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Tin Star Development LLC Order on Motion to Partially Quash the Subpoena Directed to Community Bank of the South

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Fulton County Superior Court, Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

TIN STAR DEVELOPMENT LLC, and)
TIN STAR-IRVINE MEMBER LLC,)

Plaintiffs,)

v.)

360-IRVINE, LLC, et al.)

Defendants.)

CAFN: 2015CV260541

**ORDER ON MOTION TO PARTIALLY QUASH THE SUBPOENA DIRECTED TO
COMMUNITY BANK OF THE SOUTH**

This matter is before the Court on Defendants 360 Irvine, LLC, 360-Irvine Member, LLC, 360 Residential, LLC, Jeff D. Warsaw, and Clark Butler’s (collectively as “Movants”) Motion to Partially Quash the Subpoena Directed to Community Bank of the South. Upon consideration of the Motion and briefs submitted, the Court finds as follows:

The subject matter of this litigation concerns the commercial development of a property (the “Project”). Plaintiffs claim Defendants mishandled money, used funds designated for the Project for the benefit of unrelated projects, paid themselves and their affiliates kickbacks, deprived Plaintiffs of information concerning the Project, and ultimately committed fraud. Plaintiffs served a subpoena on non-party Community Bank of the South (“Subpoena”) requesting the production of all documents and communications pertaining to eight separate LLCs, including some of the named Defendants as well as non-parties. Four of these LLCs were formed solely for financing and developing the Project: Fusion Mezzanine Lending, LLC, Fusion Property Owner, LLC, Fusion Developer, LLC, and 360-Irvine, LLC (collectively, the “Single Use LLCs”). These four LLCs are not challenging the Subpoena. However, Movants seek to partially quash the Subpoena in regards to four other LLCs: three non-parties, 360

Developer, LLC, Warshaw Residential, LLC, and Butler Residential, LLC as well as Defendant 360 Residential, LLC (the “Multi-Use LLCs”). The Multi-Use LLCs were involved in the Project as well as additional unrelated projects. The non-party Multi-Use LLCs are fully owned and operated by some Defendants.

Movants claim the Subpoena is overbroad because it seeks financial information from Multi-Use LLCs unrelated to the Project. Further, Movants state that “[a]ll bank statements of [Defendant] 360 Residential, LLC have already been provided to the Plaintiff’s counsel via prior productions, leaving the Project-related transactions but with redactions of transactions that were not related to the Project.” Movants also state that non-parties Warshaw Residential, LLC and Butler Residential, LLC do not have direct transactions with the Single-Use LLCs. The non-parties have not filed objections to the Subpoena. Movants ask the Court (1) to quash the Subpoena as to the Multi-Use LLCs, (2) to require Plaintiffs to first examine the Single Use LLCs’ records produced by Community Bank of the South, and (3) to allow the Subpoena to stand against the Multi-Use LLCs only if Plaintiffs are able to demonstrate some articulable basis for the discovery.

Under O.C.G.A. 9-11-26(b)(1), parties may generally obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. The threshold for purposes of O.C.G.A. § 9-11-26(b)(1) is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The same standard applies to non-parties. O.C.G.A. § 9-11-34(c)(1). “As with discovery requested from parties, the only requirement placed by the Georgia legislature on discovery requested from nonparties is that the documents must be relevant and nonprivileged.” *Sechler Family P’ship v. Prime Grp., Inc.*, 255 Ga. App. 854, 857 (2002) “[T]he competing interest in an individual’s

right to privacy must be accommodated in the discovery process.” *Borenstein v. Blumenfeld*, 151 Ga. App. 420, 421 (1979) (determining privacy concerns outweighed *de minimis* relevance of individual’s federal tax returns). “[F]inancial privacy has been held to be a right subject to protection when the requested information serves no real purpose.” *Sechler* at 859.

Here, the Subpoena requests nonprivileged, relevant information. An allegation in this case is that Defendants used funds designated for the Project to pay expenses on Defendants’ other projects. Thus, the funding of other projects through affiliates would be relevant to the claims asserted. Plaintiffs are not required to rely on Movants’ representations that the financial records for other projects are not relevant. Although the Subpoena seeks financial information, there is no evidence the Subpoena is meant to merely embarrass or harass the Multi-Use LLCs.

Further, any concerns as to privacy can be adequately protected through the entry of a confidentiality order. “When parties or nonparties contend that discovery requests unduly invade their privacy, suitable protective orders insuring confidentiality may be sought.” *Sechler Family P’ship v. Prime Grp., Inc.*, 255 Ga. App. 854, 859 (2002). The parties stipulated to four extensions to respond to this Motion for the purpose of negotiating a proposed protective order but were unable to reach an agreement. The record does not reflect that any of the parties have individually requested such an order from the Court.

As the information sought by the Subpoena is nonprivileged and relevant to the subject matter of this litigation, Defendants’ Motion to Partially Quash the Subpoena Direct to Community Bank of the South is **DENIED**.

SO ORDERED this 1 day of September, 2016.



JUDGE JOHN J. GOGER
Superior Court of Fulton County
Atlanta Judicial Circuit

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