

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,	:	
	:	
Plaintiff	:	CIVIL ACTION NO.
v.	:	3:16-cv-00678 (MPS)
	:	
DANIEL GREER,	:	
YESHIVA OF NEW HAVEN, INC.,	:	
	:	
Defendants	:	August 25, 2017
	:	
	:	

**EMERGENCY MOTION FOR SEQUESTER AND TURNOVER OF PERSONAL
FINANCIAL DOCUMENTS
IMPROPERLY PRODUCED BY START COMMUNITY BANK**

Pursuant to L. R. Civ. P. D. Conn. 7, the Standing Protective Order in this case (ECF No. 4), and applicable state and federal law concerning privacy of banking and other personally identifiable information, non-parties Edgewood Village, Inc., F.O.H., Inc.¹, Edgewood Corners, Inc., Edgewood Elm Housing, Inc., and Yedidei Hagan, Inc. (“Account Holders”) hereby move for an order directing plaintiff, Eliyahu Mirlis (“Plaintiff”) to immediately sequester and turn over to them documents improperly produced by Start Community Bank to Plaintiff, who only requested production of records concerning Yeshiva of New Haven, Inc. (“YNHI”).²

Because of the extremely sensitive nature of what has occurred, the Account Holders request: (a) that this matter be addressed at the telephonic status conference scheduled for 2:00 PM on August 30, 2017; and (b) an interim order requiring the

¹ As the Court may recall, Edgewood Village, Inc. and F.O.H. Inc. initially were defendants in this case, but were dropped from the complaint shortly before the start of trial.

² Plaintiff’s subpoena to Start Community Bank (Exhibit A) did not request the documents improperly produced. Because the subpoena was specifically limited to the records of YNHI, the Account Holders had no notice, no opportunity, and no reason to seek a protective order, as they had basis to believe a bank would release financial records that were not the subject of the subpoena.

sequester of the improperly produced documents until this matter can be properly briefed and heard by the Court.

Counsel for the Account Holders has spoken with Matthew Beatman, counsel for Plaintiff, regarding the documents that have been produced by Start Community Bank. Attorney Beatman has agreed to honor certain interim restrictions regarding the documents at issue, as a courtesy and accommodation to opposing counsel and the Court, and in light of the fact that there is already a status conference scheduled in this case for August 30, 2017 ("the Status Conference"). Specifically, Attorney Beatman has agreed that his office, as well as Plaintiff or any other attorney for Plaintiff, will either (1) refrain completely from review of the documents produced by Start Community Bank, until after the Status Conference and/or further order of the Court, or (2) only review Start Community Bank documents relating to judgment debtors (i.e., not the Account Holders), so that the matter may be addressed by the parties-in-interest at the Status Conference. Attorney Beatman's agreement is without prejudice to Plaintiff's right to contest the merits of this motion, any interim relief or other effort to otherwise challenge Plaintiff's rights to use any of the documents produced by Start Bank to the Plaintiff.

In support hereof, the Account Holders submit the following:

I. FACTUAL AND PROCEDURAL BACKGROUND

On June 6, 2017, judgment entered against Defendants in the amount of \$21,749,041.00 (the "Judgment"). On July 10, 2017, Plaintiff filed his Application for Writ of Execution on Financial Institution ("Greer Application"; ECF No. 174) and Application for Writ of Execution of Financial Institution ("Yeshiva Application"; ECF No. 176) (collectively, "the Applications"). On July 31, 2017, Plaintiff filed his Memorandum in Opposition of Defendant's Motion for New Trial or, in the Alternative, Remittitur (ECF No. 185).

On August 1, 2017, Plaintiff filed its Motion for Order Directing Clerk to Issue Writs of Execution (the “Motion for Order”), seeking the Court to direct the clerk to issue writs of execution pursuant to the Applications on grounds that the pending New Trial Motion should not stay or affect the enforcement of the Judgment. On August 3, 2017, Plaintiff filed his *Motion to Take Deposition from Daniel Greer* (the “Motion for Deposition”).

On August 4, 2017, the Plaintiff served several subpoenas on various banks requesting records of the Defendants in this case. Because the subpoenas were limited to the seeking records of judgment debtors, it would not have been appropriate for the Defendants (or non-parties) to seek a protective order.

On August 7, 2017, this Court entered its an Order to Show Cause relating to Plaintiff’s Motion for Order and Motion for Deposition (the “Order to Show Cause”, ECF No. 188). On August 21, 2017, Defendants filed their response to the Show Cause Order and proposed a plan of action for post-judgment discovery (the “Response to Order to Show Cause”, ECF No. 191). In their Response to Order to Show Cause, Defendants proposed a plan to comply with Plaintiff’s post-judgment discovery and to protect the confidentiality of Defendants’ personal financial information, prevent public disclosure in contravention of the Court’s standing protective order and protect the privacy of non-debtor individuals and entities. ECF No. 191.

The Court, as noted above, has scheduled a telephonic status conference for August 30, 2017 at 2:00 to address the Order to Show Cause and Defendants’ Response thereto.

II. START COMMUNITY BANK PRODUCED DOCUMENTS OUTSIDE THE SCOPE OF THE SUBPOENA AND RELATED TO INDIVIDUALS AND ENTITIES THAT ARE NOT JUDGMENT DEBTORS

Plaintiff served nine subpoenas on various financial institutions seeking the production of documents concerning Defendants’ banking activity. One of the nine was directed to Start

Community Bank of New Haven. A copy of the Start Community Bank subpoena ("the Subpoena") is attached hereto as Exhibit A. As set forth in the Subpoena, Plaintiff requested "[a]ll Documents Concerning any accounts that the Yeshiva has or has had with You from August 1, 2013, to present..." Exhibit A at Document Request 1. The Subpoena was appropriately limited in scope as "Yeshiva" is defined therein as "defendant Yeshiva of New Haven, Inc." Exhibit A at Definition 6.

Start Community Bank apparently ignored this clear language limiting the request to account documents for accounts held by defendant/judgment debtor Yeshiva of New Haven, Inc. The Account Holders learned on August 24, 2017 that, in addition, the Bank also produced documents concerning accounts held by each of the five Account Holders – all of whom are *not* judgment debtors. This production was made by Start without prior notice to the non-party Account Holders (and, obviously, without their consent).

Start Community Bank's production of the Account Holders' documents also violated Connecticut laws specifically intended to protect the privacy of banking customers' financial records. Pursuant to Conn. Gen. Stat § 36a-42 and §36a-43, a bank is prohibited from disclosing a customer's financial records, but may do so (only) pursuant to a lawful subpoena. If a subpoena is served, a bank may disclose account records only "if the party seeking the records causes such subpoena, summons, warrant or court order or a certified copy thereof to be served upon the customer whose records are being sought, at least ten days prior to the date on which the records are to be disclosed." Conn. Gen. Stat. § 36a-43. The subpoena in question (which did not even ask for the Account Holders' records) was *not* served upon the customers whose records the bank ultimately produced, and the Account Holders had *no* opportunity – much less

the required 10-day window – to object and assert their privacy rights. Thus, the records were produced in violation of Conn. Gen. Stat. § 36a-42.

In sum, the Plaintiff has absolutely no claim of lawful possession of the Start Community Bank records at issue. He never requested them (and would have had no legal basis to request account records of non-judgment debtors); the bank produced them in violation of Connecticut law – both in substance and procedure; and that production clearly violated the statutory privacy rights of the moving parties, the Account Holders.

III. RELIEF REQUESTED

The Account Holders seek an order directing the Plaintiff to (i) immediately sequester and turn over to the relevant parties all documents (including originals and copies) produced by Start Community Bank other than concerning YNHI; and (ii) to permanently delete any electronic copies of the same.

For the reasons set forth more fully in Defendants’ Response to Order to Show Cause, (ECF No. 191), which are incorporated herein by reference, the Account Holders seek an order (i) directing that all documents produced by Start Community Bank (or any other bank) be kept private and not released to the public in accordance with the Standing Protective Order [ECF No. 4] entered in this case, as well as federal laws protecting financial information from public disclosure. *See* Fed. R. Civ. P. 26(c)(1)(A); and (ii) designating such documents “confidential – attorneys’ eyes only” to ensure no confidential information is “accidentally” leaked to the public.

Alternatively, if the Court wishes to hear argument on this matter or requests further briefing, the Account Holders respectfully request that the Court enter an interim order providing the relief requested herein and allow the parties an opportunity to address this matter along with the discovery matters to be discussed at the status conference scheduled for August 30, 2017.

WHEREFORE, for the foregoing reasons, non-party movants respectfully submit that the relief requested above should be granted, in full or in part.

**NON-PARTY MOVANTS,
EDGEWOOD ELM HOUSING, INC.
EDGEWOOD VILLAGE, INC.
EDGEWOOD CORNERS, INC.
F.O.H. INC.
YEDIDEI HAGAN, INC.**

By: /s/ David T. Grudberg
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Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing Emergency Motion for Sequester and Turnover was filed electronically on August 25, 2017. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/ David T. Grudberg
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