TAX COURT OF NEW JERSEY

Joshua D. Novin
Judge

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OF THE TAX COURT COMMITTEE ON OPINIONS

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Re: Elizabeth City v. 850 West Grand Realty, LLC
Docket No. 013359-2015

Dear Ms. Humes and Mr. Blau:

This letter constitutes the court's opinion on defendant's motions, under R. 1:9-2 and R. 4:10-3, to quash plaintiff's March 23, 2016 Subpoena Duces Tecum and March 24, 2016 Subpoena Duces Tecum issued to Capital One, NA. For the reasons explained more fully below, the defendant's motion to quash plaintiff's March 23, 2016 Subpoena Duces Tecum is granted, in part, and denied, in part, and defendant's motion to quash plaintiff's March 24, 2016 Subpoena Duces Tecum is granted.

I. Procedural History and Findings of Fact

In accordance with R. 1:7-4(a), the court makes the following findings of fact based upon the certifications and exhibits submitted by the parties.

Defendant, 850 West Grand Realty, LLC ("defendant"), is a limited liability company and the owner of the real property and improvements commonly known as 834-854 West Grand Street, in the City of Elizabeth, County of Union and State of New Jersey (the "subject property").

On September 21, 2015, plaintiff, City of Elizabeth ("plaintiff"), instituted this local property tax appeal challenging the 2015 tax year assessment on the subject property. Plaintiff's Complaint asserts that the 2015 tax year assessment is less than the true or assessable value of the subject property and that plaintiff is discriminated against by the 2015 tax year assessment.

In order to appreciate the context of defendants' motions, it is necessary to briefly delve into certain bank financing transactions engaged in by defendant. On or about February 11, 2011, defendant executed a Mortgage and Note in the sum of $3,500,000 for the subject property (the "February 2011 Mortgage and Note").[1] In connection with the February 2011 Mortgage and Note defendant's mortgage lender commissioned an appraiser to prepare an appraisal report for the subject property (the "2011 Appraisal Report"). On or about August 26, 2015, defendant executed a Mortgage and Note for the subject property in the sum of $4,275,000 in favor of Capital One, NA (the "August 2015 Mortgage and Note"). In connection with the August 2015 Mortgage and Note defendant's mortgage lender, Capital One, NA, commissioned an appraiser to prepare an appraisal report for the subject property (the "2015 Appraisal Report").

On March 23, 2016, plaintiff's counsel issued a Subpoena Duces Tecum to Capital One, NA seeking production of the following: "[a]ll real estate appraisals, income and expense statements and rent rolls…associated with the mortgage 850 West Grand Realty LLC placed on the property known as 834-854 W Grand St., Elizabeth, New Jersey…The mortgage is with Capital One and was executed on August 26, 2015…" ("March 23, 2016 Subpoena").

[1] Although it is not entirely clear from the record before the court, the February 2011 Mortgage and Note was either given in favor of, or subsequently assigned to, Capital One, NA.

On March 24, 2016, plaintiff's counsel issued a second Subpoena Duces Tecum to Capital One, NA seeking production of the following: "[a]ll real estate appraisals, income and expense statements and rent rolls…associated with the mortgage 850 West Grand Realty LLC placed on the property known as 834-854 W Grand St., Elizabeth, New Jersey…The mortgage is with xxx was executed on February 11, 2011…" ("March 24, 2016 Subpoena").

On April 12, 2016, defendant moved under R. 1:9-2 and R. 4:10-3 to quash the March 23, 2016 Subpoena and March 24, 2016 Subpoena.

On May 5, 2016, the court heard oral argument from counsel. Following oral argument the court afforded counsel the opportunity to submit supplemental certifications and briefs addressing service of the subpoenas.[2] On May 16, 2016, plaintiff's counsel submitted Certifications of Service demonstrating that the March 23, 2016 Subpoena and March 24, 2016 Subpoena were served on Capital One, NA at 1735 Morris Avenue, Springfield, New Jersey, on March 31, 2016. In response thereto, on May 23, 2016, defendant's counsel advised the court that based on the Certifications of Service it "has no objection to either of the subpoenas on the basis of improper service."

In support of its motion to quash the March 23, 2016 Subpoena, defendant advances three principal arguments: (1) Capital One, NA has no interest in the outcome of the litigation and the subpoena is unreasonable, oppressive and burdensome, and less cumbersome means are available to obtain the information sought; (2) the income and expense statements and rent rolls were previously supplied to plaintiff on February 15, 2016; and (3) since neither plaintiff's appraiser, nor defendant's appraiser relied on the 2015 Appraisal Report, or consulted with Capital One NA's

[2] Although not raised in defendant's motions or in response to plaintiff's opposition to the motions, during oral argument defendant's counsel asserted that service of the March 23, 2016 Subpoena and March 24, 2016 Subpoena were improperly effectuated under R. 1:9-4.

appraiser, the 2015 Appraisal Report is not admissible and will not reasonably lead to the discovery of admissible evidence.

In support of its motion to quash the March 24, 2016 Subpoena, defendant advances four arguments: (1) Capital One, NA has no interest in the outcome of the litigation and the subpoena is unreasonable, oppressive and burdensome, and less cumbersome means are available to obtain the information sought; (2) the 2011 tax year income and expense statements, rent rolls and 2011 Appraisal Report are too remote in time to be relevant to the true market value of the subject property as of the October 1, 2014 valuation date; (3) since neither plaintiff's appraiser, nor defendant's appraiser relied upon the 2011 Appraisal Report, or consulted with Capital One NA's appraiser, the 2011 Appraisal Report is not admissible and will not reasonably lead to the discovery of admissible evidence; and (4) that discovery of opinions from consulting experts, not expected to testify at trial, are limited under R. 4:10-2(d)(3) to a showing of exceptional circumstances. Defendant contends plaintiff has made no showing of exceptional circumstances and therefore, plaintiff's access to the 2011 Appraisal Report should be precluded.

In opposition to the motions to quash plaintiff argues that defendant has not asserted or demonstrated that any of the information sought is privileged or otherwise barred from disclosure. Therefore, plaintiff maintains that due to the liberality which must be afforded litigants during pretrial discovery, the subpoenas must be upheld. Moreover, plaintiff points out that contrary to defendant's assertions, the party to whom the subpoenas were addressed, Capital One, NA, has not asserted that the scope of the information sought was unduly burdensome, unreasonable or oppressive. Finally, plaintiff maintains that the subpoenaed income and expense statements, rent rolls, 2011 Appraisal Report and 2015 Appraisal Report are relevant and may reasonably lead to the discovery of admissible evidence, and therefore must be permitted.

II. Conclusions of Law

The court's analysis begins with a principle that is axiomatic, the Tax Court is a court of limited jurisdiction. N.J.S.A. 2B:13-2. As our Supreme Court recently observed, the narrow jurisdiction of the Tax Court is "defined by statute…It is against this comprehensive mosaic of procedural safeguards -- one with which continuing strict and unerring compliance must be observed." McMahon v. City of Newark, 195 N.J. 526, 529 (2008). Here the court is charged with the responsibility, based upon the sufficiency of the evidence to be presented at trial, to make a determination of the true market value of the subject property as of October 1, 2014 valuation date.

As construed by applicable case law, a presumption of validity attaches to original tax assessments and judgments of the county boards of taxation. MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998); Riverview Gardens, Section One, Inc. v. North Arlington, 9 N.J. 167, 174-175 (1952); Aetna Life Insurance Co. v. Newark City, 10 N.J. 99, 105 (1952); Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985). Based on this presumption, the appealing party bears "the burden of proving that the assessment is erroneous." Pantasote Co., supra, 100 N.J. at 413 (citing Riverview Gardens, supra, 9 N.J. at 174). The presumption is not an evidentiary device functioning "as a mechanism to allocate the burden of proof. It is, rather, a construct that expresses the view that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote Co., supra, 100 N.J. at 413 (quoting Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)).

A litigant can only surmount the presumption of validity by introducing "cogent evidence" of true value. That is, evidence "definite, positive and certain in quality and quantity to overcome the presumption." Aetna Life Insurance Co., supra, 10 N.J. 99, 105 (1952). Thus, the appealing party shoulders the burden of presenting the court with credible evidence "sufficient to determine

the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.'" West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Properties, Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div. 2000), certif. denied, 165 N.J. 488 (2000)).

A. Pretrial Discovery

To afford litigants the opportunity to fulfill this burden, our court rules favor "broad pretrial discovery." Payton v. New Jersey Turnpike Authority, 148 N.J. 524, 535 (1996) (citing Jenkins v. Rainner 69 N.J. 50, 56 (1976)). See also Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 215-216 (App. Div. 1987). A party may obtain discovery which "appears reasonably calculated to lead to the discovery of admissible evidence" pertaining to the cause of action. In re: Liquidation of Integrity Ins. Co., 165 N.J. 75, 82 (2000). The court rules afford litigants the right to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action…" R. 4:10-2(a). While not explicitly defined in the court rules, "relevant evidence" is defined as "evidence having any tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. However, the relevancy of documents and materials is not predicated upon its admissibility at trial, instead it is founded upon whether the information sought is "reasonably calculated to lead to admissible evidence respecting the cause of action or its defense." Pressler & Verniero, Current New Jersey Rules Governing the Courts, comment 1 on R. 4:10-2(a) (2016). Thus, disclosure of inadmissible evidence is nonetheless required "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." R. 4:10-2(a). See also Irval Realty Inc. v. Board of Public Utility Commissioners, 115 N.J. Super. 338, 346 (App. Div. 1971), aff'd, 61 N.J. 366 (1972); Berrie v. Berrie, 188 N.J. Super. 274, 278 (Ch. Div. 1983). Information which bears even a remote

relevance to the subject matter of the cause of action is discoverable, but can be withheld by a demonstration of privilege. Payton, supra, 148 N.J. at 539.

B. Motion to Quash

Although it is well-settled law that discovery should be liberally granted, the scope of pretrial discovery is not limitless. Meandering expeditions which seek irrelevant, oppressive or burdensome discovery are not permitted. "The discovery rights provided by our court rules are not instruments with which to annoy, harass or burden a litigant or a litigant's experts." Gensollen v. Pareja, 416 N.J. Super. 585, 591 (App. Div. 2010). R. 1:9-2 permits the court "on motion made promptly [to] quash or modify the subpoena…if compliance would be unreasonable or oppressive and…may condition denial of the motion upon the advancement by the person in whose behalf the subpoena or notice is issued of the reasonable cost of producing the objects subpoenaed." R. 1:9-2. See also In re: Grand Jury Proceedings of Guarino, 104 N.J. 218 (1986); In re Addonizio, 53 N.J. 107 (1968); In re Grand Jury Subpoenas Duces Tecum Served by Sussex County, 241 N.J. Super. 18 (App. Div. 1989). Additionally, R. 4:10-3 allows a litigant or the person from whom discovery is sought to obtain relief from the court to "protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense…" R. 4:10-3. Our court rules afford trial courts expansive authority in discovery matters, including directing that discovery not be had; limiting the scope of discovery to certain information; on specified terms and conditions; by prescribed methods; and in the presence of only designated individuals. See R. 4:10-3(a) and 3(d). The determination of what discovery request is reasonable and relevant, and what constitutes an annoying, embarrassing, oppressive or unduly burdensome request, must be measured by the trial court on a case-by-case basis. Berrie, supra, 188 N.J. Super. at 278.

1. March 23, 2016 Subpoena

a. 2015 Appraisal Report

The March 23, 2016 Subpoena seeks production of "[a]ll real estate appraisals, income and expense statements and rent rolls" associated with defendant's August 2015 Mortgage and Note in favor of Capital One, NA. In this action, the central issue facing the court is determination of the true market value of the subject property as of the October 1, 2014 valuation date. The defendant executed and delivered a Mortgage and Note for the subject property to Capital One, NA on or about August 26, 2015. The 2015 Appraisal Report, which is part of the information sought under the March 23, 2016 Subpoena, was completed or updated during either late 2014 or early 2015. Therefore, the 2015 Appraisal Report offers the appraiser's opinion of the true market value of the subject property as of a valuation date in close proximity to the October 1, 2014 valuation date. Thus, measuring the 2015 Appraisal Report against the standards of R. 4:10-2(a), the court concludes that the 2015 Appraisal Report falls within the scope of permissible discovery. Employing even the narrowest definition of relevance, the 2015 Appraisal Report likely contains information about the subject property which is directly relevant to its true market value and may reasonably lead to the discovery of admissible evidence. Appraisal reports are consistently relied on by the court in making an informed decision of the true market value of real property.

Defendant's argument that the 2015 Appraisal Report is not discoverable because it was not relied upon by plaintiff's or defendant's expert and would be inadmissible at trial is specious. The standard for producing information sought during pretrial discovery is not measured by its admissibility at trial, or whether it was relied upon by another expert, instead the court must gauge whether the information sought will reasonably lead "to the discovery of admissible evidence." R. 4:10-2(a). Here, the court concludes that it will.

Moreover, the court finds a lack of support for defendant's argument that plaintiff must make a showing of exceptional circumstances to obtain the 2015 Appraisal Report. R. 4:10-2(d) limits the scope of discovery, which is otherwise discoverable to "facts known and opinions held by experts" that are "acquired or developed in anticipation of litigation or for trial." R. 4:10-2(d) (emphasis added). For example, through interrogatories, a litigant is entitled to know the name and address of each expert witness expected to be called at trial, including a treating physician expected to testify, and the name of an expert who has conducted a physical or mental examination of an injured party, whether or not expected to testify. R. 4:10-2(d)(1). R. 4:10-2(d)(3) permits a litigant to "discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only upon a showing of exceptional circumstances under which it is impractical for the party seeking discovery to obtain facts or opinions on the same subject by other means." R. 4:10-2(d)(3) (emphasis added). The provisions of R. 4:10-2(d)(3) are not directly applicable to defendant's motion to quash the March 23, 2016 Subpoena because the appraiser who prepared the 2015 Appraisal Report was not retained by, nor identified as an expert in this matter, by plaintiff or defendant. The 2015 Appraisal Report was prepared for defendant's mortgage lender, Capital One, NA, and not for a party in anticipation of litigation or in preparation for trial. Thus, the 2015 Appraisal Report is not an expression of the opinions held by an expert of plaintiff or defendant that is not expected to be called to testify at trial under R. 4:10-2(d)(3).

Although the provisions of R. 4:10-2(d)(3) are not directly applicable, the approach expressed by the Rule should nonetheless be applied to the instant motion. The Rule suggests that, absent a showing of exceptional circumstances, discovery of an appraisal report prepared for a non-party to the litigation, employing a valuation date that is markedly removed from the valuation date at issue, should not be permitted. Here, the 2015 Appraisal Report was prepared for Capital

One, NA in late 2014 or early 2015 pursuant to defendant's mortgage loan for the subject property. In this litigation, the court is being asked to determine the true market value of the subject property as of October 1, 2014. Therefore, the 2015 Appraisal Report, and the information about the subject property upon which the appraiser's opinions are founded, are not so far removed from the valuation date, that it would likely contain information relevant to the true market value of the subject property as of October 1, 2014, and may reasonably lead to the discovery of admissible evidence.

b. 2015 Income and Expense Statements, Rent Rolls and Note

Although Capital One, NA has not advanced a position before the court regarding the reasonableness or propriety of the March 23, 2016 Subpoena, defendant maintains it is oppressive and burdensome, and that less cumbersome means are available to obtain the information sought.

Conversely, plaintiff charges that the income and expense statements and rent rolls sought from Capital One, NA "should be exactly the same as those the taxpayer has provided to to [sic] the City in its answers to interrogatories". Plaintiff's counsel questions "why the taxpayer would object to the bank producing the income and expense statements" and expresses his "suspicion" that they could be "relevant for impeachment purposes."

The March 23, 2016 Subpoena seeks all "income and expense statements and rent rolls" and the "$4,275,000 note" associated with the August 2015 Mortgage and Note on the subject property. The preferred method for determining the estimated market value of income-producing property is the income capitalization approach. Parkway Village Apartments Co. v. Township of Cranford, 8 N.J. Tax 430 (Tax 1985), aff'd, 9 N.J. Tax 199 (App. Div. 1986), rev'd on other grounds, 108 N.J. 266 (1987); Helmsley v. Borough of Fort Lee, 78 N.J. 200 (1978); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (Tax 1996). "The income capitalization approach to value consists of methods, techniques, and mathematical procedures that an appraiser

uses to analyze a property's capacity to generate benefits (i.e., usually the monetary benefits of income and reversion) and convert these benefits into an indication of present value." Appraisal Institute, The Appraisal of Real Estate 439 (14th ed 2013). Pivotal to the income capitalization approach is the appraiser's analysis of costs, market data and a property's capacity to generate future benefits. It is essential to the income capitalization approach that an appraiser perform a "comprehensive analysis of the annual expenses of property operation". Appraisal Institute, The Appraisal of Real Estate 453 (14th ed 2013). Thus, when engaging in the income capitalization approach to value, an appraiser would be remiss not to evaluate and analyze a property's own income and expense statements and rent rolls before computing items of potential gross income, effective gross income and net operating income. Similarly, in employing the band of investment technique to derive an overall capitalization rate, debt and equity components of an investment must be weighted and combined. The mortgage capitalization rate component of the equation "is a function of the [mortgage] interest rate, the frequency of amortization, and the amortization term of the loan." Appraisal Institute, The Appraisal of Real Estate 496 (14th ed 2013). Thus, material to development of the mortgage capitalization rate are market rates of interest and amortization terms identified for similar property types on or about the valuation date. Thus, the income and expense statements, rent rolls and the August 2015 Mortgage and Note likely contain information which is probative of, and relevant to, the true market value of the subject property.

However, concluding that the income and expense statements and rent rolls bear some relevance to the instant litigation does not end the court's inquiry. In considering whether to restrict the scope of discovery under R. 4:10-2 and R. 4:10-3, the court must balance the "beneficial effects of discovery against its disadvantages". State ex rel W.C., 85 N.J. 218, 224 (1981). In exercising this discretion the court should weigh whether the evidence being sought would meaningfully contribute to the prosecution or defense of the cause of action, or whether it

would likely lead to unnecessary burdens, annoyance, harassment or embarrassment. The party moving to quash a subpoena bears the burden of demonstrating the request is oppressive or unreasonable. However, one of the key factors employed by the courts in evaluating whether a subpoena is burdensome, oppressive or unreasonable, is the requesting party's need for the production. See Berrie, supra, 188 N.J. Super. at 286; Northrop Corp. v. McDonnell Douglas Corp., 751 F.2d 395, 405 (D.C. Cir. 1984); In re Auto. Refinishing Paint Antitrust Litig., 229 F.R.D. 482, 495 (E.D. Pa. 2005).

Here, plaintiff's counsel acknowledges having received from defendant, "in its answers to interrogatories" the "income and expense statements" and rent rolls for the subject property. Plaintiff's counsel demands copies of the income and expense statements and rent rolls defendant supplied to Capital One, NA for the same time period so that plaintiff's counsel can either confirm or refute his "suspicion" that they are identical. However, plaintiff's counsel has failed to demonstrate a substantial need for the production of these documents which are admittedly already in its possession. Plaintiff has not offered a scintilla of evidence to the court supporting his unfounded hunch or "suspicion" that the income and expense statements or rent rolls supplied by defendant to Capital One, NA deviate or stray from the income and expense statements or rent rolls furnished during discovery. Plaintiff's counsel's mere curiosity is not enough to warrant intrusion into the lines of communication and disclosure of financial information made by defendant to its mortgage lender in connection with a mortgage loan that is not the subject of the instant litigation. Plaintiff's counsel is not entitled to conduct a discovery fishing expedition based on general and unsupported allegations. See Cain v. Merck & Co., Inc., 415 N.J. Super. 319, 332 (App. Div. 2010). The object of our discovery rules are to enable a litigant to obtain insight into an adversary's evidence and cause of action, not to burden a non-party to the litigation with requests for discovery which seek duplicative information that was previously supplied by another litigant.

Weighing the probative value of the income and expense statements and rent rolls furnished to defendant's lender, against the duplicative nature of plaintiff's request, the court will not compel Capital One, NA to produce them at this time. Absent some factual premise for plaintiff's counsel's "suspicion" that the income and expense statements and rent rolls furnished plaintiff during discovery materially deviate from those supplied to defendant's mortgage lender, the court will not cause an unwelcome intrusion to be visited upon a non-party. "[A]n inspection to investigate possible wrongdoing where there is no 'credible basis,' is a license for 'fishing expeditions'" and thus, is averse to maintaining a non-party's interests in the privacy and confidentiality of its business records. Cain, supra, 415 N.J. Super. at 332. "Where the need for the information was not sufficient to outweigh the invasion of…privacy, discovery has been denied especially where the deponent is not a party to the suit." Berrie, supra, 188 N.J. Super. at 286 (citing Premium Service Corp. v. Sperry & Hutchinson Co., 511 F.2d 225, 229 (9th Cir. 1975)).

However, as stated hereinabove, material to the development of a mortgage capitalization rate are the market rates of interest and amortization terms for loans given to similar or like properties on or about the valuation date. Here, on or about August 26, 2015 defendant executed and delivered a Mortgage Note in favor of Capital One, NA in the sum of $4,275,000. Although defendant argues that it will supply plaintiff with the August 26, 2015 Mortgage Note "upon proper request", there is no indication in the record that it has been furnished. The Mortgage Note was executed and delivered by defendant to Capital One, NA on August 26, 2015, a date in relative close proximity to the October 1, 2014 valuation date. The August 2015 Mortgage Note contains information which may be directly relevant to development of the mortgage capitalization rate and correspondingly, integral to development of the true market value of the subject property under the income capitalization approach.

2. March 24, 2016 Subpoena

a. 2011 Appraisal Report

The March 24, 2016 Subpoena seeks production of "[a]ll real estate appraisals, income and expense statements and rent rolls" and the "$3,500,000 note" associated with defendant's February 2011 Mortgage. As set forth above, the issue facing the court is determining the true market value of the subject property as of the October 1, 2014 valuation date. The 2011 Appraisal Report was prepared in late 2010 or early 2011, in connection with defendant's mortgage loan. Once again employing the principles expressed under R. 4:10-2(d)(3), absent a showing of exceptional circumstances, discovery of an appraisal report prepared for a non-party to the litigation, employing a valuation date that is markedly removed from the valuation date at issue, should not be permitted. Here, the 2011 Appraisal Report offers valuation opinions that are likely between three and four years prior to the October 1, 2014 valuation date. The 2011 Appraisal Report and information about the subject property upon which the appraiser's opinions are founded, are far removed from the valuation date. The valuation opinions, property information and data in the 2011 Appraisal Report are not relevant to the true market value of the subject property as of October 1, 2014, and will not reasonably lead to the discovery of admissible evidence.

b. 2011 Income and Expense Statements, Rent Rolls and Note

Under the provisions of R. 4:10-2(a), a litigant may "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action…" R. 4:10-2(a). The standard for relevancy is measured by whether the information sought is "reasonably calculated to lead to admissible evidence respecting the cause of action or its defense." Pressler & Verniero, Current New Jersey Rules Governing the Courts, comment 1 on R. 4:10-2(a) (2016).

Here, the income and expense statements and rent rolls were prepared in late 2010 or early 2011, and likely contain income and expense information compiled for the subject property for the

2009 and 2010 tax years. Moreover, the February 2011 Mortgage and Note were executed and delivered by defendant on February 11, 2011, and represent the market condition approximately four years prior to the October 1, 2014 valuation date. The income and expense statements, rent rolls and February 2011 Mortgage and Note are too far removed to provide meaningful and relevant information regarding the true market value of the subject property as of the October 1, 2014 valuation date. The 2011 income and expense statements, rent rolls and February 2011 Mortgage and Note will not reasonably lead to the discovery of admissible evidence.

III. Conclusion

The court concludes that defendant's motion to quash plaintiff's March 23, 2016 Subpoena is denied, in part, insofar as Capital One, NA shall produce the 2015 Appraisal Report, if any, and August 26, 2015 Note in the sum of $4,275,000; and granted, in part, insofar as Capital One, NA shall not be required to produce the income and expense statements and rent rolls associated with the August 26, 2015 Mortgage and Note. Plaintiff shall be responsible for reimbursing Capital One, NA all reasonable costs and expenses in duplicating and producing the 2015 Appraisal Report and August 26, 2015 Note.

The court further concludes that defendant's motion to quash plaintiff's March 24, 2016 Subpoena is granted. Capital One, NA shall not be required to produce the 2011 Appraisal Report, if any, the February 11, 2011 Note, and the income and expense statements and rent rolls associated with the February 11, 2011 Mortgage.

An Order reflecting the foregoing will be issued by the court.

Very truly yours,

/s/Hon. Joshua D. Novin, J.T.C.