

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

IN RE MARRIAGE OF:

JAY EDELSON,  
Petitioner,

vs.

DANA EDELSON,  
Respondent.

C.A. No: N20M-09-140

ISSUANCE OF FOREIGN  
SUBPOENA

Submitted: January 15, 2021

Decided: January 20, 2021

***Upon Dana Edelson's Motion to Compel Response  
to Out-of-State Subpoena Directed to Third Party***  
**GRANTED in part; DENIED in part**

**ORDER**

This matter is before the Court on a motion by Respondent to compel a third party to produce documents sought in connection with an Illinois divorce proceeding. Specifically, Respondent seeks to challenge assertions by Petitioner in the divorce proceeding with respect to his assets, expenses and liabilities. Third-party Bench Walk Advisors, LLC, ("BWA") opposes the motion to compel on the grounds that the information sought includes proprietary information.

1. BWA is a Delaware limited liability company incorporated and headquartered in Delaware.

2. It is not disputed that Petitioner had a business relationship with BWA, in that BWA loaned money to Petitioner which has since been paid in full. Specifically, BWA provided litigation funding to Edelson, P.C., the law firm in which Petitioner practices law.

3. BWA asserts that the loan document sought by Respondent contains proprietary pricing information. According to BWA, “Pricing models are one of the chief differences among companies in the highly competitive litigation funding industry, and BWA guards its models zealously.”<sup>1</sup> BWA strenuously objects to producing documents which will disclose its proprietary pricing model. This Court agrees that a non-disclosure agreement would not adequately protect its interest under the circumstances presented here.

4. In an Order dated September 17, 2020, the Honorable Debra B. Walker ordered compliance with the subpoena issued by Respondent to BWA. However, Judge Walker acknowledged a lack of jurisdiction over BWA<sup>2</sup> and also noted that BWA did not appear in the Circuit Court of Cook County, Illinois, County Department, Domestic Relations Division (“Illinois Circuit Court”).<sup>3</sup>

---

<sup>1</sup> BWA’s Resp. ¶ 5.

<sup>2</sup> Dana Edelson’s Mot. Compel. Ex. C, at 10 (Tr. at 40).

<sup>3</sup> Dana Edelson’s Mot. Compel. Ex. D (*In re* Marriage of Jay Edelson, 2018 D 009047 (Sept. 17, 2020)).

5. Delaware Uniform Interstate Deposition and Discovery Act<sup>4</sup> promotes uniformity among jurisdictions with respect to discovery and depositions.

6. However, while this Court respects the ruling issued by the Illinois Circuit Court, the issue presented here for this Court's consideration was not fully litigated in the Illinois Circuit Court. Due process requires full and fair consideration of BWA's interests before requiring disclosure of proprietary information.<sup>5</sup> For example, when this Court enforced a New Jersey subpoena in *Adams v. Suez Water Management & Services, Inc.*,<sup>6</sup> the issues in dispute had been fully litigated by the New Jersey court.

7. BWA has produced all financial statements and information presented to BWA by Petitioner. These financial documents are relevant to the divorce proceedings and do not impact the interests of the third party. Accordingly, these documents were properly produced.

8. Respondent is entitled to test the assertions of Petitioner with respect to expenses claimed to offset marital assets. BWA has agreed to provide financial information regarding the amounts disbursed in loan(s) to Petitioner and the

---

<sup>4</sup> See 10 Del. C. § 4311.

<sup>5</sup> *W.L. Gore & Assocs., Inc. v. Wu*, 2006 WL 905346, at \*4 (Del. Ch. Mar. 30, 2006), *aff'd*, 918 A.2d 1171 (Del. 2007) (applying the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine the amount of process due for highly confidential and proprietary information).

<sup>6</sup> 2020 WL 1082401 (Del. Super. Mar. 4, 2020), *reargument denied*, 2020 WL 3073083 (Del. Super. June 8, 2020).

amount(s) received from Petitioner as repayment. The Court finds this information is relevant and should be produced. On the other hand, it is unduly burdensome on a third party, such as BWA, to require production of loan documents which include proprietary terms and conditions, especially where, as here, the relevant information will be produced.

**NOW, THEREFORE**, in consideration of the parties' written submissions, oral argument presented January 15, 2021, the Delaware Uniform Interstate Deposition and Discovery Act, Superior Court Rules of Civil Procedure, decisional law, and the entire record in this miscellaneous matter, BWA shall produce all financial statements and information presented to BWA by Petitioner as well as the amounts disbursed in loan(s) to Petitioner and the amount(s) received from Petitioner as repayment. The balance of the information sought is unduly burdensome to a third party.

**Accordingly, Dana Edelson's Motion to Compel Response to Out-of-State Subpoena Directed to Third Party is hereby GRANTED in part and DENIED in part.**

**IT IS SO ORDERED this 20<sup>th</sup> day of January 2021.**

*Andrea L. Rocanelli*

---

**The Honorable Andrea L. Rocanelli**