 A.D.3d 1072, 1075 (1st Dep't 2014) ("A trial court is vested with broad discretion in its supervision of disclosure."); *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. Dist. Ct. App. 2002) ("scope and limitation of discovery is within the broad discretion of the trial court"). And New York "strongly encourages open and full disclosure as a matter of policy." *MSCI Inc.,* 120 A.D.3d at 1075. The bank records sought are central to this action, and while the motion to quash itself will be litigated in Florida, a ruling from *this* Court will aid the disclosure process by mooting defendants' patently pretextual bases to oppose the subpoena.

Summary of the Action and Relevance of Bank Records

This action concerns defendants' fraud and gross mismanagement of Pursuit's $10 million investment, and the following facts are laid out in great detail in the Verified Amended Complaint. (Doc. 14.) Pursuit invested capital into specialty finance entities KrunchCash and KC PCRD, both owned and managed by Hackman, and now seeks to recover its investment and demands an accounting of how its principal and returns were squandered.

Every dollar Pursuit invested or was owed ***flowed through KrunchCash's and KC PCRD's bank accounts*** at First Citizens Bank—the question is, to whom? Pursuit deposited millions of dollars in KrunchCash's and KC PCRD's bank accounts and KrunchCash and Hackman in turn advanced Pursuit's capital through various law firm, plaintiff funding, and pharmacy receivable transactions over several years. Pursuit's investments were governed by a series of agreements, and those agreements created obligations on the part of KrunchCash and KC PCRD with respect to how monies were to be maintained, segregated, invested, and distributed. In addition, KrunchCash and Hackman, who maintain they had no obligation to Pursuit even though the funds flowed through KrunchCash's accounts and were controlled by Hackman, assumed fiduciary responsibilities because they solicited investment capital from Pursuit into KrunchCash's accounts and assumed responsibility for collecting proceeds from advances, including those that were in default.

These investments *appeared* to perform for years until, suddenly, two counterparties to the transactions—LB Pharma and Resnick—defaulted on nearly $10 million in advances. KrunchCash and Hackman have since become embroiled in litigation with the defaulting parties, and through those actions Pursuit discovered that it had been defrauded, and its assets grossly mismanaged, by defendants. Specifically, Pursuit discovered that the profits defendants represented to Pursuit were a lie—and one that was used to solicit *millions of dollars* of additional capital from Pursuit.

LB Pharma, for example, represents at least $6.7 million of outstanding principal owed to Pursuit. Each month, Hackman prepared a "ledger" purporting to show detailed banking transactions and asset performance. While Hackman was always careful to ensure the KC PCRD bank account (which was supposed to hold Pursuit's proceeds) appeared consistent with the false ledger, neither the ledger nor the account balance accurately reflected the performance of the advances or how Pursuit's funds were being used. The **monthly ledger falsely represented that advances to LB Pharma were consistently repaid, and that each advance had been profitable.** Based on the ledger, it falsely *appeared* Pursuit's investment was successful and Hackman was due millions in performance-based compensation.

Through the default litigation concerning the LB Pharma investment, Pursuit learned that, in fact, LB Pharma fell behind on the *very first advance,* and by October 2018, was behind on more than $2.2 million in repayment obligations. (Ex. 2, p. 5-6 (highlighted).) Hackman also falsely represented that these false profits were accruing to Pursuit's principal investment balance and being "reinvested" in future tranches. During that same time frame, **Hackman solicited an additional $3.875 million based on the *false representation* that LB Pharma had been performing** when, in fact, there were shortfalls beginning with the very first tranche. *Id.* And like dominoes, the shortfalls, repeatedly concealed from Pursuit, grew to $6.76 million.

Pursuit has a good faith basis to believe that this pattern repeated itself in the Resnick advances and elsewhere. And the fraud described above does not even touch upon defendants' later improprieties, alleged in the Verified Amended Complaint, which offer additional bases for the relevance of the bank records. Pursuit has challenged the KrunchCash Parties' improper payments to themselves and to defendant McGhie, improper refusal to account for or distribute millions of dollars in proceeds recovered from the LB Pharma and Resnick advances, illegal use of Pursuit's funds to prop up other investors' capital requirements, improper refusal to distribute proceeds from other investments that defendants concede are owed to Pursuit, general mismanagement and misuse of Pursuit's funds, and continued attempts to extort Pursuit to invest additional capital.

These revelations are astounding. Not only did the KrunchCash Parties solicit millions based on false and misleading accounting, but Hackman paid himself millions based on false profits that were, in fact, never realized. Of course, the details of this fraud lie in the bank records, and Pursuit is entitled to investigate those records without the interference of defendants' historical insistence on self-serving redactions to obscure the very fraud that requires investigation.

Procedural History of the Bank Subpoena Dispute

On May 20, 2022, Pursuit served a notice of a non-party subpoena directed to First Citizens Bank & Trust Co. ("First Citizens") seeking, with respect to two accounts belonging to KrunchCash and KC PCRD, documents sufficient to show transactions in the accounts (e.g. bank statements), including the payor and/or payee of each transaction. (Doc. 21.) The subpoena was duly issued in Florida on June 6, and served on First Citizens on June 15. (Ex. 1 at 17-18, 20-21.) On June 17, First Citizens notified KrunchCash and KC PCRD that it intended to comply with the subpoena, and explained that the total fee for producing the records would be $6.00 per account ($12.00 total). (Ex. 1, at 15, 19.) No other burden was identified. *Id.* On June 22, counsel for Pursuit granted First Citizens an extension of time to respond to the subpoena until July 1.

Meanwhile, even before the subpoena was served, on June 3, defendants wrote to Pursuit objecting to the subpoena. Pursuit responded to both defendants and First Citizen explaining, in detail, the relevance of the bank records, and offering to enter into a confidentiality stipulation to placate defendants. (Ex. 1 at 23 (offering six detailed areas of relevant inquiry).) Defendants responded by letter on June 17, claiming the subpoena was premature, and demanding the subpoena be narrowed to the point of obscuring the very information Pursuit requires: transparency into what was *actually* happening with Pursuit's investment capital, both before and after defendants declared the advances to be in default in late 2019.

Before Pursuit was able to respond, on June 23, defendants prematurely declared the parties at an impasse, refusing even to address Pursuit's request for a confidentiality order, so that KrunchCash and KC PCRD could rush to file a patently frivolous motion to quash in Florida to delay disclosure of the bank records. (Ex. 1 at 2-3.) Pursuit requested further meet and confer before the motion was filed, but defendants did not respond to that request. (Ex. 3.) Notably, defendants do not even oppose the production of KC PCRD bank records, but assert that Pursuit may only seek those documents via direct party disclosure, and that the subpoena is premature because the relevance of the bank records has not yet been adjudicated by *this Court*. (Ex. 1 at 3, ¶¶ 6-8.)

Plaintiff Requests a Discovery Determination and a Protective Order

Accordingly, Pursuit comes now before the Court seeking a determination regarding the relevance of the bank accounts, and entry of a protective order. The scope of third-party disclosure is "interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy..." and "imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source." *Kapon v. Koch*, 23 N.Y.3d 709, 711 (2014). "[S]o long as the disclosure sought is relevant to the prosecution or defense of an action, it must be provided by the nonparty." *Id.* Notably, *Kapon* rejected the prior line of cases that required the requesting party to demonstrate special circumstances, in favor of disclosure of relevant information. *Id.* First Citizens does not oppose disclosure, requests only $12.00 for expenses (which Pursuit will pay), and indicated in writing that it would comply with the subpoena unless ordered not to do so. (Ex. 1, at 15, 18.) Thus, it is only defendants who object to the disclosure.

Defendants argue that Pursuit must first battle for the bank records in New York before it can seek production from First Citizens. *First,* this is contrary to New York law, which permits Pursuit to seek the primary records from the bank. *Kapon*, 23 N.Y.3d at 711. *Second,* the KrunchCash Parties's position only underscores that the motion to quash is dilatory because they could volunteer to produce the records themselves, but refuse to do so. Outside of this action, the KrunchCash Parties have long refused any transparency into the banking records, and have made it clear that they will fight any effort to seek unredacted bank records. (*See, e.g.,* Doc. 14, ¶ 39, 145, 147, 153, 226-227.) KrunchCash has refused to provide *any* bank records to Pursuit, asserting that Pursuit should be limited to the very ledgers and accounting records it alleges are misleading in the first place.

The unredacted bank records are necessary and material to this action. Only with full, unredacted records can Pursuit determine whether advances and proceeds represented in Hackman's self-serving "ledger" were accurately presented, and to what extent defendants used commingled funds to obscure defaults and losses, or to improperly satisfy the KrunchCash Parties' debts to others. In light of these material misrepresentations, Pursuit must be permitted to obtain full, unredacted banking records to trace its investment funds, the proceeds from advance recipients, and improper payments to defendants or creditors from those funds.

Respectfully Submitted,

Renee Bea