

FILED DATE: 12/28/2018 9:20 AM 2018L011219

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
12/28/2018 9:20 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2018L011219

HARVEST BIBLE CHAPEL,
THROUGH JAMES SCOTT MILHOLLAND,
COO; RONALD DUITSMAN, ELDER)
BOARD CHAIRMAN; WILLIAM)
SPERLING, ELDER BOARD MEMBER;)
AND, JAMES S. MACDONALD, BOTH)
INDIVIDUALLY AND AS SENIOR)
PASTOR OF HARVEST BIBLE)
CHAPEL,)

Plaintiffs,)

vs.)

No.: 2018 L 011219

RYAN MICHAEL MAHONEY,)
MELINDA MAHONEY,)
SCOTT WILLIAM BRYANT, SARAH BRYANT,)
and JULIE STERN ROYS.)

Defendants.)

Hon. Diane Joan Larsen

**MOTION TO STAY DISCOVERY
OR IN THE ALTERNATIVE TO
BAR ABUSE OF PRETRIAL DISCOVERY MATERIALS**

NOW COME PLAINTIFFS, by and through their attorney The Law Office of Michael J. Young, and respectfully moves this Court to stay Discovery until the resolution of the Motions to Dismiss, in support of such request the plaintiffs state as follows:

1. The Complaint on this matter was filed on October 16, 2018.
2. The defendants filed three separate Motions to Dismiss.
3. The Defendants' Motions to Dismiss seek to dismiss the plaintiffs' entire Complaint as well as distinct portions therein.

4. On December 5, 2018, this Court set a briefing schedule whereby the plaintiffs must respond to the Defendants' three separate Motions to Dismiss by February 4, 2019.
5. Notwithstanding the three pending Motions to Dismiss, the defendants have issued several Subpoenas to third-parties seeking a wide array of documents, including private e-mails and text messages.
6. On December 6, 2018, the third-parties that received these Subpoenas provided responses that contained both confidential information as well as information that is protected by the Attorney-Client Privilege.
7. Counsel for the plaintiffs advised defense counsels that the documents tendered pursuant to the Subpoenas contained both confidential information as well as information protected by the Attorney-Client Privilege. Specifically, plaintiffs' counsel Michael Young wrote to all defense counsels on December 6, 2018:

I am formally requesting that these responses are not provided to any other entity other than the attorneys that have their appearance on file . . ."

Exhibit 1.

8. Additionally, on December 8, 2018, Attorney Young wrote to opposing counsels requesting that the materials be held by counsels until Judge Larsen had an opportunity to hear Plaintiffs motion:

Initially I did not believe a Protective Order was necessary nor desired because Discovery was not opened by the Court and the defendants' have all filed motions to dismiss, alleging that the

entire case should be dismissed. However, because the Elephant's Debt website continues to publish information of the court proceedings (that is not complete nor accurate) and documents, I am concerned that the confidential and privileged communications will be published by the defendants. The defendants' litigation strategy is that of trying to case in the court of public opinion rather than in the actual venue.

Therefore, I will be filing a Emergency Motion for a Protective Order. This motion will be filed Monday, December 10, 2018 and will be noticed for December 12, 2018. Based upon your own acknowledgement that the materials contains both confidential and privilege communications and this notice of our intention to file for a Protective Order, I am requesting that the documents remain only with the attorneys of record and not published to the ED website or otherwise until Judge Larsen has the opportunity to hear the matter. Finally, the defendants are not prejudiced by waiting a few days for Judge Larsen's ruling. (Emphasis added).

Exhibit 2.

9. On December 12, 2018, Attorney Young again wrote to opposing counsels:

[P]lease consider this this formal notice pursuant to Illinois Supreme Court Rule 201(p) of the Plaintiffs claim that the documents tendered so far by third-parties are protected because they are privileged, work product and or confidential. Until my motion which deals directly with this issue is before the Court, I would direct all counsels to Illinois Supreme Court Rule 201(p) . . .

Exhibit 3.

10. Plaintiffs' counsel initially noticed their Motion for a Protective Order for December 13, 2018. However, Plaintiffs counsel decided not to move forward with the motion as the defendants attorneys stated that they did not receive any notice. Plaintiffs changed the date in order to ensure that all defense counsels had adequate notice.
11. Plaintiff re-noticed the Motion for December 18, 2018.
12. On December 13, 2018, plaintiffs' counsel, for the fourth time, requested that defense counsel hold the materials until Judge Larsen had the opportunity to rule on the issuance of a Protective Order as it pertained to these documents.

Counsels:

I will schedule my motion so it does not interfere with anyone's Christmas holiday. However, by doing so, I need an agreement on the documents that have been produced so far. I tend to agree with Attorney's Philbrick reading of Ill. Sup. Ct. Rule 201(p), nevertheless, the documents that are produced are still subject to both confidentiality and other specific protections. What is the harm to your clients' if the documents are held by counsel until the Judge can rule on the issue? I understand that the defendants want to publish these on the ED website asap. The cases I have cited in my motion support my position that they should be held until the Court decides the matter.

Exhibit 4.

13. The plaintiffs scheduled its motion for a protective order before this Court for December 18, 2018, as an Emergency Motion out of concern that defense counsels would release the information to their clients and they would publish the information on the internet.

14. On December 18, 2018, approximately 30 minutes before this Court was scheduled to hear Plaintiffs' Motion for a Protective Order, Defendant Roys published the contested materials on the internet. Exhibit 5.
15. Defendants, Mahoney and Bryant, also published the contested materials on their website, the Elephant's Debt. Exhibit 6.
16. Defendant, Roys, Mahoneys, and Bryants usurped Judge Larsen's authority by publishing the materials before this Court had the opportunity to hear the matter.
17. The defendants continue to seek as much confidential and privilege information as they can with the sole intention of publishing all Discovery to force the plaintiffs into dismissing the lawsuit. Exhibit 7.
18. Using Discovery for the purpose of trying to embarrass a party is not proper. *See Roberson v. Liu*, 198 Ill.App.3d 332, 338, 555 N.E.2d 999 (asserting that "conduct calculated to embarrass, hinder or obstruct a court in its administration of justice or to derogate from its authority or dignity" is the applicable standard a court should utilize when assessing Contempt).
19. Additionally, publishing materials received in Discovery when there is a Motion for a Protective Order pending is unethical, unprofessional, disrespectful to this Court, to plaintiffs' counsel, and to the interests of justice. *See May Centers, Inc. v. S.G. Adams Printing and Stationery Co.*, 153 Ill.App.3d 1018, 1022-3, 506 N.E.2d 691 (1987) (stating that "Discovery should educate the parties as to their value of their claims and defenses and expedite ascertainment of the truth . . . A litigant *has no constitutional right* to disseminate information made available only for the purposes of trying his suit . . . Pretrial discovery has a significant potential for abuse. This abuse is not limited to matters of delay and expense; discovery may also implicate privacy interests of litigants

and third parties. Such interest are implicitly protectable by protective orders”) (internal citation omitted)(emphasis added).

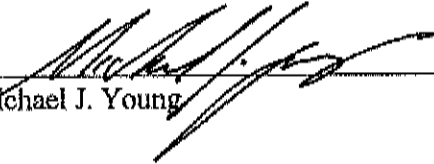
20. The defendants’ wrongful use of Discovery, their wrongful publication of confidential and privileged information and their intentional efforts to undermine this Court’s authority, is a basis to stay Discovery until such time as a Protective Order is in place and rulings on the Defendants’ Motions to Dismiss have been decided.
21. This Court may stay Discovery “as part of its inherent authority to control the disposition of cases before it.” *Phillips Electronics, N.V. v. New Hampshire Insurance Co.*, 295 Ill.App.3d at 901-2, 692 N.E.2d 1268 (1998).
22. A request for a stay of Discovery only attempts to “preserve the status quo existing on the date.” *Kaden v. Pucinski* 263 Ill.App.3d 611, 615, 635 N.E.2d 468 (1994).
23. As the party seeking the stay plaintiffs need only justify the stay in outweighing “potential harm” to the opposing parties. *Kaden* 263 Ill.App.3d at 616, 635 N.E.2d 468.
24. Defendants suffer no potential harm from temporarily delaying Discovery. There is no way to be sure what will survive any of the Motions to Dismiss.
25. The present case differs from the normal circumstance in that materials being tendered in Discovery is being published on the internet by defendants. *See* Exhibit 5, 6, and 7.
26. Defendants state, on their website, that it is their understanding that Discovery is public record and therefore allowed to be published. Exhibit 7. This is however, patently untrue as “courts clearly distinguish between pleadings . . . and mere discovery which has not been filed with the court. . . In fact, discovery by its very nature is distinct from documents which are filed with the court. . . Therefore, discovery is not open to the public at common law and is generally conducted in private as a matter of modern practice.” *Jackson v. Jackson*, 2002 WL 323301735 (citing *Seattle Times v. Rhinehard*,

476 U.S. 20 and *Monier v. Chamberlin*, 35 ILL.2d 351, 221 N.E.2d 410).

27. This creates real opportunity for harm to plaintiffs in that defendants are reaching far beyond the reasonable scope of Discovery as plaintiffs currently see it, and even further beyond reasonable scope in the event that some claims do not survive the multitude of motions.
28. In normal circumstance this is an acceptable risk to litigation. However, in the present action with the instantaneous dissemination plaintiffs should not have to sacrifice all aspects of their public privacy in regards to matters unrelated to the case at hand in order to pursue their actionable legal rights. *See May Centers, Inc. v. S.G. Adams Printing and Stationary Co.*, 153 Ill.App.3d 1018, 506 N.E.2d 691 (stating as reasoning against abuse of Discovery that plaintiffs would “rather than expose themselves to unwanted abusive use of discovered matters, individuals may well forgo the pursuit of their just claim: ‘The judicial system will thus have made the utilization of its remedies so onerous that the people will be reluctant or unwilling to use it, resulting in frustration of a right as valuable as that of speech itself’”)(internal citations omitted).
29. The continued untethered Discovery as it is being perpetrated by defendants, when not limited by a reasonable scope of the actions, stands to create cognizable harm to plaintiffs. Forcing them to disavow any desire or hope of privacy, whether related to this case or not. Staying Discovery for a short time to allow for a clearer image of the case as it stands does not present any harm actual or foreseeable to defendants in this matter. *See May Centers, Inc.*, 153 Ill.App.3d at 1023, 506 N.E.2d 691 (the defendants need to show need or good reason to justify being able to publish Discovery).

30. These abuses of Discovery to circumvent the natural order of the law are precisely why the relevant rules and case precedent have been created. As we wish to continue pursuing this matter with respect to opposing counsel we hope this court provides a remedy that allows for his matter to be handled amicably as the defendants have shown they intend to circumvent the authority of this court as much as possible. Therefore, Plaintiffs respectfully request that this Court grant an Order to Stay Discovery until such a time as the Motions to Dismiss have been decided and/or a Protective Order has been entered in the alternative to bar the abuse of pretrial Discovery materials.

Respectfully submitted,



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