

Barr v Bentley Motors Ltd.

2016 NY Slip Op 32225(U)

October 25, 2016

Supreme Court, Nassau County

Docket Number: 601718/2016

Judge: Karen V. Murphy

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This opinion is uncorrected and not selected for official publication.

Short Form Order

SUPREME COURT – STATE OF NEW YORK
TRIAL TERM, PART 8 NASSAU COUNTY

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

x

THOMAS BARR IV,

Plaintiff,

-against-

BENTLEY MOTORS LIMITED, LUKE VUKSANAJ,
BESPOKE MOTOR GROUP LLC, BESPOKE MOTOR
GROUP LLC d/b/a BESPOKE MOTOR GROUP,
BESPOKE MOTOR GROUP LLC d/b/a BENTLEY
LONG ISLAND, BENTLEY LONG ISLAND, LLC,
BENTLEY LONG ISLAND LLC d/b/a BENTLEY
LONG ISLAND, MANHATTAN MOTORCARS, INC.,
MANHATTAN MOTORCARS, INC. d/b/a BENTLEY
MANHATTAN, BENTLEY MOTORCARS, INC.,
JOSEPH L. BUCKLEY, ASIF A. SIDDIQI, THE
NASSAU COUNTY POLICE DEPARTMENT,
KATHLEEN RICE AS THE DISTRICT ATTORNEY
OF NASSAU COUNTY, and THE COUNTY OF
NASSAU,

Defendants.

x

Index No. 601718/2016
Motion Submitted: 09/20/16
Motion Sequence: 004

The following papers read on this motion:

- Notice of Motion/Order to Show Cause..... X
- Answering Papers.....
- Reply.....
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Counsel for defendants Bentley Motors Limited, Bentley Motors, Inc., Joseph L. Buckley, Esq., and Bespoke Motor Group, LLC d/b/a Bentley of Long Island

(collectively, the moving defendants) move this Court by Order to Show Cause (OTSC) why they should not be granted a protective order prohibiting plaintiff from contacting or communicating with those defendants, and requiring that all contact or communication from plaintiff to the moving defendants be made through counsel for the parties. Furthermore, the moving defendants seek to prohibit plaintiff from contacting or communicating with counsel by using obscene, vile, threatening, harassing and/or ethnically offensive language, and that monetary sanctions be awarded against plaintiff.

At the outset, the Court notes that counsel of record for plaintiff is Herbert Arthur Smith, Esq. There has been no proof submitted that plaintiff, an attorney licensed to practice law in New York, is acting in a *pro se* capacity.¹ Mr. Smith is listed as the attorney of record for plaintiff on the Request for Judicial Intervention (RJI) filed on March 16, 2016, after this case was transferred from Suffolk County. Moreover, Mr. Smith appeared at the Preliminary Conference of this matter, via telephone, on May 23, 2016. As a result, the Court required that Mr. Smith appear for the Compliance Conference of this matter held on September 27, 2016, and did not entertain Mr. Barr's request that he be permitted to participate in the conference by telephone. At the conference, Mr. Smith did not state whether or not he was adopting Mr. Barr's papers submitted on three other motion sequences pending in this matter. Further conference on this matter was adjourned to December 1, 2016.

In support of the instant application, defendants submit a notice filed by Mr. Barr on March 16, 2016 (Document 22), whereby Mr. Barr states that the "current and only attorney of Record in this matter, for the Plaintiff, Thomas Barr IV, is Herbert A. Smith, Jr." In that same document, he also requests that he be "add[ed] as a second attorney of record, appearing *pro se* for myself, in this matter." There is no evidence that Mr. Barr is a member of Mr. Smith's firm, and the proposition that he be added as "a second attorney of record" is incongruous with his statement that Mr. Smith is the "current and only attorney of record in this matter." Furthermore, the arrangement proposed by Mr. Barr (being added as "second attorney of record") is unfamiliar to this Court, and highly unusual.

Mr. Barr's e-mail to defendants' counsel dated April 16, 2016 states that, "I am not taking over from Mr. Smith as the attorney of record—he maintains that position with the duties and responsibilities associated therewith. Until he has been relieved from that duty by a court order." There has been no application made to this Court seeking to relieve Mr. Smith as counsel for plaintiff Barr. Nonetheless, it appears to this Court that defendants continue to entertain Mr. Barr's submissions on the merits.

¹Mr. Barr states that he is "retired."

The instant OTSC was issued by the Court on September 7, 2017. The return date was set for September 20, 2016, and the instant application was marked fully submitted without opposition on that date. On September 22, 2016, plaintiff himself e-filed a document referencing, *inter alia*, the instant application denominated as Motion Sequence 4. In that regard, plaintiff states, "I agreed with [defendants' counsel], and hereby agree with this Court, that, until Mot 004 is decided, and without admitting anything as to whether I am or am not guilty of anything alleged in Mot 004, and without giving up anything in my favor, (i) to have no 'obscene, vile, offensive, etc.' correspondence with [defendants' counsel], and (ii) to have no impermissible contact with any of the represented Defendants, punishable by contempt if I violate this agreement." Mr. Barr also requested that the date for him to file opposition papers be adjourned to October 17, 2016.

At odds with his request for an adjournment to October 17, 2016 is a letter filed by Mr. Barr on September 12, 2016 (Document 137), wherein he states, "I am under no duty to file anything with respect to Mot 4, and, even though 'invited to,' I will not do so."

On September 23, 2016, defendants' counsel, noting that Barr agreed to refrain from the offensive communications/contact, consented to Barr's request to adjourn the deadline for him to submit opposition, on the condition that he be bound by the non-monetary relief sought in the OTSC pending the return date, i.e., continue to refrain from making offensive communications.

No opposition papers have been received from plaintiff, or from his attorney of record, as of the date of this Decision and Order. The Court received a letter from Mr. Barr, via facsimile, that is time-stamped on October 16, 2016, at 7:00 p.m., a Sunday evening, requesting a further adjournment of the deadline by which to submit his opposition, presumably to Motion Sequence 4. Mr. Barr recounted that he was experiencing a health problem in his foot, and was confined to bed with his foot elevated. He further wrote, that he would "inform" the Court when he "can reasonably be expected" to file his opposition papers. He did not submit any medical proof at all establishing that he is unable to compose and e-file opposition papers.

Based upon the foregoing, including Mr. Barr's earlier statement that he would not be filing any opposition to Motion Sequence 4, the Court sees no justifiable reason to further adjourn this application *ad infinitum*, without any medical proof, especially in view of the fact that Mr. Barr has personally agreed to abide by the terms of the OTSC, by refraining from offensive communications and contact.

The exhibits submitted by the moving defendants, which include numerous copies of e-mails sent by “Tom Barr,” and “Thomas Barr,” from tb@tbarr4.com,² and copied to Thomas Barr IV at tb1@hamptons.com,³ are shockingly inappropriate, and unprofessional, to say the least. The e-mails commenced pre-suit, and have continued to be transmitted through late August 2016. In those e-mails, profane language is used freely and repeatedly, as well as sexual innuendo, numerous insults, ethnic slurs (reference to “stuck up and arrogant Limeys and Krauts”), and threats of violence.

The affidavit of Sophia Briscoe, receptionist at Bespoke Motor Group LLC d/b/a Bentley Long Island, submitted in support of the instant application is particularly disquieting. She recounts that, on August 12, 2016, Mr. Barr called the general showroom. Ms. Briscoe answered the call. The caller identified himself as Thomas Barr. She described him as being “extremely rude and [having] yelled at [her] repeatedly during the phone call.” Mr. Barr also represented to her that his vehicle was being serviced/repared and that he need to speak with someone in the service department immediately. When she inquired as to why the matter was so urgent, Mr. Barr claimed that there was “something” in the trunk, and that he needed to get to it before it exploded. When she asked him what was in the trunk, he replied to her that she would “find out in the next 30 minutes.” It was later discovered that Mr. Barr apparently attempted to use the implication that there was some sort of explosive material in the trunk of his vehicle as a ruse to get through to the service department. Not only was his car not at the service department on the day that he made the call, Ms. Briscoe later was told by the service department that they had stopped taking his repeated harassing telephone calls. Ms. Briscoe was unaware that the service department had been instructed not to answer any calls from Mr. Barr.

Accordingly, the Court grants the moving defendants the relief requested to the extent that it is

ORDERED that plaintiff

- 1) is prohibited from contacting or communicating, or causing another to contact or communicate with the moving defendants, and requiring that all contact or communication from plaintiff to the moving defendants be made through counsel of record for such parties; and
- 2) that plaintiff is prohibited from contacting or communicating with counsel for the moving defendants by or through the use of profane, vile, threatening, harassing, and/or ethnically offensive language.

² Mr. Barr copied this Court on an e-mail concerning a previous adjournment. That e-mail was sent on Friday, August 5, 2016, from “Thomas Barr <tb@tbarr4.com>”

³ Plaintiff lists this e-mail address on his correspondence to this Court.

Mr. Barr's failure to comply as directed will result in appropriate sanctions, including but not limited to an adjudication of contempt and/or fine, and/or imprisonment, upon notice.

At this juncture, the Court declines to impose financial sanctions upon plaintiff Thomas Barr, IV, without prejudice to any future applications, should such applications become necessary.

The foregoing constitutes the Order of this Court.

Dated: October 25, 2016
Mineola, NY


J.S.C.

ENTERED

OCT 31 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE