

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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CATHERINE KASSENOFF, individually, and as  
mother and natural guardian of C.K and J.K., infants  
under the age of eighteen,

Index No. 67296/2021

*Plaintiffs,*

-against-

SUSAN ADLER,

*Defendant.*

-----X

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF NON-PARTY ALLAN  
KASSENOFF'S MOTION TO QUASH AND FOR A PROTECTIVE ORDER**

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## I. INTRODUCTION

There can be no mistaking the fact that Ms. Kassenoff suffers from mental illness. Dr. Marc Abrams, the neutral forensic therapist appointed by the Court in the Matrimonial Action, concluded that she has a personality disorder with narcissistic and sadistic tendencies.<sup>1</sup> Similarly, both Judge Koba and Judge Lubell stated as much from the bench. For example, Judge Koba explained as follows during a June 2, 2021 hearing:

This is the problem as I see it: I have an obligation to act in the best interest of the children. And while – the Court made findings a year ago after a ten-day hearing, and the Court believes, based upon the evidence deduced during that hearing, that ***Ms. Kassenoff does have a mental illness that's impacting her interactions with the children***, okay.

(Ex. 13 at 60 (emphasis added)).<sup>2</sup> Similarly, Judge Lubell specifically told Ms. Kassenoff that “maybe she should look inside before she starts casting the aspersion outside.” (Ex. 14 at 25). If that were not clear enough, Judge Lubell then instructed her to get “some help”:

And when somebody continually has motions against them for violation of orders, contempt motions, orders of protection, that sends a message to this Court. And maybe, Mrs. Kassenoff, instead of asking everybody else to do things for you, maybe you ought to look inside and start doing things for yourself and get yourself some help.

(*Id.* at 50).

Presumably due to her mental illness, Ms. Kassenoff abused the oldest Kassenoff child for years and then manipulated all three children throughout the divorce, including, for example, by telling them to lie about their father. It was because of these actions (and many more like them) that led the Matrimonial Court to only permit Ms. Kassenoff to see her children for a few hours

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<sup>1</sup> In sum and substance, Dr. Abrams found that, due to the disorders suffered by Ms. Kassenoff, she is unable to place any blame on herself for her current predicament and, instead, blames everyone around her.

<sup>2</sup> All exhibits are attached to the Reply Affirmation of Allan A. Kassenoff.

per week, *always* with a therapeutic supervisor present. In fact, Judge David Everett, the first judge in the Matrimonial Action, stated on the record that Ms. Kassenoff cannot be around the children without supervision even “for a few minutes”:

THE COURT: All right. Since this record will be so-ordered, I just want to make it very clear that, Ms. Most, please be sure to communicate to each of the people on the risks of supervising visits that *the children are not to be alone in the presence of Mrs. Kassenoff* –

MS. MOST: Okay.

THE COURT: – during the period of time that they are supervising the visits.

MS. MOST: Okay.

MR. DIMOPOULOS: Your Honor, if I –

THE COURT: *For any period of time whatsoever.* Yes?

MR. DIMOPOULOS: If that concludes that part of our discussion, I’d like to just bring up one brief thing just for clarification. Do we need to say anything more –

MS. MOST: Dr. Ravitz.

MR. DIMOPOULOS: Yeah, so we’re transitioning, okay, so we can cut there for –

THE COURT: *Just so it’s clear, when I say any – at any time I mean even for a few minutes.* It has to be –

MS. MOST: I get it.

THE COURT: *It has to be constant.*

(Ex. 15 at 17-18 (emphasis added)).

Rather than addressing and dealing with her own documented mental illness, Ms. Kassenoff’s divorce “strategy” is to falsely claim that she is a victim of domestic violence and that her children are victims of child abuse, all at the hands of Mr. Kassenoff. Ms. Kassenoff followed this strategy in her Opposition to Non-Party Allan Kassenoff’s Motion to Quash and For a Protective Order (NYSCEF #68, the “Opposition”). However, none of the Plaintiff’s allegations of abuse are even remotely true.<sup>3</sup> To wit, Ms. Kassenoff tried peddling the same lies to the

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<sup>3</sup> Mr. Kassenoff could easily refute all of the Plaintiff’s abuse allegations, including supplying videos of *Plaintiff’s* abuse of the children. In fact, Mr. Kassenoff has done exactly that in the Matrimonial Action which is why he has had sole legal and physical custody of the children for over 2 ½ years.

Matrimonial Court, which saw Ms. Kassenoff's allegations for what they are (lies) and awarded Mr. Kassenoff sole legal and physical custody of the parties' three children following a two-week trial in July 2020 and limited Ms. Kassenoff to only therapeutically supervised visits with the children. (NYSCEF #54 at 43-44). Judge Koba's Order following the trial also prohibited Ms. Kassenoff from *any* non-therapeutically supervised access or communications with the children. (*Id.* at 44).

Plaintiff also presented these same "factual" allegations to all of the other professionals involved in the Matrimonial Action – none of whom believed her – including Carol Most (the Attorney for the Children), Dr. Adler, Dr. Carolyn McGuffog (the therapist for the third Kassenoff child), and Dr. Abrams. Like Judge Koba, all of these professionals saw Ms. Kassenoff's allegations for what they are (lies). Similarly, the rest of the allegations made by Ms. Kassenoff in the Opposition are likewise misstatements at best or lies at worst. As but one example, Ms. Kassenoff argued that Judge Koba's August 2020 Decision and Order on custody "was premised *almost exclusively* on the testimony of [Mr.] Kassenoff's 'star' witness, Marc Abrams." (Opposition at 4 (emphasis added)). That could not be further from the truth. First, Dr. Abrams was not Mr. Kassenoff's "witness" – he was appointed by the Matrimonial Court as the *neutral* forensic evaluator. Moreover, Judge Koba made clear that her decision was based upon countless factors, including Ms. Kassenoff's own behavior – **and not simply Dr. Abrams' testimony**. As Judge Koba explained, "[b]ased upon the totality of the circumstances, the Court concludes the award of temporary sole legal and physical custody of the children to their father is in their best interests at this time." (*Id.* at 40) (emphasis added). In fact, Judge Koba spent over 10 pages explaining just some of Ms. Kassenoff's bad behavior, which formed the basis of the Court's custody decision. For example:

Since the issuance of the prior custody order, the mother has continued to demean the father in the presence of the children; made statements in front of the children that he does not care about the children and/or is inept or unable to assist them with schoolwork; discussed enrolling the children in camps with them without first discussing it with the father so she “can have the recording”; referred to the father by his first name instead of “dad” or “father” when speaking to the children; threatened to call the police in front of the children when the father appeared at the marital residence during her access time to deliver money to [A.K.] after she told [A.K.] she could not participate in a school activity because she did not have any money; encouraged the children to communicate with her on the Zoom chat function which was not visible to the supervisor; implied the father is acting inappropriately in terminating the Zoom visits after they exceeded the court ordered time limit, instructed the children to keep talking despite his request that they end the visit and stated that she “doesn’t care what he says”; discussed the court proceeding with the children and encouraged them, while speaking on Zoom, to discuss their complaints regarding their father so that the judge would ultimately hear them; and told the children to ask their father why they have not seen their mother.

(*Id.* at 30-31 (citations omitted)).

Similarly, Judge Koba recognized Ms. Kassenoff’s failure to even “understand that her actions have been and are deleterious to her children’s psychological health and emotional well-being” and that she manipulated the children:

Both parents are capable of providing for the children’s intellectual development, but given the mother’s actions over the past year and given her failure to recognize and understand that her actions have been and are deleterious to her children’s psychological health and emotional well-being, the father’s ability to provide for the children’s emotional well-being and development is superior to that of the mother’s at this time. Specifically, *the Court finds the mother’s orchestration of [A.K.] running away to the police department on March 31, 2020 to state she is afraid of her father and does not want to live with him was extremely harmful to the children, their father and the children’s relationship with him. The mother’s manipulation of the children is apparent in the recorded Zoom Visit the preceding night during which she is informed by [A.K.] and [J.K.] of their “plan” to go to the police department, asked by them if they can go, and her affirmative response that they can do so. In the recording, however, none of the children show any signs of fear precipitated by their father. Nor do they react when he enters the room other than to caution their mother to be quiet as he had entered the room; at which point she directs them to speak in French. While they are discussing going to the police to report their father, the children are laughing and giggling as if it is a joke. During the hearing, the mother testified she was trying to help her children and give them options because she is not there; she is telling them it is their decision whether to go to the police. The Court finds the mother’s explanation and her denial that she*

manipulated the children incredible. If genuinely concerned for her children, then the mother exhibited very poor judgment in not taking any action that would realistically permit timely intervention. . . . It is clear the mother's goal was to have the children run to the police, complain of the father and trigger a CPS investigation which might result in evidence to use in court and an order changing custody in her favor. In fact, a CPS investigation was triggered, and [A.K.'s] complaint was determined to be unfounded.

(*Id.* at 31-33 (emphasis added)).

If that were not enough, Judge Koba recounted yet another example of Ms. Kassenoff's "poor parenting judgment and inability to provide for the children's emotional well-being":

A more egregious example of the mother's poor parenting judgment and inability to provide for the children's emotional well-being is seen in her actions following receipt of the e-mail from [C.K.] on June 1, 2020, at 9:41 p.m., stating she wanted to disappear or kill herself. The mother admitted she did not immediately notify the father or [C.K.'s] therapist when she received the email. The first step she took was to contact her attorney. She also contacted her mother and asked her to call [C.K.]. The grandmother attempted to call [C.K.] on June 2 and June 3 without success. The mother also recommended [C.K.] contact the school counselor. She said she did not contact [C.K.'s] therapist as she knew she had an appointment the following day and had suggested to [C.K.] that she discuss it with her. She also said she did not contact the therapist because her contact was limited to scheduling issues. She testified she did not notify her husband because she was concerned that he would either retaliate against [C.K.] or discuss it with her, which would cause [C.K.] to lose trust in her mother. As this was not the first time [C.K.] raised feeling this way with her, the mother testified she was not so concerned as [C.K.] did not actually say she was going to do something.

(*Id.* at 33-34).

Most disturbing, perhaps, was the Court's finding that Ms. Kassenoff manipulated the children for her own purposes and even made "*false allegations of abuse against the father*":

The mother's manipulative conduct demonstrates a deliberate "placement of her self-interest above the interests of others." *The evidence of false allegations of abuse against the father, i.e., the March Zoom Visit, and the purposeful actions to alienate the children from him is "so inconsistent with the best interests of the child[ren] that it raises, by itself, a strong probability that the offending party is unfit to act as a custodial parent."* There was no evidence presented that the father manipulated the children into making any false claims against the mother.

(*Id.* at 38-39 (citations omitted) (emphasis added)).



Notwithstanding the Plaintiff's misstatements and lies, Ms. Kassenoff makes two arguments in opposition to the Motion to Quash: (1) Mr. Kassenoff lacks standing to challenge the Subpoena and (2) the materials sought by the Subpoena are relevant to her sole remaining claim against Dr. Adler. As demonstrated in Mr. Kassenoff's opening brief and further below, both arguments fail.

## II. ARGUMENT

### A. Mr. Kassenoff Has Standing To Challenge The Subpoena

As Ms. Kassenoff correctly argues, "a subpoena may only be challenged by the person to whom it is directed or by a person whose property rights or privileges may be violated." (Opposition at 7). As a Greenberg Traurig ("GT") Shareholder,<sup>4</sup> Mr. Kassenoff has an ownership interest in the Firm and, thus, an ownership interest (i.e., "property right[]") in all of the Firm's computer equipment and servers as well as the emails stored therein. In fact, this exact issue was addressed in *In re Palmer*, which was a "proceeding to settle the final account for a trust." 2017 WL 1969398, at \*1 [Surrogate's Ct, NY County Apr. 13, 2017]. The petitioner in *Palmer* had served subpoenas "on two non-parties, objectant's current and former law firms, Akerman LLP and Putney, Twombly, Hall & Hirson LLP." *Id.* As in the instant case, "[t]he subpoenas primarily seek objectant's correspondence, including emails by or to objectant . . . ." *Id.* Although the objectant did not dispute that he had used "his law firms' email systems to send and receive personal correspondence regarding the trust," he filed a motion to quash the subpoenas and for a protective order. *Id.* Like Ms. Kassenoff, the "Petitioner opposed the motions on standing grounds" and like GT, the non-party law firms "served with the subpoenas have neither moved to

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<sup>4</sup> Being a Shareholder in GT is not simply in name only. Rather, GT Shareholders "buy-in" to the Firm and fund periodic "capital calls."

quash nor endorsed objectant's position on these motions." *Id.* The *Palmer* Court, however, rejected the Petitioner's argument, concluding that "[a]s a former and current partner in the respective firms, objectant has standing to move to quash a subpoena for documents served on them." *Id.* at \*2. Accordingly, as in *Palmer*, even if Mr. Kassenoff didn't have a "property right[]" in the materials sought by the Subpoena simply by being the author or recipient thereof,<sup>5</sup> as a Shareholder in GT, he "has standing to move to quash a subpoena for documents served on them."

**B. The Subpoena Seeks Materials That Are "Utterly Irrelevant" To Plaintiff's Sole Remaining Claim Against Dr. Adler**

As explained in Mr. Kassenoff's opening brief, Plaintiff's sole remaining claim in this action is that Dr. Adler fraudulently induced her to enter the contracts to treat C.K. and J.K. (the "Contracts") by failing to disclose "her longstanding personal and professional relationships with Most, Abrams, and others" and "concealing that she intended to subject the Children to 'reprogramming therapy.'" (NYSCEF #4 at ¶¶ 228-29). Although Plaintiff tries her best to demonstrate that Mr. Kassenoff's communications are somehow relevant to her fraudulent inducement claim *against Dr. Adler*, she fails miserably. Despite conceding that "no *per se* conspiracy is alleged," (Opposition at 13), the sole basis for her allegation that the Subpoena seeks relevant information is based upon her "belief" of such a conspiracy. For example, according to Plaintiff:

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<sup>5</sup> Plaintiff's standing argument should also be rejected for a second reason. Even if GT reserves the right to monitor email, Mr. Kassenoff still possessed a "property right[]" in his emails. As explained by the Central District of California, "an individual has a personal right in information in his or her profile and inbox on a social networking site and his or her webmail inbox." *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965, 974 [C.D. Cal. 2010]; *see also J.T. Shannon Lumber Co., Inc. v. Gilco Limber, Inc.*, 2008 WL 3833216, at \*1 [N.D. Miss. Aug. 14, 2008] (finding that defendants had standing to quash plaintiff's subpoena to three non-parties seeking defendant employees' emails because they had "a personal interest in the documents sought").

- “The emails that were exchanged between Kassenoff and the AFC [Ms. Most] confirm *his coordination with her and Susan Adler to ‘reprogram’* and take custody of *the Children.*” (Opposition at 4 (emphasis added)).
- “The documents [Mr.] Kassenoff attempts to shield from discovery go to the heart of this case against Adler: his domestic abuse of Plaintiff and her Children, his weaponization of false allegations – e.g., ‘alienation’ and of ‘mental illness’ – to cover for his own domestic abuse, and *his coordination with Adler, McGuffog, the AFC [Ms. Most] and others to ‘reprogram’ the Children . . .*” (*Id.* at 5 (emphasis added)).
- “The communications among Kassenoff, Most, Adler, McGuffog and Dimopoulos, *inter alia*, are therefore essential to proving Adler’s intent to reprogram the Children, her means of doing so, her plan to suppress Kassenoff’s abuse to accomplish her goal, her plan to make false claims of ‘alienation’ against Plaintiff, *her coordination with others (such as McGuffog) to further her fraud*, her plan to eliminate Plaintiff from the Children’s lives . . . .” (*Id.* at 15 (emphasis added)).

In short, as explained in Mr. Kassenoff’s opening brief (at 9), none of the correspondence between Mr. Kassenoff and Ms. Most and/or Dr. McGuffog – or even Dr. Adler herself – is relevant as to whether or not Dr. Adler “knowingly and intentionally induced [Ms.] Kassenoff to enter the Contracts by withholding material information” or “by misrepresenting the true nature of her services to the Children and concealing that she intended to subject the Children to ‘reprogramming therapy.’” (NYSCEF #4 at ¶¶ 228-29)<sup>6</sup> Moreover, as confirmed in the Opposition, the Plaintiff is really seeking information in support of her “personal belief” of some sort of conspiracy between Dr. Adler, Ms. Most, Dr. McGuffog and Mr. Kassenoff – a claim never asserted in the Complaint. And, as explained in Mr. Kassenoff’s opening brief, the Supreme Court in *Etkin v. Sherwood 21 Assocs., LLC* granted a motion to quash 8 non-party subpoenas seeking documents and depositions, concluding that they (1) were irrelevant to the plaintiff’s breach of

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<sup>6</sup> At most, the only materials that would arguably be relevant to Plaintiff’s remaining claim against Dr. Adler would be any communications between Mr. Kassenoff and Dr. Adler concerning “reprogramming” the children. However, no such documents exist as there was no plan to “reprogram” anyone.

contract claim against Sherwood and (2) impermissibly sought discovery on “some sort of fraud or conspiracy” *not* alleged in the complaint:

*The discovery sought is not “material and necessary” to Etkin’s complaint – the only remaining cause of action relating to the condominium’s windows is the cause of action for breach of contract. . . .*

*As correctly noted by Sherwood and KPF, Etkin’s subpoenas relate to his personal belief and continuing accusation that Sherwood engaged in some sort of fraud or conspiracy to sell the various units in the building and avoid repairing the windows until the contractual period in which to bring any claim for repairs or replacement expired. **Indeed, on their face, the subject subpoenas appear to be seeking discovery merely to explore and support these fraud claims.** However, the operative complaint does not allege any cause of action relating to these allegations. Thus, the subpoenas must be quashed as the sought discovery is nothing more than a “fishing expedition to ascertain the existence of evidence.”*

2021 NY Slip Op 30372[U], at 9 [Sup Ct, NY County 2021] (emphasis added).

Faced with the *Etkin* decision, the Plaintiff attempted (unsuccessfully) to distinguish it by arguing that *Etkin* “did not involve fraud allegations; it was a breach of contract case where intent is obviously not at issue. Accordingly, the court there did not view the subpoena’s direction toward a ‘fraud or conspiracy’ as relating to the action.” (Opposition at 13). Plaintiff, however, misunderstands the *Etkin* holding – the decision was premised on the fact that the subpoenas were directed to a claim not asserted in the complaint (a fraud claim). That is the same issue presented by the Plaintiff’s Subpoena – namely, that it is directed to a claim not asserted in the complaint (a conspiracy between Dr. Adler, Ms. Most, Dr. McGuffog and Mr. Kassenoff). According, *Etkin* is directly on point. Moreover, Plaintiff did not even try to distinguish any of the cases cited in Mr. Kassenoff’s opening brief holding that a subpoena cannot be used “to ascertain the existence of evidence.”” *See, e.g., Harris v. Harris*, 2020 NY Slip Op 31937[U], at 2 [Sup Ct, NY County 2020] (“It is well settled that a subpoena must not be used as a tool of harassment or for a ‘fishing expedition to ascertain the existence of evidence.’”); *see also Shea v. Mad River Bar & Grille*, 2019 WL 4277004, at \*5 [Sup Ct, NY County Sept. 10, 2019] (granting non-party’s motion to





quash plaintiff's subpoena, holding that "it is not permissible [to serve a pre-action non-party subpoena] as a fishing expedition to ascertain whether a cause of action exists"); *see also id.* ("it does appear, despite her protestations to the contrary, that plaintiff is attempting to depose the nonparties to obtain information to draft a complaint against them"). Because the Subpoena seeks information that is "utterly irrelevant" to Ms. Kassenoff's remaining claim against Dr. Adler, Mr. Kassenoff's motion to quash should be granted. *Kapon v. Koch*, 23 NY3d 32, 34 [2014].

### C. The Subpoena Is Nothing More Than An Improper "Fishing Expedition"

Rather than seeking information that is "material and necessary in the prosecution" of her action against Dr. Adler, Ms. Kassenoff served the Subpoena with the hope that she uncovers evidence that can be used against Mr. Kassenoff, Ms. Most and/or Dr. McGuffog in future litigation. In fact, Ms. Kassenoff did not even try to dispute (or justify) how litigious she is or that she is planning future litigations. In fact, just yesterday, Ms. Kassenoff following up on her October 26, 2022 to Mr. Dimopoulos (again with the subject line "False Arrest, Malicious Prosecution, Libel, Slander and False Words") as follows:

Re: False Arrest, Malicious Prosecution, Libel, Slander and False Words

 catherine kassenoff <ckassenoff@yahoo.com>  
To:  Gus Dimopoulos;  Kassenoff, Allan (Shld-NY-IP-Tech)  
 You forwarded this message on 12/7/2022 12:50 PM.

 Reply  Reply All  Forward 

Wed 12/7/2022 12:39 PM

\*EXTERNAL TO GT\*

Following up on this to see if you have any change of heart.

Sent from my iPhone

(Ex. 16).

Similarly, Ms. Kassenoff did not dispute that she is seeking to get Mr. Kassenoff fired. In fact, she did not dispute that she did any of the following:

- Emailing Martin Kaminsky, Esq., GT's General Counsel, on February 20, 2020, to report Mr. Kassenoff for "abundantly using GT resources for his personal reasons [including] his GT email [and] GT telephone conference number." (NYSCEF #61).

- Filing a grievance against Mr. Kassenoff with the Attorney Grievance Committee of the First Judicial Department. (NYSCEF #53 at ¶ 13).
- Sending a “Preservation Notice,” on December 30, 2020, to several members of GT’s executive committee – including Mr. Kaminsky and Richard Rosenbaum (GT’s Executive Chairman) – regarding the instant action, alleging that her claims against Dr. Adler “relate to Mr. Kassenoff’s abuse of his children and of [her].” (NYSCEF #62).
- Posting slanderous lies about Mr. Kassenoff on her public Facebook account – often identifying him as a Greenberg Traurig (in all capitals) Shareholder – in an effort to harass him and (hopefully) get him fired.

### III. CONCLUSION

Accordingly, Mr. Kassenoff respectfully requests that the Court grant his motion to quash the Subpoena under CPLR § 2304 and enter a protective order under CPLR § 3103(a).

Dated: December 8, 2022

Respectfully submitted,

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**CERTIFICATION OF COMPLIANCE  
PURSUANT TO 22 N.Y.C.R.R 202.8-B**

The undersigned hereby certifies pursuant to the Uniform Civil Rules for the Supreme Court, as follows:

1. The total number of words in the within motion, as calculated by the word processing system used to prepare it, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certificate of Compliance is: 4,195.

2. The within reply memorandum of law complies with 22 N.Y.C.R.R. 202.8b(a)(2) limiting affidavits, affirmations, briefs, and memorandum of law in reply to 4,200 words each.

Dated: New York, New York  
December 8, 2022

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