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SELECTIVE TRANSPORTATION CORPORATION, Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MIDDLESEX COUNTY DOCKET NO. MID-L-8013-12 MID-L-8018-12 J-198852-13 CIVIL ACTION
DIRECT COAST TO COAST, LLC Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	**NOTICE OF MOTION TO QUASH A SUBPOENA DUCES TECUM**

To: Ronald Horowitz, Esq.
PO Box 353707
Palm Coast, FL 32137
Counsel for Plaintiff Selective Transportation Corporation

PLEASE TAKE NOTICE that on Friday, January 20, 2017, at 9:00 a.m. o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned attorneys for non-party S.P. Richards Company shall, in accordance with R. 1:9-2, apply to the above named Court at the Middlesex County Court House in New Brunswick, New Jersey, for an Order to quash the subpoena duces tecum dated December 16, 2016. Non-party S.P. Richards Company will rely upon the Certification of Raymond G. Chow, Esq., attached hereto.

A proposed form of Order is submitted.

I hereby certify that the original of this Notice of Motion has been filed with the Clerk of Middlesex County and a copy has been served on Plaintiff's counsel via regular mail and fax.

Pursuant to R. 1:6-2(d), the undersigned requests oral argument if opposition is filed.

BREUNINGER & FELLMAN

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By: Raymond G. Chow

Attorneys for Non-Party S.P. Richards

Dated: December 22, 2016

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SELECTIVE TRANSPORTATION CORPORATION, Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MIDDLESEX COUNTY DOCKET NO. MID-L-8013-12 MID-L-8018-12 J-198852-13 CIVIL ACTION
DIRECT COAST TO COAST, LLC Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	**CERTIFICATION OF COUNSEL IN SUPPORT OF MOTION TO QUASH A SUBPOENA DUCES TECUM**

I, RAYMOND G. CHOW, hereby certify as follows:

1. I am an Attorney at Law in the State of New Jersey and am an associate with the law firm of Breuninger & Fellman, the attorneys representing non-party S.P. Richards company with regard to the within matter.

2. On or around October 19, 2016, Plaintiff Selective Transportation Corp. ("Selective") attempted to serve non-party S.P. Richards ("SPR") with an information subpoena. Service was not perfected, as it was mailed to a P.O. Box.

3. On or around November 8, 2016, Selective filed a Motion in Aid of Execution, also not perfectly served to a P.O. Box. The notice of motion was not received by our office until Monday,

November 28, 2016. Our office requested an adjournment of the motion in order to have time to gather information from our client. The adjournment request was granted, and the new return date was December 16, 2016.

4. I immediately contacted our client to inform them they will need to execute an information subpoena, and that they must first determine exactly how much money SPR owes to Defendant Selco ("Selco"). After totaling all outstanding invoices and accounting for debit memos, it was determined that SPR owes Selco the sum total of $10,507.43. The details of this sum were previously detailed in my letter to Your Honor dated December 15, 2016 (a true copy is attached as **Exhibit A**).

5. In an effort to amicably settle this matter, we prepared a draft consent order to turnover to Selective the amount SPR owed Selco. I contacted Selective's counsel, Mr. Horowitz, on December 9, 2016 to advise him of the total amount of outstanding debt. He advised he would still require an executed information subpoena. Given the pendency of the Motion in Aid of Execution, the holiday season, my SPR contact's out-of-office schedule, I asked Mr. Horowitz if he would accept our written representation as to the accuracy of this debt for the purposes of disposing of the motion, with the understanding that an executed information subpoena would follow shortly thereafter. He agreed.

6. A near final draft of the consent order was sent to Mr. Horowitz's office on December 12, 2016 (a true copy is attached as **Exhibit B**). The following day, on December 13, 2016, Mr. Horowitz proposed further edits which we accepted and returned for his review.

7. The following day, on December 14, 2016, Mr. Horowitz called our office, spoke with Susan Fellman, and stated he would no longer accept our written representation as to the amount of the debt. He demanded an executed information subpoena within two hours. Ms. Fellman made attempts to explain why such a demand was unreasonable, to no avail. I knew that our client had the information subpoena in the pipeline, so I called to see if they could accelerate the process. After much effort, they were able to receive authorization, and Sandy Beaver executed the information

subpoena in the afternoon on December 14, 2016 (a true copy is attached as **Exhibit C**). I contacted Mr. Horowitz's office, which instructed me to scan and overnight the information subpoena, which I and my client did. Because Mr. Horowitz demanded the information subpoena be overnighted, I (incorrectly) assumed he would accept the executed information subpoena and we would continue finalizing the consent order.

8. The following morning of December 15, 2016, our office received a letter dated December 14, 2016 from Mr. Horowitz's office (a true copy is attached as **Exhibit D**). In it, Mr. Horowitz states that he viewed the docket of Selco's bankruptcy case, and found a summary historical aged trial balance, of which he attached two sheets to his letter.

9. Mr. Horowitz's letter states that there are two balances, $245,053.69 and $195,335.04. He does not state the date these balances were owed. In fact, the $245,053.69 balance was a current balance, and was dated July 31, 2014; the $195,335.04 balance incorrectly included an amount owed to Selco by Grainger, a separate entity which has no relationship to SPR. The document Mr. Horowitz attached clearly indicates that SPR's balance was $195,094.44. That difference is minor, but of critical importance is that this balance was dated June 30, 2015, and is thus twenty-one (21) months old.

10. Mr. Horowitz's letter concludes by stating "discovery will have to be obtained from SP to reconcile this great disparity".

11. The following day, on December 16, 2016, Mr. Horowitz served a subpoena duces tecum on SPR (a true copy is attached as **Exhibit E**). This subpoena duces tecum commands an appearance in Keasbey, New Jersey on December 27, 2016, and demands that the following be produced:

> All documents concerning Selco Industries, Inc., whose last known addresses are 1590 Albon Road, Unit 1, Holland, OH 43528, 7555 Airport Highway, Suite A, Holland, OH 43528 and/or 349 Sawgrass Court, Holland, OH 43528, including, but not limited to, all invoices, cancelled checks, wire transfers, purchase orders, e-mails, correspondence, and facsimiles for the last five years of business with Selco Industries, Inc.

12. Selective has no right to now demand discovery by a subpoena duces tecum after the full execution of an information subpoena. Moreover, the demands made by this subpoena are grossly overbroad, unreasonable, and is crafted with the clear intent to harass and annoy the non-party SPR. Accordingly, non-party SPR respectfully requests that this Court enter an Order which quashes the subpoena duces tecum in its entirety.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BREUNINGER & FELLMAN

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By: Raymond G. Chow
Attorneys for Non-Party S.P. Richards

Dated: December 22, 2016

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SELECTIVE TRANSPORTATION CORPORATION, Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	SUPERIOR COURT OF NEW JERSEY LAW DIVISION-MIDDLESEX COUNTY DOCKET NO. MID-L-8013-12 MID-L-8018-12 J-198852-13 CIVIL ACTION
DIRECT COAST TO COAST, LLC Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	**BRIEF IN SUPPORT OF MOTION TO QUASH A SUBPOENA DUCES TECUM**

PRELIMINARY STATEMENT

Plaintiff Selective Transportation Corp. ("Selective") attempted to serve non-party S.P. Richards ("SPR") with an information subpoena, allegedly on or around October 19, 2016. Afterwards, on November 8, 2016, Selective brought a Motion in Aid of Execution. Immediately after our office received this Motion, we made efforts to determine the outstanding balances SPR owed Defendant Selco Inc ("Selco"). After determining this outstanding balance was $10,507.43, our firm entered into an agreement with Selective's counsel, Ronald Horowitz, Esq., to resolve this manner by consent order to minimize litigation expenses and the burden on this Court. In essence, Mr. Horowitz agreed to accept our written representation as to the value of the owed debt, we would resolve the

matter by consent order, and a fully executed information subpoena would follow shortly. After being presented with a near final consent order, Mr. Horowitz reneged on this agreement, demanding immediate production of an executed information subpoena. At great inconvenience to my client's holiday schedule, we were able to comply on Wednesday, December 14, 2016, and provided a scanned copy of the executed information subpoena by e-mail and overnighting the original as instructed by Mr. Horowitz's office. Regardless, of these efforts, by way of letter to Your Honor dated December 14, 2016 Mr. Horowitz stated that he rejects the admission of debt, and relies on a twenty-one (21) month old document to conjure an imagined disparity. In that letter, Mr. Horowitz further stated he will need "discovery" from SPR. (see letter dated December 14, 2016, **Exhibit D**).

Mr. Horowitz then served a subpoena duces tecum on December 16, 2016 upon non-party SPR seeking "all documents concerning Selco Industries, Inc. . . . including, but not limited to, invoices, cancelled checks, wire transfers, purchase orders, e-mails, correspondence, and facsimiles for the last five years of business with Selco Industries, Inc." (see subpoena duces tecum, **Exhibit E**). The demands made in this subpoena are facially unreasonable. The demands are so broadly drafted that the only reasonable interpretation is that it was designed solely to harass and annoy non-party SPR. Further, Selective is in possession of a fully executed information subpoena, and can present no good cause as to why it should be entitled to pursue further discovery. Accordingly, non-party SPR respectfully requests that the subpoena duces tecum be quashed.

LEGAL ARGUMENT

1. Selective is in Possession of a Fully Executed Information Subpoena, and Therefore has no Basis to Pursue Further Discovery Against Non-Party SPR

SPR has executed and served the requested information subpoena. There is simply no basis for Selective to pursue further discovery against non-party SPR, and certainly not by an overly broad subpoena duces tecum. SPR's execution of the information subpoena strikes squarely at the heart of

Selective's present subpoena duces tecum. The New Jersey Court Rules provides two distinct avenues for Selective to obtain the information it seeks (that information being the sum total of the debt owed to Selco); Selective "may examine any person, including the judgment debtor, by proceeding as provided by these rules for the taking of depositions **or** the judgment creditor may proceed as provided by R. 6:7-2 (the service of an information subpoena)." R. 4:59-1(f) (emphasis added). This option of resolving the issue by way of an information subpoena, which is less burdensome than a subpoena duces tecum, is critical. The New Jersey Chancery Division, in analyzing whether to quash a document subpoena against a non-party, analyzes several factors:

> As gleaned from the cases in New Jersey and elsewhere, this court believes that the factors to be weighed in the consideration of an application by a nonparty to limit discovery are the interest of the proposed deponent in the outcome of the litigation, the necessity or importance of the information sought in relation to the main case, the ease of supplying the information requested, the significance of the rights or interests which the nonparty seeks to protect by limiting disclosure, and the **availability of a less burdensome means of accomplishing the objective of the discovery sought**.

Berrie v. Berrie, 188 N.J. Super. 274, 284 (Ch. Div. 1983) (emphasis added). R. 4:59-1(f) provides Selective with the option of demanding the execution of an information subpoena, which is the more efficient, direct, and less-burdensome route towards obtaining the information to which Selective is entitled. And that has been done. Selective has already opted for the less-burdensome option. It served an information subpoena, and SPR has completed, executed, and returned that information subpoena. (See executed information subpoena, **Exhibit C**). The information subpoena provides Selective with all of the information that it is entitled to by law, and further depositions and/or document subpoenas will reveal nothing further. Selective, apparently displeased with how low the bottom-line number is, ought not be allowed to now backtrack and choose the more indirect route after it has already exhausted its rights under the less-burdensome option.

2. **Mr. Horowitz's Letter Dated December 14, 2016 is Misleading, and does not Present Enough Evidence to Overcome the Presumption of Accuracy Afforded to an Executed Information Subpoena and Attorney Representations**

Mr. Horowitz's letter attempts to paint a picture where it is suspicious that SPR only owes Selco $10,507.43, and to support that position, presents two "balances due and owing" without context. (See letter dated December 14, 2016, **Exhibit D**). The first balance was "$245,053.69", but Selective did not state the date of this balance: it was from July 31, 2014. Further, when examining the attached aged trial balance document, it clearly indicates that balance on the account was current and that no older debt existed. (**Id.**) The second balance, as cited in Mr. Horowitz's letter, is allegedly "$195,335.04", but it is clear from plain review of his attached documents that this amount includes a sum owed by another debtor, Grainger. (**Id.**) More critically though, that document is dated June 30, **2015**. (**Id.**) Contrary to Mr. Horowitz's contention in his letter, it does not matter that the document was not e-filed with the bankruptcy court until March 8, 2016, all that matters is the actual date of the document itself. The document which Selective presents, in an attempt to imply that the current $10,507.43 debt is impossibly-low, is **twenty-one (21) months old**. Any inference that might be drawn from such an old document is so weak that it does not overcome the presumption of accuracy which must be afforded to the recent and valid execution of an information subpoena on December 14, 2016. Selective can present no good cause as to why it is entitled to pursue further discovery. Any "great disparity" (**Id.**) is wholly imagined and unsupportable by any objective evidence. Such an imagined disparity should not allow Selective to baselessly harass a non-party with a subpoena duces tecum, and it should be quashed.

3. **The Over Broadness of the Demands Made in the Subpoena Duces Tecum Lend Support to the Conclusion that the Subpoena Duces Tecum is Intended Solely to Harass Non-Party SPR**

By the nature of the present case's procedural position, Selective is necessarily limited as to the information it is entitled from a non-party. This is not pending litigation. The case-in-chief is over, and Selective's sole rights remaining relate to the execution of the entered judgment. S.P. Richards is

a non-party to the case-in-chief; it has no interest in this litigation and it is being brought to this Court only because it owes Defendant Selco the sum of $10,507.43. Thus, Selective's only rights as they relate to non-party SPR is to have the money that it owes to Defendant Selco turned-over to Selective. To that end, the only information to which Selective is entitled from non-party SPR is the amount of that debt. The manner of accrual of that debt, how old it is, supporting documents, etc. are all irrelevant, and even moreso now that SPR has certified that it owes Selco $10,507.43 (see executed information subpoena, **Exhibit C**). Selective's demand for "e-mails, correspondence, and facsimiles" (see subpoena duces tecum, **Exhibit E**) are even further removed as to the relevancy to the owed debt, and so it is clear that the demand for that information is intended solely to harass or annoy SPR.

Further, by Selective's own submissions to this Court, it has admitted it needs no information older than July of 2014. On the page numbered "16 of 27" of the "aged trial balances" attached to Mr. Horowitz's letter dated December 14, 2016, it clearly indicates that as of that date there are no late balances, and that the totality of SPR's debt to Selco is current. By its own research and initiative, Selective has discovered that it is indisputable that there are no debts older than 7/2014. For Selective to then demand documents from "the last five years" gives clear support to the fact that the present subpoena duces tecum is intended solely to harass SPR. This Court is authorized by R. 1:9-2 to quash any subpoena "if compliance would be unreasonable or oppressive". It is respectfully submitted that the subpoena is facially unreasonable and oppressive, and should be quashed in its entirety.

CONCLUSION

For the above stated reasons, non-party SPR respectfully asks that Selective's Subpoena Duces Tecum be quashed.

BREUNINGER & FELLMAN

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By: Raymond G. Chow
Attorneys for Non-Party S.P. Richards

Dated: December 22, 2016

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DIRECT COAST TO COAST, LLC Plaintiff(s), vs. GUSSCO MANUFACTURING LLC; and SELCO INDUSTRIES, INC. Defendants	**ORDER**

THIS MATTER, having been brought before the Court on Motion by Breuninger & Fellman, attorneys for non-party S.P. Richards, pursuant to R. 1:9-2 for an Order to quash the subpoena duces tecum dated December 16, 2016, and for good cause appearing;

IT IS, on this ____ day of January, 2017;

ORDERED that non-party S.P. Richards' Motion to Quash a Subpoena Duces Tecum is hereby granted; and it is further

ORDERED that the Subpoena Duces Tecum dated December 16, 2016 is hereby quashed in its entirety; and it is further

ORDERED that a copy of the within Order shall be served upon all parties within ____ days of the date herein contained.

_____
Honorable Lisa M. Vignuolo, J.S.C.