UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff, No. 3:16-cv-00678 (MPS)

v.

DANIEL GREER, ET AL.

Defendants.

OBJECTION TO MOTION FOR PROTECTIVE ORDER

The plaintiff, Eliyahu Mirlis ("Mirlis" or "Plaintiff"), hereby objects to the Defendants' Motion for Protective Order (Doc. No. 203) (the "Motion") filed by the defendants, Daniel Greer ("Greer") and the Yeshiva of New Haven, Inc. (the "Yeshiva" and together with Greer, "Defendants"), in the above captioned action. In support of his Objection, Mirlis states as follows:

I. FACTUAL BACKGROUND

A. Relevant Procedural History

On June 6, 2017, following a jury verdict in favor of Mirlis, the Court entered a judgment against the Defendants in the above-captioned case in the total amount of $21,749,041.00 for, *inter alia*, unrelenting conduct of a predator who sexually molested a minor child and the failure of an educational institution to protect that child (this judgment and any amendment or modification thereto if any hereinafter collectively referred to as the "Judgment"). The Judgment remains unsatisfied, and Defendants have paid nothing.

On July 10, 2017, Plaintiff filed (1) the Application for Writ of Execution Financial Institution (Doc. No. 174) (the "Greer Application") and the Application for Writ of Execution Financial Institution (Doc. No. 176) (the "Yeshiva Application" and together with the Greer

Application, the "Applications") seeking writs of execution to collect payments from financial institutions regarding the judgment debt owed by Greer and the Yeshiva. No bond or other security for the Judgment has been posted by Defendants. Because the writs of execution were not issued by the Clerk, Plaintiff filed the Motion for Order Directing Clerk to Issue Writs of Execution (Doc. No. 186) (the "Execution Motion") on August 1, 2017, which seeks an order directing the Clerk to issue writs of execution pursuant to the Applications.

Plaintiff also filed the Motion to Take Deposition of Daniel Greer (Doc. No. 187) (the "Deposition Motion") on August 3, 2017, seeking to take the deposition of Greer in aid of Plaintiff's efforts to collect the Judgment from Defendants. On August 7, 2017, the Court issued an Order to Show Cause (Doc. No. 188) (the "Show Cause Order"), ordering Defendants "to show cause why the Court should not grant the relief prayed for in the [Execution Motion] and in the [Deposition Motion] to take deposition of Daniel Greer[]" on or before August 21, 2017. On August 21, 2017, Defendants filed their response to the Order to Show Cause. The Court scheduled a telephonic status conference for August 30, 2017 to consider these matters, but the Court cancelled the status conference, and it has not yet been rescheduled. While the Execution Motion and Deposition Motion remain pending before the Court, however, the parties have informally reached an agreement on the Deposition Motion that permits the deposition of Mr. Greer to be taken by Mr. Mirlis by consent while preserving Mr. Greer's right to seek a protective order on certain grounds (but not on the basis that his deposition had been previously taken). No agreement on the Execution Motion has been reached, and it will require adjudication by the Court.

B. Defendants Have Repeatedly Sought to Have Information Kept Confidential without Any Basis

On June 27, 2017, Plaintiff served post-judgment interrogatories upon Defendants using the Connecticut Superior Court form. The Court extended deadline for Defendants to respond to these post-judgment interrogatories on August 28, 2017. Defendants responded to the post-judgment interrogatories on August 28, 2017, under penalty of false statement, but designating their entire response, to be **CONFIDENTIAL- Attorneys' Eyes Only**. Plaintiff requested this designation be removed from the responses in writing and met and conferred with Defendants' counsel. Subsequently, Defendants' counsel changed the designation to **CONFIDENTIAL.** Plaintiff believes that this designation is improper and without any reasonable or good faith basis and will challenge said designation. Defendants applied this designation to the entirety of their interrogatory responses even though much of the information disclosed is publicly available (e.g., real property), not a trade secret (e.g., bank accounts, personal property and real property), and not the subject of a reasonable expectation of privacy (e.g., virtually the entire disclosure except for personally identifiable information like complete bank account numbers). No legitimate basis has been provided by the Defendants for any designation.

In early August, Plaintiff caused several subpoenas to be served upon financial institutions in which it believed that Defendants had accounts. Plaintiff has received production from some of these financial institutions. The financial activity gleaned to date strongly suggests conscious efforts by Greer and his wife to evade this Court and the Judgment, including significant transfers to Greer's wife around the time of the Judgment. Defendants also designated that information as "Confidential-Attorneys' Eyes Only." However, the Standing Order only allows the "producing party" to make such designations, and Plaintiff was not the producing party—the financial institutions were. (Standing Order, ¶ 2.)

On October 6, 2017, Plaintiff served a Notice of Deposition (the "Greer Notice") upon Greer and a further Notice of Deposition (the "Yeshiva Notice" and together with the Greer

Notice, the "Notices") upon the Yeshiva, which Notices also included requests for the production of documents. On October 17, 2017, Defendants filed the Motion. While Defendants state that they have agreed to make Greer available for a deposition individually and as a representative of the Yeshiva; (Motion, ¶ 17), Defendants seek a number of unusual and unreasonable preconditions to these depositions. These requests are without any factual or legal basis and in some cases, premature, but seek to limit the scope of the depositions to post-judgment collection; seal the depositions; prevent the disclosure of financial information to attorneys and their agents only (to the exclusion of Mirlis, the judgment creditor); prohibit the use of financial information or deposition testimony "outside the context of post-judgment discovery in this specific litigation;" and provide "additional protections" to preserve Greer's Fifth Amendment immunities. (Id., ¶ 17(a) – (e).)

II. DEFENDANTS HAVE NOT DEMONSTRATED GOOD CAUSE ENTITLING THEM TO A BLANKET PROTECTIVE ORDER

A. Legal Standard for Protective Order Based upon "Good Cause"

Fed. R. Civ. P. 26(c)(1), which governs protective orders, provides in relevant part:

> 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 motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. . . .

"Under the rules, there is a presumptive right of public access to discovery in all civil cases." Loussier v. Universal Music Grp., Inc., 214 F.R.D. 174, 176-77 (S.D.N.Y. 2003). Any party who seeks to have access to discovery materials limited bears the burden of proving that a protective order is necessary. Id. at 177.

> The burden to show good cause is clearly on defendants, defendants "must show an adequate reason [for sealing the depositions], by a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." . . . Further, "broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test."

Id.

Blanket protective orders should only be considered in extremely limited circumstances and require a particularly heavy burden with a showing that the disclosure would cause "a clearly defined and very serious injury." Waeld v. Merck, Sharp & Dohme, 94 F.R.D. 27, 28 (E.D. Mich. 1981) (quotation marks omitted). This is of particular concern given the potential for abuse, the powerful means of maintaining and enforcing secrecy, the public's constitutionally protected interest in access to civil proceedings. It is worth noting that this Court's responsibility in making a determination of whether "good cause" exists is so paramount that the Court must make this determination even if the protective order being sought was a stipulation of the parties. See Jepson, Inc. v. Makita Elec. Works, Ltd., 30 F.3d 854, 858 (7th Cir. 1994) ("Even if the parties agree that a protective order should be entered, they still have the burden of showing that good cause exists for issuance of that order.") (quotation marks omitted). The movants bear the burden to show, for each particular document they seek to protect, the actual and specific prejudice or harm that will result if a protective order is not granted. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003). The Court should then scrutinize each request for protection and enter them only after very careful, particularized review that supports each request.

B. Defendants Have Not Demonstrated Good Cause to Justify a Blanket Protective Order Limiting the Scope of the Depositions of Greer and the Yeshiva

Under Fed. R. Civ. P. 26(c)(1)(D), a court may issue a protective order "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters"

upon a showing of good cause. See 6-26 Moore's Fed. Practice – Civil § 26.105[5]. Defendants have not demonstrated good cause for such a protective order because they have failed to set forth any particular and specific facts that would show they are entitled to such protection. That is, Plaintiff seeks to depose Greer and the Yeshiva pursuant to Fed. R. Civ. P. 69(a)(2), which provides broad post-judgment discovery to judgment creditors. There is absolutely no indication that there are any particular facts that demonstrate that Plaintiff will attempt to exceed the bounds of permissible discovery, nor do Defendants attempt to argue that this is the case.

> Fed. R. Civ. P. 69(a)(2) provides:
>
> If in the aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person – including the judgment debtor – as provided by these rules or by the procedure of the state where the court is located.

Discovery of a judgment debtor's assets using the Federal Rules of Civil Procedure is "conducted routinely." First City, Texas-Houston, N.A. v. Rafidain Bank, 281 F.3d 48, 54 (2d Cir. 2002). A judgment creditor is allowed "to question the judgment debtor about the nature and location of assets that might satisfy the judgment[]" because he "is entitled to discover the identity and location of any of the judgment debtor's assets, wherever located." Id. (citations and quotation marks omitted). "[T]he judgment creditor must be given the freedom to make a broad inquiry to discover hidden or concealed assets of the judgment debtor." Id. (citations and quotation marks omitted); see also EM Ltd. v. Republic of Argentina, 695 F.3d 201, 207 (2d Cir. 2012); 13-69 Moore's Federal Practice - Civil § 69.04 (2017) ("The purpose of discovery under Rule 69(a)(2) is to allow the judgment creditor to identify assets from which the judgment may be satisfied and consequently, the judgment creditor should be permitted to conduct a broad inquiry to uncover any hidden or concealed assets of the judgment debtor.").

If Defendants' counsel believes that any specific questions at the depositions of Defendants exceed the scope of permissible discovery of judgment debtors, he can interpose an objection and/or instruct his client not to answer. To have an order in place prior to Plaintiff asking his first question is premature, unwarranted, without precedent, and a waste of the Court's resources. Indeed, any dispute about particular questions posed would be more capable of adjudication than a nebulous, inchoate dispute about the scope of discovery prior to the depositions. Defendants are protected by the rules of discovery, but that does not seem to be enough for them; rather, they would like an order from this Court that such rules apply. This is patently unnecessary, and there has been absolutely no showing of good cause for such a protective order.

C. Defendants Have Failed to Establish That There Is Good Cause to Seal the Depositions or to Prohibit the Disclosure of Financial Information to Anyone Other Than Plaintiff's Attorneys or Their Agents

Defendants seek an order to prevent the disclosure of any information produced pursuant to the depositions, including restricting access, even by Mirlis, to any financial information produced and to seal the depositions of Defendants. As with the other relief sought, Defendants have failed to show good cause for such an order and only make conclusory allegations regarding the harm they may suffer.

Defendants assert that "certain media outlets have repeatedly published slanderous and disparaging articles directed at Defendants." (Motion, ¶ 25.) Defendants do not cite to a single allegedly slanderous article published by any media source, nor obviously, do they attempt to explain any way in which they have been slandered. More importantly, if they have been slandered, they have recourse to their legal rights. These merely conclusory allegations are simply insufficient to support a finding of good cause that is necessary for the entry of a protective order. Jerolimo v. Physicians for Women, P.C., 238 F.R.D. 354, 356 (D. Conn. 2006)

("To establish good cause under Rule 26(c), courts require a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.") (quotation marks omitted); Rofail v. United States, 227 F.R.D. 53, 54 (E.D.N.Y. 2005).

Defendants have made unreasonable efforts, *inter alia*, (1) to shield ALL post-judgment information produced by Defendants from disclosure with designations of confidentiality; (2) to force Plaintiff's counsel to file substantive motions seeking ordinary relief under seal; (3) to otherwise restrict Plaintiff's ability to ferret out assets; and (4) to restrict Plaintiff's counsel's review of information with their client in order to collect on a multimillion dollar judgment entered against Defendants for heinous misconduct. As a continuation of this improper conduct, Defendants now seek to limit inquiry into their assets and financial affairs, including by limiting the scope of their deposition testimony. This over-reach and expectation that the Court and Mirlis must rely on Defendants as to what is confidential or what should be sealed without any reasonable basis (e.g., trade secret, proprietary business information, or legitimate expectation of privacy) or to convert information that was previously publicly available into information subject to a protective order should not be countenanced.

A search of recent news articles demonstrates that they concern the verdict and Judgment against Defendants as well as Greer's arrest for sexual assault and risk of injury to a minor. E.g., Christopher Peak, Affidavit: Scar Gave Rabbi Greer Away, New Haven Independent, July 27, 2017, available at http://www.newhavenindependent.org/index.php/archives/entry/rabbi_greer_arrested/; New Haven Rabbi Daniel Greer Found Liable for $15 Million in Civil Trial Alleging He Sexually Abused a Student, New Haven Register, May 18, 2017, available at http://www.nhregister.com/connecticut/article/New-Haven-Rabbi-Daniel-Greer-found-liable-for-15-11312455.php. While it may be true that Defendants would find such articles embarrassing or upsetting, that is hardly cause for the baseless arguments Defendants make to support their

continued efforts to frustrate proper discovery. See Condit v. Dunne, 225 F.R.D. 113, 118 (S.D.N.Y. 2004) (allegations that deposition may be misrepresented in media causing deponent embarrassment insufficient to support protective order). Moreover, Defendants are the real cause of any unfavorable press that they receive because Defendants' heinous conduct against a minor over the course of years is the basis for the reporting on the allegations and Judgment against Greer and the Yeshiva.

Indeed, Defendants essentially concede in their Motion and these articles confirm that the Defendants and their action are subject to public scrutiny. There is a First Amendment right of public access to court records in these proceedings; see Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 124 (2d Cir. 2006); and Defendants' request for a protective order limits and controls how Mirlis can use this information in this Court, shifting the burden to Mirlis, requiring motions to seal. Yet, the public's right of access can be overcome only by "an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984) (quotation marks omitted). Defendants' request for secrecy must identify specific reasons why secrecy is warranted and show that nothing short of sealing will adequately protect their interests. Oregonian Pub. Co. v. U.S. Dist. Ct., 920 F.2d 1462, 1465 (9th Cir. 1990) (citation omitted). The Defendants' provide no legitimate basis for secrecy or that they have legitimate interests worth protecting post-judgment.

In addition, there is no allegation by Defendants that Plaintiff's counsel or Plaintiff has engaged in bad faith during the post-judgment discovery process, and indeed, they cannot make such allegations. Plaintiff, as the Rules allow him, has sought discovery regarding the nature and extent of Defendants' assets to satisfy the Judgment, which attempts have met with resistance from Defendants at every turn; this is simply Defendants' latest attempt to seek unnecessary

orders from the Court with the purpose of delaying and evading payment of the Judgment. Absent any such evidence of intentional and improper conduct, the Court is justified in assuming that neither Plaintiff nor his counsel have improper or malicious intentions regarding discovery materials. Condit, 225 F.R.D. at 117 (finding no cause to enter protective order sealing deposition where plaintiff's counsel stated "when the public learns of Mr. Dunne's testimony, whatever reputation he enjoyed will be lost forever in my opinion."). Here, neither Plaintiff nor his counsel have indicated any intention to use the discovery process maliciously, and Defendants cannot demonstrate good cause for the entry of the protective order they seek. Indeed, the only actual events regarding allegedly improper disclosure made in the Motion concern the actions of third parties and not Plaintiff or his counsel.

The Motion should be denied in addition because the relief sought is overly broad and would include the disclosure of information independently obtained by Plaintiff. See Int'l Prods. Corp. v. Koons, 325 F.2d 403, 408 (2d Cir. 1963). As evidence of this, Defendants already have sought, improperly and without any articulated basis, to designate materials Plaintiff obtained from third-party banks pursuant to subpoenas as "Confidential-Attorneys' Eyes Only."[1] This designation is improper because, among other reasons, the Standing Protective Order (Doc. No. 4) (the "Standing Order") only allows the "producing party" to make such designations, and Plaintiff was not the producing party—the financial institutions were. (Standing Order, ¶ 2.). Entering the proposed protective order sought by Defendants would only serve to give

[1] This designation prevents disclosure of discovery materials to Plaintiff, as well as third parties. If, as allowed in Defendants' proposed protective order, such designations are made regarding other discovery, Plaintiff would be prohibited from consulting with his counsel about certain aspects of the collection of the Judgment he received. In addition, there is no basis to prevent Plaintiff from attending the depositions or to review any transcripts. "Under Rule 26(c)(5), it is generally recognized that a court may exclude a party from attending a deposition only in extraordinary circumstances. Furthermore, when the person to be excluded is a party to the action, the court must also consider any constitutional due process right to be present at the deposition." 6-26 Moore's Fed. Practice – Civil § 26.105[6].

Defendants yet another device to impede discovery and the collection of the Judgment. For example, Plaintiff's investigation has already revealed that Greer and/or the Yeshiva have made transfers of large sums of money to Greer's wife at or around the time of Judgment. The broad relief sought by Defendants would restrict Plaintiff's ability to bring lawful actions to recover any fraudulent transfers because, presumably, Plaintiff may be barred from disseminating any information obtained, from Defendants or otherwise, in a complaint against third-parties, which is plainly improper. See Leonia Amusement Corp. v. Lowe's, Inc., 18 F.R.D. 503, 508 (S.D.N.Y. 1955) ("He says, however, that with respect to general information that comes to him here and is relevant to another action he should be able to use that information in any way which the law permits. In the absence of anything to make me doubt the attorney's good faith, I agree.").

In sum, Defendants' attempt to restrict access to post-judgment discovery is baseless. They clearly have not made the particularized showing of facts necessary to demonstrate there is good cause to enter the requested protective order. The Motion is one more example of Defendants' continued and repeated contumacy and refusal to comply with their duties as litigants. Therefore, the Motion should be denied to the extent that it seeks a protective order limiting the disclosure of information or sealing the depositions of Defendants.

D. Defendants Have Not Shown Good Cause That a Protective Order Is Necessary to Protect Greer's Fifth Amendment Privilege

Defendants also cite the protection of Greer's Fifth Amendment rights as a justification for the protective order they seek. However, they have not shown good cause on this basis either. The privilege against self-incrimination "is entitled to be asserted in any civil, criminal or administrative proceeding. . . . It may properly be invoked whenever a witness reasonably believes that his testimony could 'furnish a link in the chain of evidence needed to prosecute'

him for a crime." Estate of Fisher v. Commissioner, 905 F.2d 645, 648 (2d Cir. 1990) (citation omitted).

> Ultimately, a "witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself." . . . It is the court that decides whether a witness' refusal to answer is privileged. "To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." . . . The danger of self-incrimination must be real, not remote or speculative. . . . When the danger is not readily apparent from the implications of the question asked or the circumstances surrounding the inquiry, the burden of establishing its existence rests on the person claiming the privilege.

Id. at 648-49. Thus, a protective order is not necessary to protect Greer from waiving his Fifth Amendment privilege. He is free to assert the privilege in response to specific deposition questions, as he did at his deposition prior to judgment. If Plaintiff believes that the privilege is improperly invoked as to any question or questions, he may raise the issues with regard to those specific questions with the Court. That said, the Plaintiff has no objection to a protective order limited SOLELY to ensuring that any testimony of Greer will not waive his 5th Amendment rights.

E. There Is No Basis for a Protective Order Limiting the Discovery to Defendants' Assets Only

One of the decretal paragraphs in the proposed protective order would limit discovery without any basis. "The scope of inquiry is post-judgment discovery directed to the judgment debtors in this case: Greer and [the Yeshiva]." (Motion, Exh. A, ¶ 29.) To the extent that Defendants seek an order limiting the scope of discovery to the assets of Defendants only, this is both improper and premature. Inquiry into the assets of a non-party is only permitted "'where the relationship between the judgment debtor and the non-party is sufficient to raise a reasonable doubt as to the bona fides of the transfer of assets between them.'" Sberbank of Russia v. Traisman, 2016 US Dist. LEXIS 113351 at *5-6 (D. Conn. Aug. 23, 2016) (quoting

Magnaleasing, Inc. v. Staten Island Mall, 76 F.R.D. 559, 561-62 (S.D.N.Y. 1977)). "Post-judgment discovery into the assets of a non-party requires 'a somewhat heightened showing of necessity and relevance' through some demonstration of concealed or fraudulent transfers or an alter ego relationship." Id. (quoting Uniden Corp. of America v. Duce Trading Co., LTD., 1993 U.S. Dist. LEXIS 10441 (W.D.N.Y. July 19, 1993)). Thus, Plaintiff is able to take discovery regarding the assets of nonparties where he has information that suggests that Defendants have concealed or transferred assets or have an alter ego relationship with another entity. Plaintiff asserts that such facts exist, including evidence of the transfer of assets, evidence of the concealment of assets, and evidence that Greer controls certain nonparty entities. In any event, it would be premature for the Court to address the scope of discovery prior to Plaintiff asking any questions about the assets of third-parties or Defendants refusing to respond to such questions.

III. Conclusion

WHEREFORE, based upon the foregoing, Plaintiff respectfully requests that the Court deny the Motion and grant such other and further relief as justice requires.

Dated at Bridgeport, Connecticut, this 7th day of November, 2017.

THE PLAINTIFF,
ELIYAHU MIRLIS

By: */s/ Matthew K. Beatman*

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on November 7, 2017, a copy of the foregoing Objection to Motion for Protective Order was served upon all appearing parties with access to the CM/ECF System by operation of the Court's electronic notification system.

/s/ Matthew K. Beatman

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