

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW
YORK, by LETITIA JAMES, Attorney
General of the State of New York,

Plaintiff,

-against-

Donald J. Trump, *et al.*,

Defendants.

Index No. 452564/2022

Mot. Seq. 034

Hon. Arthur Engoron

**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO
IVANKA TRUMP'S MOTION TO QUASH**

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PRELIMINARY STATEMENT

The Office of the New York State Attorney General (“OAG”) submits this memorandum of law in opposition to Ivanka Trump’s Motion to Quash Subpoenas Ad Testificandum issued by OAG to compel her testimony at trial in this action.

Ms. Trump was served properly at the New York addresses and actual place of business of multiple entities that are under her control; she should be compelled to testify in this proceeding. While no longer a Defendant in this action, she indisputably has personal knowledge of facts relevant to the claims against the remaining individual and entity Defendants.¹ But even beyond that, Ms. Trump remains financially and professionally intertwined with the Trump Organization and other Defendants and can be called as a person still under their control. Finally, Ms. Trump has been and remains a litigant in the OAG’s concurrent, still active, special proceeding, and appeared in and litigated this action without contesting personal jurisdiction. These are sufficient, ample bases to compel Ms. Trump’s testimony.

ARGUMENT

1. Ivanka Trump was Properly Served with Subpoenas

A subpoena “shall be served in the same manner as a summons” under CPLR 2303. OAG has served subpoenas on Ms. Trump through several available means to ensure that she had adequate notice of the Subpoenas and to ensure that this Court could exercise its jurisdiction over Ms. Trump appropriately. New York courts “have not been hesitant in extending the reach of a subpoena to persons outside the State if they have a presence in the State and service is effected

¹ Although the Appellate Division dismissed claims against Ms. Trump on statute of limitations grounds, this Court has repeatedly noted that the statute of limitations applies against *claims* and not *evidence*, and therefore has no bearing on the enforcement of this trial subpoena.

in the State.” *Coutts Bank Ltd. v. Anatian*, 275 A.D.2d 609, 611 (1st Dep’t 2000) (noting that the Judiciary Law “is concerned not with where the witness is located, but, rather, where service is made”). *See also Roach v. Tozzo*, 2004 WL 6010961 (Sup. Ct. Queens Cty. 2004) (defendant still “found in the state” where they still owned property out of which their former business had operated)

As an initial matter, Ms. Trump tries to draw a distinction between whether the subpoena had been served on her individually or as an officer of the entities addressed beneath her name in the subpoena. All roads here lead to Rome; regardless of how the subpoenas are parsed,² sufficient service was effected to compel Ms. Trump’s testimony, whether individually or as an officer or agent of the corporate entities. The factual knowledge in her possession and its relevance to this action does not change whether she is appearing, for example, as officer of Ivanka OPO, LLC or as Ivanka Trump who negotiated the OPO loan and other transactions at issue in this case.

First, service may be effected in the State on a natural person by personal delivery to the individual at their “actual place of business,” defined broadly as “any location that the [subpoena recipient], through regular solicitation or advertisement, has held out as its place of business.” CPLR 308(6). In *Xiao Hong Wang v Chi Kei Li*, 169 A.D.3d 593 (1st Dept 2019), the First Department held that service was appropriately effectuated at an address where business tax bills

² *See Deutsche Bank AG v Vik*, 2015 N.Y. Misc. LEXIS 291 *34 (Sup. Ct. N.Y. Cty., 2015) (“Where one defendant is subject to personal jurisdiction and service of process, its alter egos are subject to personal jurisdiction and may be served by serving it”) (quoting *Glory Wealth Shipping Pte Ltd v Industrial Carriers, Inc.*, 590 F. Supp. 2d 562, 564 (S.D.N.Y. 2008)). Indeed, Ms. Trump herself cites *Stanley Agency v. Behind the Bench (National Basketball Wives Association)*, 23 Misc. 3d 1107(A) (Sup. Ct. Kings Cty. 2009), which stated that “the Appellate Division, Second Department has held that service of a single summons on an officer of a corporation, who is also an individual defendant, **constitutes proper service on both the corporation and the individual defendant**” (emphasis added) Ms. Trump breaks up this quote to suggest it only applies to a defendant, but that language merely reflects the context there of service of a summons. Where a subpoena is to be served the same way on a third party, there is no question that the manner of service is applicable.

were mailed to an individual, noting that, given service at such an address, the individual “may not now reasonably claim that he was not properly served.” *Id.* at 593. Similarly, in *Gibson Dunn & Crutcher LLP v. Global Nuclear Services and Supply, Ltd.*, 280 A.D.2d 360, 361 (1st Dep’t 2001), the First Department held that an individual who had “effectively held out” an address as his place of business could be served at that address. In particular, in the course of that ruling, the First Department noted, among other facts, that the individual was “executive vice president and a significant shareholder of at least one company operating at that location.” *Id.* See also, e.g., *Day v. Davis*, 47 A.D.3d 750 (2d Dep’t 2008) (attorney who held out location as address could be served at that address).

These standards are easily satisfied here. Ms. Trump has been properly served personally at her actual place of business, namely the address of Trump Tower, 725 5th Avenue, New York, NY, consistently used by Ms. Trump for transacting business through three separate entities that are under Ms. Trump’s partial or total control, TTT Consulting LLC, Ivanka OPO LLC and 502 Park Project LLC. OAG attempted personal delivery to Ms. Trump at that address and, following rejection of service, OAG undertook substituted service by mailing the subpoena and emailing a copy to Ms. Trump’s New York counsel of record.

Second, service upon the three entities is sufficient to require those entities to produce Ms. Trump for testimony at trial. *Standard Fruit & S. S. Co. v. Waterfront Commission*, 43 N.Y.2d 11 (1977), establishes that entities doing business in New York may be required to produce their out-of-state personnel in judicial proceedings in this State. As the Court of Appeals explained, “[w]e hold that a corporation doing business in New York may be subpoenaed to testify as a witness about a corporate transaction through its officers and employees who have knowledge of the transaction.” *Id.* at 9. “It is no excuse that the officers and employees who participated in the

corporate transaction involved are not within the jurisdiction or that they refuse to appear or testify in New York.” *Id.*

Here, Ms. Trump, as an officer or owner of the entities named in the subpoenas, TTT Consulting LLC and 502 Park Project, LLC, can be compelled to appear in for testimony in New York, where those entities are found. For example, the entity Ivanka OPO LLC was the vehicle through which Ms. Trump exercised her ownership interest in the Old Post Office property. As set forth in its Operating Agreement, the “Principal Office” of Ivanka OPO LLC are the offices of the Trump Organization on Fifth Avenue in Manhattan, where the subpoena was ultimately served. *See* Gaber Aff, ¶9, Exhibit 3³

1.7 Principal Office.

The principal office of the Company shall be located at c/o The Trump Organization, 725 Fifth Avenue, New York, New York 10022, or at such other place as the Member may determine from time to time and the Company shall maintain records there as required by the LLCA. The Company may also operate at such other locations, both within or without the State of Delaware, as the Member may determine from time to time.

Through Ivanka OPO, LLC, Ms. Trump undertook a host of commercial activities relevant to this case, guaranteeing, in connection with her ownership interest, a portion of Trump Old Post Office LLC’s loan from Deutsche Bank. Gaber Aff, Exh. 2 When the Trump Organization finally sold the OPO property in May of 2022, Eric Trump sent a congratulatory “all hands” email “[o]n behalf of my father, Ivanka, Don and our entire family.” Gaber Aff., Exh. 17. Ms. Trump and

³ Ms. Trump has averred that Ivanka OPO, LLC is a Delaware LLC without authorization to do business in New York. The entity’s failure to obtain proper authorization is not a defense to being found in New York, merely an admission of its transacting business without required authorization.

Ivanka OPO LLC remained involved in the transaction, which as of the date of this proceeding had certain financial terms outstanding.

There cannot be dispute that Ms. Trump, individually, through corporate entities she owns, controls or holds an interest in, or through her ongoing relationship with the Trump Organization is clearly doing business in New York and should be amenable to testify before its courts, regardless of her domicile. *Standard Fruit & S. S. Co.*, 43 NY2d at 15 (1977)(“a corporation doing business in New York may be subpoenaed to testify as a witness about a corporate transaction through its officers and employees who have knowledge of the transaction”) *In re Grand Jury Subpoenas*, 70 NY2d 700 (1987)(corporate officers “doing business” in New York were within the state for jurisdictional purposes) *See, also, e.g., Wallace v. Bacon*, 143 A.D. 211, 215 (1st Dept 1911) (“the isolated fact that the party sought to be examined is a nonresident of this state, and that fact does not prevent a party to the action from examining such nonresident before trial if he can be found within this state and served with the order requiring his examination.”)

2. This Court has Personal Jurisdiction over Ivanka Trump

First, the plain fact of the matter is that service on Ms. Trump personally, at the actual place of business she has used with multiple corporate alter egos, as described above is sufficient under CPLR 308(2) to establish personal jurisdiction over a natural person. The cases cited by Ms. Trump are all inapposite: *Amelius v. Grand Imperial LLC*, 64 N.Y.S.3d 855, 865–66 (Sup. Ct. N.Y. Cty. 2017) dealt with the issue of general jurisdiction over an out of state corporate defendant and whether New York’s long-arm statute could be used to obtain general jurisdiction over and subpoena a foreign corporation. *In re Three Arrows Cap. Ltd.*, 649 B.R. 143 (Bankr. S.D.N.Y. 2023) is a bankruptcy case interpreting federal civil procedure on service of foreign

parties that ultimately did not reach a decision on personal jurisdiction. *Genger v Genger*, 50 Misc 3d 361 (Sup. Ct. N.Y. Cty. 2015) deals with a privilege from *further* suit of nondomiciliary witnesses travelling to New York to give testimony.⁴

Second, having served the subpoenas “within the state” as described above, there is no need to consider long-arm jurisdiction. To the extent general or specific jurisdiction over Ms. Trump or any of her corporate entities is concerned, there is an ample record showing that Ms. Trump’s corporate entities are all at home in New York and subject to this court’s general jurisdiction. In the case of Ivanka OPO, LLC, that entity *would* be subject to general jurisdiction by virtue of the fact that its operating agreement and nearly all available transaction documents show it to be “at home” in New York City, notwithstanding its lack of legal authority to do business in the state. *Aybar v. Aybar* 37 N.Y.3d 274 (2021). TTT Consulting LLC likewise appears to have its principal place of business in New York, and 502 Park Project LLC is a New York entity.

Third, even if the Court should not want to reach the issue of general jurisdiction, Ms. Trump and the other entities through which she has been subpoenaed have extensive contacts with the State, concerning the facts at issue, more than sufficient to justify specific jurisdiction and her being called to testify.

⁴ The final paragraph in *Coutts Bank* 275 AD2d at 613 is an instructive analogy here: “Finally, we note that the judgment-debtor’s arguments in support of the proposition that long-arm jurisdiction does not apply to the service of a subpoena ignore the fact that jurisdiction is here asserted on the basis of service of the subpoena “in the state” through his attorneys. The record also discloses that, at the time of such service, the judgment-debtor owned a home in the State, appeared in the United States Bankruptcy Court for the Southern District of New York to prosecute personal claims against one of his former companies and was designated manager of seven LLCs, all of which were listed as “active” in New York. All of these factors are relevant to a designation for substituted service under CPLR 308 (5).”

Fourth, the fact that Ms. Trump has submitted to this Court’s jurisdiction supports the Court’s compulsion of her testimony at trial. Judiciary Law § 2-b(1) authorizes a trial subpoena’s issuance to anyone who is “found in the State,” and additionally authorizes the Court to issue any order “necessary to carry into effect the powers and jurisdiction possessed by it.” Ms. Trump, in the ongoing special proceeding (No. 451685/2020), remains subject to this Court’s jurisdiction. Furthermore, when she was a party to this action, Ms. Trump did not contest personal jurisdiction despite ample litigation and opportunity to do so. Therefore, that defense should be deemed waived, as notwithstanding her dismissal as a party and recall as a witness, the facts surrounding this court’s jurisdiction over her in this action have not changed. Gaber Aff., ¶5

Accordingly, this Court may exercise jurisdiction over her and compel her testimony here. The First Department’s decision in *Coutts Bank (Switzerland) Ltd. v. Anatian*, 275 A.D.2d 609 (1st Dep’t 2000), is instructive. There, the court found an individual judgment debtor was subject to subpoena under Judiciary Law § 2-b(1) by virtue of their litigation of “a related federal action” in this State. *Id.* at 609; *see also id.* at 609 (Sullivan, P.J., concurring). Here, Ms. Trump is similarly situated to the judgment debtor in *Anatian*: not only does she remain a party to related litigation, but she voluntarily initiated a substantial portion of that litigation to challenge the Attorney General’s investigative subpoena issued to her. The proceeding in which her challenge was rejected remains ongoing, so Ms. Trump remains subject to the jurisdiction of the Court and her testimony may be compelled here.

Finally, Ms. Trump remains under the control of the Trump Organization, including through her ongoing and substantial business ties to the organization. Ms. Trump reappointed herself to a participating member of several Trump Organization entities following her departure from government. Gaber Aff., ¶¶17, 18, Exh. 4. Moreover she does not seem to be averse to her

involvement in the family business when it comes to owning and collecting proceeds from the OPO sale, the Trump Organization purchasing insurance for her and her companies, managing her household staff and credit card bills, renting her apartment or even paying her legal fees in this action.⁵ It is only when she is tasked with answering for that involvement that she disclaims any connection. But her attempt now to distance herself from her family's business carries no legal weight.

3. Ms. Trump Cannot Designate Someone Else to Testify in Her Place

Ms. Trump conflates rules for noticing the deposition of a corporate entity by designating an individual to testify on behalf of the corporation, 22 NYCRR § 202.20-d, with the rules governing a trial subpoena seeking testimony from a corporate officer or agent with *personal knowledge* of the relevant facts. Rule 202.20-d governs deposition testimony about “information known or reasonably available to the entity” to be given during the pretrial phase, and is meant to streamline discovery and information gathering from an entity. New York law is clear, however, about the distinction between witness’ personal knowledge and hearsay information they learn from corporate records. *Matter of New York City Asbestos Litig.*, 27 N.Y.3d 765, 804 (2016) (witness who only knew about transactions at issue from familiarizing himself with corporate documents correctly precluded). *See also Evans v. 3M Co.*, 2017 N.Y. Misc. LEXIS 1152, *6 (Sup. Ct. N.Y. Cty. 2017) (“Defendant cannot circumvent the requirement that a witness have personal knowledge merely because that witness testifies for a corporation”)

⁵ See Gaber Aff ¶30

The Corporation's obligation under *Standard Fruit* (43 N.Y.2d at 11), similarly, is to produce the required witness with personal knowledge, not a mere representative. Other Defendants cannot testify as to *Ms. Trump's* personal knowledge, and they are no substitute for her appearance as a trial witness.

4. There is No Basis to Limit Ms. Trump's Testimony at Trial.

Lastly, assuming Ms. Trump is required to appear, there is no basis to limit the substance of her testimony. She was a key participant in many of the events at issue, as the Court is aware. Moreover, the Court has broad discretion concerning the scope of any direct, cross, and re-direct examination. *See, e.g., Ingebretsen v. Manha*, 218 A.D.2d 784, 784 (2d Dep't 1995) (citing *Feldsberg v. Nitschke*, 49 N.Y.2d 636 (1980)).

Ms. Trump cites only to a single case in support of her position, *Mestel & Co. v. Smythe Masterson & Judd, Inc.*, 215 A.D.2d 329, which involves a subpoena *duces tecum* not a testimonial subpoena. The more apposite case is elsewhere in Ms. Trump's brief, 23/23 *Communs. Corp. v. GMC*, 172 Misc. 2d 821, 824 (Sup Ct NY County 1997), which states "[t]he traditional rule is that '[s]ince the court should not anticipate potential lines of questioning, the power to issue a subpoena *ad testificandum* is absolute and unlimited. The court should not impose a pretestimonial hearing on the 'absolute and unlimited' right of a party to issue a trial subpoena." (Internal citations and quotations omitted). *See also Ocean-Clear, Inc. v Continental Cas. Co.*, 94 A.D.2d 717, 719 (2d Dep't 1983); *Matter of Dwyer v Wilcox*, 92 A.D.2d 646 (3d Dep't 1983); *Matter of Hirshfeld v Craig*, 239 N.Y. 98, 117 (1924).

CONCLUSION

For the foregoing reasons, this court should deny Ms. Trump's motion to quash the testimonial subpoenas and direct her to appear and provide testimony at trial.

Dated: New York, New York
October 25, 2023

Respectfully submitted,

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SHERIEF GABER