

**IN THE CIRCUIT COURT OF HARRISON COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION**

**DOUGLAS E. GRIFFITH, JR.,
an individual; and
iLEASE & RENTALS, LLC,
a West Virginia limited liability company,**

Plaintiffs,

vs.

**Civil Action No. 20-C-231
Presiding Judge: Shawn D. Nines
Resolution Judge: Christopher C. Wilkes**

**MVB BANK, INC., a West Virginia
corporation; and
JARROD FURGASON,
an individual,**

Defendants,

and

CHRISTOPHER P. SANDER,

Intervenor.

ORDER DENYING PLAINTIFF'S MOTION TO QUASH

On this _____ day of April, 2024, this matter came before the Court upon *Plaintiff's Motion to Quash Subpoenas Duces Tecum and for Protective Order and Other Relief*. The Plaintiffs, Douglas E. Griffith, Jr. and iLease & Rentals, LLC, by counsel Robert P. Fitzsimmons, Esq. and Holly S. Planinsic, Esq., Counterclaim Plaintiff, MVB Bank, Inc., by counsel Brian A. Glasser, Esq. and Rebecca Pomeroy, Esq., and Intervenor, Christopher P. Sander, by counsel J. Michael Benninger, Esq., have fully briefed and argued the issues. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

FINDINGS OF FACT

1. The Complaint in this case was filed on September 14, 2020, wherein Plaintiff alleged that Defendants MVB Bank and Jarrod Furgason sold Plaintiff a failed life insurance premium financing/investment scheme. *See* Pl's Mot., p. 2; *see also* Def's Resp., p. 3-4. Further, Defendant MVB Bank has asserted a counterclaim against Plaintiffs due to default on two loan agreements Plaintiffs have with MVB. *See* Def's Resp., p. 4.
2. The parties have engaged in written discovery. *See* Pl's Mot., p. 2. Specifically, MVB has issued several subpoenas related to Plaintiffs' claims, MVB's defenses, and its counterclaim. *See* Def's Resp., p. 4.
3. One of Defendant MVB Bank's Subpoenas Duces Tecum was directed to the Mardi Gras Casino & Resort on or about May 26, 2021 and sought information from and after January 1, 2018 as to Plaintiff Griffith's gambling, dates of his visits to the casino, his average bets, complimentary items furnished to him such as free meals, tickets and other rewards, and the casino's monitoring of Griffith's gaming activity. *See* Pl's Suppl., 3/1/24, p. 6; *see also* Pl's Mot., Ex. E.
4. The Court has received and considered the following submissions of the parties:
 - * ***Plaintiff's Motion to Quash Subpoenas Duces Tecum and for Protective Order and Other Relief*** filed on June 14, 2021;
 - * ***Response in Opposition to Plaintiffs' Motion to Quash Subpoenas Duces Tecum, for Protective Order, and Other Relief*** filed by Defendant MVB Bank, Inc. on October 6, 2021;
 - * ***Plaintiffs' Reply to Defendant MVB Bank, Inc.'s Response in Opposition to Plaintiffs' Motion to Quash Subpoenas Duces Tecum, for Protective Order and Other Relief*** filed on October 22, 2021;
 - * ***MVB Bank, Inc.'s Supplemental Response in Opposition to Plaintiffs' Motion to Quash Subpoenas Duces Tecum, for Protective Order, and Other Relief*** filed on February 12, 2024; and

* ***Supplemental Reply in Opposition to MVB Bank, Inc.'s Supplemental Response in Opposition to Plaintiffs' Motion to Quash Subpoenas, for Protective Order, and Other Relief*** filed on March 1, 2024.

5. The Court now finds the issue ripe for adjudication.

CONCLUSIONS OF LAW

In the instant motion, Plaintiff requests this Court order Defendant MVB Bank to produce all records of all Court filings and proceedings in other jurisdictions initiated by MVB Bank with respect to subpoenas duces tecum relating to this action and issued under signature of its counsel, and moves this Court for a protective order preventing MVB Bank from issuing any additional subpoenas without leave of this Court. Further, Plaintiff moves this Court to quash three subpoenas duces tecum issued by Defendant MVB Bank to Willowbeach Investments, LLC, True Flameless Rentals, LLC, and Mardi Gras Casino & Resort. Finally, Plaintiff requests this Court review, in camera, items obtained by MVB Bank pursuant to a subpoena duces tecum directed to Summit Community Bank that resulted in the alleged disclosure of confidential personal financial information of a nonparty West Virginia attorney, his law firm, and his family, and seeks that this Court order a “clawback” of the records. The Court will take up the issues in turn.

Out of Jurisdiction Court Filings Regarding Subpoenas Duces Tecum

First, the Court addresses Plaintiff's argument this Court should order Defendant MVB Bank to produce all records of all Court filings and proceedings in other jurisdictions initiated by MVB Bank with respect to subpoenas duces tecum relating to this action and issued under signature of its counsel, and moves this Court for a protective order preventing MVB Bank from issuing any additional subpoenas without leave of this Court. In its motion, Plaintiff averred that it had learned that MVB Bank had initiated proceedings in a Florida court to obtain an order

commanding the subpoenaed parties' appearance and production of documents without notifying Plaintiffs. *See* Pl's Mot., p. 3. On the other hand, MVB avers it followed all applicable rules of procedure and law when it served the aforementioned subpoenas. *See* Resp., p. 5-6.

This issue is now partially moot. Plaintiff averred in its supplemental brief that since the filing of the motion to quash, "with the cooperation of the parties, Greenburg Traurig produced documents in response to MVB Bank's Subpoena Duces Tecum and Mr. Griffith's attorney Martin Kalb was deposed". *See* Pl's Suppl., 3/1/24, p. 4. However, Plaintiff "nonetheless request[s] this Court issue an Order requiring any party initiating out-of-state court proceedings to secure the issuance of enforceable Subpoenas for testimony or production of documents in other jurisdictions provide proper notice and copies of all such filings to other parties to ensure a meaningful opportunity to properly object in the issuing court". *Id.* In its request for relief in the same supplement, Plaintiff asks this Court to order that MVB be prohibited from issuing any additional subpoenas duces tecum without the agreement of opposing counsel or first applying to this Court for leave. *Id.* at 11. MVB argues the "extraordinary step of asking for Court supervision of all future subpoenas issued by MVB...should be denied". *See* Resp., p. 6.

The Court will not issue an obstacle by instituting a blanket requirement to obtain leave from the undersigned to issue subpoenas duces tecum on out-of-state third-party entities who may indeed have non-privileged, discoverable documents. Therefore, the Court declines to issue the requested order. The Court notes although it declines to place a blanket restriction, and opines such a restriction would be an undue burden on a party conducting discovery within all applicable rules, any party may still bring a legitimate objection or relevant motion regarding such future subpoenas before the Court. Such specific matters will be considered by the Court

on a case by case basis. The Court opines this would be the more prudent course of action than a blanket restriction.

Further, counsel are directed to follow all applicable rules and law of the jurisdictions in which they seek discovery. The Court considers Rule 3.4 of the West Virginia Rules of Professional Conduct, which governs fairness to opposing party and counsel. Rule 3.4(c) states that a lawyer shall not “knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.” *See* W. Va. R. Prof. Conduct 3.4(c). The Court declines to order further or specific rules upon counsel, but encourages counsel to work together fairly, efficiently, and in good faith in conducting discovery in this matter. Accordingly, the instant motion is denied as to this request (to the extent it was not moot).

Willowbeach Investments, LLC

Next, the Court analyzes the discovery requests to Willowbeach Investments, LLC (hereinafter “Willowbeach”). Defendant MVB Bank avers it seeks Willowbeach’s financial documents and contracts with Plaintiffs. *See* Def’s Resp., p. 2. Specifically, Defendant seeks all balance sheets from December 31, 2018 to the present, all Operating Agreements and any modifications or amendments, and records of all transactions involving iLease from January 1, 2018 to the present. *See* Reply, p. 6; *see also* Pl’s Mot., Ex. D.

Plaintiff argues MVB Bank has identified Willowbeach as a business entity that Griffith has or had an interest, but it is not related to this case, has no relationship to MVB Bank or the claims and defenses in this action, and the subpoenas duces tecum to this entity should be quashed as they are irrelevant. *See* Pl’s Mot., p. 4. On the other hand, MVB Bank argues that Willowbeach is a company Plaintiffs control, at least in part, and that have voluminous dealings

with Plaintiff iLease. *See* Def's Resp., p. 2. Further, Defendant argues the information requested is clearly relevant as it sheds additional light on Griffith's financial dealings and his "web of corporate interests", demonstrates Griffith's financial strain, explains his motivation for this lawsuit and avoidance of his financial obligations to MVB, and shows additional breaches of his loan agreements with MVB, particularly in the form of commingling funds from iLease's loans or lines of credit among his various corporate interests. *Id.*

The Court finds that the motion to quash must be denied as to Willowbeach. In case like the instant civil action where there are allegations of breach of the loan agreements at the heart of this case, and commingling of funds among various corporate interests, the requested discovery could lead to the discovery of relevant admissible evidence. The Court considers the request is narrowly tailored as it is limited to Willowbeach's financials, operating agreements, and transactions that include iLease, a party to this case. The Court notes this information may lead to the discovery of relevant evidence, even when eliminating Defendant's argument that it may show motivation to bring the instant lawsuit. For this reason, the Court denies the motion as to this request.

True Flameless Rentals, LLC

Plaintiff argues MVB Bank has identified True Flameless Rentals, LLC as a business entity that Griffith has or had an interest, but it is not related to this case, has no relationship to MVB Bank or the claims and defenses in this action, and the subpoenas duces tecum to this entity should be quashed as they are irrelevant. *See* Pl's Mot., p. 4. The request to quash the subpoena to True Flameless is now moot. *See* Pl's Suppl., 3/1/24, p. 4.

Mardi Gras Casino & Resort

Plaintiff argues MVB Bank has issued a subpoena duces tecum to the Mardi Gras Casino & Resort, seeking information on Griffith's gambling habits, nature and value of any comps provided to him, and other information, and said subpoenas should be quashed as the information has no bearing on this case. *See* Pl's Mot., p. 4; *see also* Reply, p. 7. Further, Plaintiff argues Griffith objected to producing information regarding his gambling activities in response to Interrogatory No. 1 (which contained a partial answer), and this objection was never challenged. *See* Reply, p. 7-8. As an alternative argument, Plaintiff argues the Court should limit the records to those the Court deems relevant to this case. *Id.* at 8.

With regard to the objection, Defendant argues that because Plaintiff answered the Interrogatory No. 1 notwithstanding his general objections to it, there is no valid objection for MVB to attempt to circumvent. *See* Resp., p. 3, 10-11. Further, Defendant argues the discovery into Griffith's alleged gambling habit is relevant to his financial stress, motivation for bringing this suit, and potential breaches of his obligations on the relevant loan agreement *See* Resp., p. 3.

As an initial matter, the Court finds that although an objection was made, and notwithstanding the objection, the discovery request was answered, the Court will address the merits of the discovery request.

The Court considers that although Plaintiffs argue Griffith's personal gambling habits are not relevant to his claims or the counterclaims in this case (*see* Pls' Mot., p. 12), Plaintiffs hold numerous personal and business accounts with MVB, Plaintiffs are borrowers under various consumer and commercial loans advanced by MVB with Griffith signing personal guarantees to pay each of the commercial loans at issue. *See* Def's Resp., p. 9. As stated above, the counterclaim alleges Plaintiffs have defaulted under the terms of two of those commercial loans.

Id. As the commercial loans go to the heart of the counterclaim, plainly this discovery could lead the discovery of admissible evidence in this civil action.

The Court finds the information is discoverable and the motion to quash should be denied for these reasons.

Summit Community Bank Disclosure

Plaintiff argues MVB Bank's subpoenas resulted in the disclosure by Summit Community Bank of confidential information to a nonparty attorney, his law firm, and his family. *See* Pl's Mot., p. 4. This request is now moot. *See* Pl's Suppl., 3/1/24, p. 5-6.

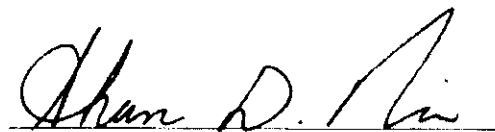
In conclusion, for all these reasons, *Plaintiff's Motion to Quash Subpoenas Duces Tecum and for Protective Order and Other Relief* is hereby DENIED.

CONCLUSION

Accordingly it is hereby ADJUDGED and ORDERED that *Plaintiff's Motion to Quash Subpoenas Duces Tecum and for Protective Order and Other Relief* is hereby DENIED. The Court notes the objections and exceptions of the parties to any adverse ruling herein.

The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 12th day of April 2024.


Shawn D. Nines
Business Court Division