

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,	:	CIVIL ACTION NO.
	:	
Plaintiff	:	3:16-cv-00678 (MPS)
	:	
v.	:	
	:	
DANIER GREER AND YESHIVA	:	October 17, 2017
OF NEW HAVEN, INC.,	:	
	:	
Defendants	:	

DEFENDANTS’ MOTION FOR PROTECTIVE ORDER

Pursuant to Fed. R. Civ. P. 26(c), defendant Daniel Greer (“Greer”) and the Yeshiva of New Haven, Inc. (the “Yeshiva”, or, together with Greer, the “Defendants”) hereby move this Court for entry of a protective order with respect to depositions upon oral examination of Greer individually and as agent of the Yeshiva presently scheduled for October 30, 2017 (the “Depositions”). In support hereof, Defendants submits as follows:

I. BACKGROUND

1. On June 6, 2017, judgment entered against Defendants in the instant proceeding in the amount of \$21,749,041.00 (the “Judgment”).
2. On June 27, 2017, Plaintiff served post-judgment interrogatories on Defendants. Defendants responded to the same on August 28, 2017.
3. On June 28, 2017, Defendants filed a *Motion for New Trial or, in the Alternative, Remittitur* (the “New Trial Motion”; ECF No. 172) pursuant to Fed. R. Civ. P. 59.
4. On July 10, 2017, Plaintiff filed an *Application for Writ of Execution on Financial Institution* (the “Greer Application”; ECF No. 174) and *Application for Writ of Execution of*

Financial Institution (the “Yeshiva Application”; ECF No. 176) (together with the Greer Application, the “Applications”).

5. 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).

6. On August 1, 2017, Plaintiff filed its *Motion for Order Directing Clerk to Issue Writs of Execution* (the “Motion for Order”; ECF No. 186), requesting that the Court 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.

7. On August 3, 2017, Plaintiff filed his *Motion to Take Deposition from Daniel Greer* (the “Motion for Deposition”; ECF No. 187).

8. On August 7, 2017, this Court entered an Order to Show Cause (ECF No. 188) requiring Defendants to show cause why the Court should not grant the relief prayed for in the Motion for Order and Motion for Deposition.

9. On August 21, 2017, Defendants filed their *Response to (1) Court’s Order to Show Cause, (2) Plaintiff’s Motion for Order Directing Clerk to Issue Writs of Execution, and (3) Plaintiff’s Motion to Take Deposition from Daniel Greer* (the “Greer Response”; ECF No. 191).

10. The Greer Response proposed a plan of action for post-judgment discovery that would comply with Plaintiff’s post-judgment discovery rights and 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.

11. The Greer Response further provided that, while Defendants do not object to Plaintiff’s Motion for Deposition in principle, the subject matter should be limited to post-

judgment and collection related matters, and an appropriate protective order should enter to ensure the transcript of the deposition does not become public.

12. Subsequently, Defendants were made aware that certain documents relating to non-parties Edgewood Village, Inc., F.O.H. Inc., Edgewood Corners, Inc., Edgewood Elm Housing, Inc., and Yedidei Hagan, Inc. (the “Account Holders”) were improperly disclosed by Start Community Bank to Plaintiff pursuant to a subpoena requesting production of records solely concerning the Yeshiva.

13. As such, Defendants filed a *Motion for In Camera Review of Defendants’ Responses to Plaintiff’s Post-Judgment Interrogatories* (the “Motion for In Camera Review”; ECF No. 195) and an *Emergency Motion for Sequester and Turnover of Personal Financial Documents Improperly Produced by Start Community Bank* (the “Motion to Sequester”; ECF No. 197).

14. On August 28, 2017, a telephonic status conference that was scheduled for August 30, 2017 was cancelled. As such, currently pending before the Court is Plaintiff’s Motion for Order and Motion for Deposition, and Defendants’ Motion for In Camera Review and Motion to Sequester.

15. On October 6, 2017, Plaintiff served Notices of Depositions with respect to Greer and the Yeshiva.

16. The State of Connecticut has commenced a criminal proceeding against Greer in the Connecticut Superior Court, New Haven GA 23 styled *State of Connecticut v. Greer*, Docket No. N23N-CR17-0177934-S (the “Criminal Matter”).

II. RELIEF REQUESTED

17. Defendants have agreed to make Greer available for post-judgment depositions of himself and as agent of the Yeshiva. However, Defendants request that a protective order enter pursuant to Fed. R. Civ. P. 26(c) that:

- a. Limits the scope of the Depositions to post-judgment and collection issues pursuant to Fed. R. Civ. P. 26(c)(1)(D);
- b. Requires that the Depositions be sealed and opened only on court order pursuant to Fed. R. Civ. P. 26(c)(1)(F);
- c. Prohibits the disclosure of Defendants' financial information to anyone other than attorneys (or their agents, such as an accountant) for Plaintiff so that third parties cannot access Defendants' private information;
- d. Prohibits the use of Defendants' financial information or deposition testimony outside the context of post-judgment discovery in this specific litigation; and
- e. Provides additional protections to ensure Greer's Fifth Amendment immunities are preserved.

III. BASIS FOR RELIEF REQUESTED

A. Protective Orders, Generally

18. Fed. R. Civ. P. 26 provides that, “[a] party or any person from whom discovery is sought may move for a protective order in the court where the action is pending – or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken.... The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....” Fed. R. Civ. P. 26(c)(1).

19. The court has “substantial latitude to fashion protective orders,” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984); *Dove v. Atl. Capital Corp.*, 963 F.2d 15, 19 (2d Cir. 1992) (“[t]he grant and nature of protection is singularly within the discretion of the district court”) (internal quotations and citation omitted). “The text of Rule 26(c) is construed liberally to include a wide range of potential harms not explicitly listed.” *Dongguk Univ. v. Yale Univ.*, 270 F.R.D. 70, 73 (D. Conn. 2010).

20. However, a court may issue a protective order only upon a demonstration of “good cause” by the movant – i.e. a showing that a “‘clearly defined, specific and serious injury’ will occur in the absence of a protective order.” *DaCosta v. City of Danbury*, 298 F.R.D. 38, 38 (D. Conn. 2014) (citations omitted).

21. “To establish good cause under Rule 26(c), courts require a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.... Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Burgess v. Town of Wallingford*, 2012 WL 4344194, at *6 (D. Conn. Sep. 21, 2012) (citations and quotation marks omitted).

B. Good Cause Exists to Enter a Protective Order as Defendants’ Have a Right to Privacy in Personal Financial Information

22. The Defendants here assert that good cause exists to enter a protective order so as to prevent the disclosure of personal financial information beyond the confines of the instant case.

23. “The Second Circuit, on several occasions, has held that an individual has a privacy interest in certain personal matters. For example, in *Barry* [*v. City of New York*, 712 F.2d 1554 (2d Cir. 1983)] and its progeny, the Second Circuit held that individuals have a

fundamental right to privacy in their personal financial information.” *Sec. Indus. & Fin. Markets Ass’n v. Garfield*, 469 F. Supp. 2d 25, 35 (D. Conn. 2007).

24. A protective order limiting the disclosure of Defendants’ private financial information is necessary to prevent Plaintiff from providing Defendants’ private financial information to third-parties for purposes of harassment. *Sullivan v. StratMar Systems, Inc.*, 276 F.R.D. 17 (D. Conn. 2011) (parties ordered to submit joint motion for protective order limiting disclosure of sensitive financial information in order to protect against any possible misuse or sabotage); *Bonin v. World Umpires Ass’n*, 204 F.R.D. 67, 70 (E.D. Pa. 2001) (court entered protective order limiting disclosure and use of any financial information produced and not otherwise in public domain from an independent source on grounds that Fed. R. Civ. P. 26(c) permits court to make “any order which justice requires to protect” respondent from annoyance and oppression.); *State Farm Mut. Auto. Ins. Co. v. Physiomatrix, Inc.*, 2013 WL 10572229, at *3 (E.D. Mich. Aug. 13, 2013) (“...sensitive financial information should not be routinely disclosed in discovery, at least not without an adequate protective order.”)

25. Plaintiff should not be permitted to reveal, leak, or otherwise disclose Defendants’ private financial information for any purpose, including, but not limited to, dissemination of Defendants’ private financial information or deposition testimony to members of the media. Throughout the duration of this case, certain media outlets have repeatedly published slanderous and disparaging articles directed at Defendants. Further, on more than one occasion, financial institutions have disclosed private financial information of the Defendants to unrelated third parties. Specifically, Washington Trust Bank provided unsolicited information concerning Defendants’ banking activities to unrelated third parties, and Start Bank disclosed financial

documents of non-parties to Plaintiff. Thus, a protective order is vital to prevent repeated, continued, or further harassment.

C. Good Cause Exists to Enter a Protective Order in Light of Pending Criminal Matter Against Defendant Greer

26. Entry of a protective order is particularly important given the pendency of the Criminal Matter. It would be both unfair and inappropriate for Greer to agree to sit for a deposition only to have his deposition testimony used against him in other proceedings or to invoke a waiver of a Fifth Amendment privilege.

27. It is well settled that the privilege against self-incrimination may be asserted in connection with civil litigation. *Camelot Group, Ltd. v. W.A. Krueger Co.*, 486 F. Supp. 1221 (S.D.N.Y. 1980) (citing *Kastigar v. United States*, 406 U.S. 441, 444 (1972)).

28. In order to assert the Fifth Amendment privilege, a witness must have “reasonable cause to apprehend danger from a direct answer.” *Hoffman v. United States*, 341 U.S. 479, 486 (1951); *Camelot Group*, 486 F. Supp. at 1226. Courts construe the privilege broadly – it is not required that criminal charges actually be pending, and most courts do not require criminal prosecution to be probable, but only possible. *State v. Williams*, 200 Conn. 310, 319 (1986) (citing *In re Folding Carton Antitrust Litigation*, 609 F.2d 867 (7th Cir. 1979)); *In re Master Key Litigation*, 507 F.2d 292, 293 (9th Cir. 1974).

29. Accordingly, here, where criminal charges *are* in fact pending, Greer is entitled to assert his Fifth Amendment privilege in response to Plaintiff’s deposition questions.

Accordingly, Defendants request that the Court not grant Plaintiff’s Motion for Deposition until after the Criminal Matter has been resolved, unless an appropriate protective order is put in place. A copy of Defendants’ proposed protective order is attached hereto as Exhibit A.

30. Defendants further submit that, pursuant to Fed. R. Civ. P. 26(c)(1)(D), the scope of the examination should be narrowly limited to the relevant subject matter: Defendants' assets and related financial activity within the relevant time frame. Plaintiff should not be permitted to inquire into factual issues relating in any way to liability as to which Greer retains a valid Fifth Amendment privilege.

31. Likewise, Plaintiff should not be permitted to engage in a fishing expedition as to the assets of entities against which he does not hold judgments (i.e. the corporate entities that were initially named as defendants in the instant case but were dropped from the case by Plaintiff shortly before trial). If Plaintiff believes he has valid claims against third-party entities, he may bring such claims separately and should not be permitted to investigate the same through the Depositions.

32. Defendants assert that it is important to establish clear limitations in advance as to the permissible scope of inquiry, and that placing appropriate limits in advance will help eliminate the need for future intervention by the Court.

WHEREFORE, for all of the foregoing reasons, the Court should grant Defendants' Motion for Protective Order and provide such further relief as this Court deems just and proper.

Respectfully submitted,
DEFENDANTS,
Daniel Greer and the Yeshiva of New Haven, Inc.

By: /s/ Jeffrey M. Sklarz
Jeffrey M. Sklarz
Lauren McNair
Green & Sklarz LLC
700 State Street, Suite 100
New Haven, CT 06511
(203) 285-8545
Fax: (203) 823-4546
jsklarz@gs-lawfirm.com
lmcnair@gs-lawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below a copy of the foregoing was served by CMECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

Date: October 17, 2017

/s/ Jeffrey M. Sklarz