

**SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 28 SUFFOLK COUNTY**

PRESENT:

Honorable Mark D. Cohen

_____ x
CLB

Plaintiff

- against -

PHC

Defendant

_____ x

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Upon the application to use still photography by New York Daily News, on behalf of itself and “pool photographer” during this trial, and after submissions from the parties, pursuant to an Order of the Court dated June 26, 2008, it is hereby

ORDERED that the application is denied.

This Court has received an application for the use of still photography during a matrimonial trial scheduled to commence on July 2, 2008. The Court has indicated in a prior Order that the courtroom is a public place and the media, along with the public, should have access and attend.

However, the state legislature has determined that cameras in the courtroom are not permitted. Civil Rights Law §52. The issue is whether this statute applies to still photography. Application of binding caselaw requires an answer in the affirmative. In *Heckstall v. McGrath*, 15 A.D.3d 824, the Appellate Division, Third Judicial Department, granted an article 78 petition to “prohibit respondent [judge] from permitting audiovisual coverage and still photography of court proceedings in petitioner's underlying criminal action.”¹ Moreover, the Court of Appeals, in upholding the constitutionality of the statute, interpreted this law to mean that the media “cannot ... bring cameras into the courtroom.” *Courtroom Television Network, LLC v. State*, 5 N.Y.3d 222,229. Consequently, this Court is of the opinion that it lacks the authority to grant the application under caselaw interpreting Civil Rights Law §52. See *Santiago v. Bristol*, 273 A.D.2d 813, lv. den., 95 N.Y.2d 848 and app. dismiss. 95 N.Y.2d 847.

Even if the Court concluded it had the discretion, in the exercise thereof, the application would have to be denied. The Uniform Rules provide some guidelines, such as the distraction from the decorum of the courtroom, the safety of the persons having business in the Court, disruption of Court activities and undue burden upon the resources of the Court. Cf. 22 NYCRR 29.1; 131.² Here, even skilled and professional photographers would be a distraction to the parties and the Court. The safety and security concerns of sudden movements during the trial by a photographer seeking a better angle and exposure is another factor. Consequently, the balance would tip against the application.

The foregoing constitutes the decision and Order of the Court.

Dated: June 27, 2008
Central Islip, NY


HON. MARK D. COHEN, J.S.C.

¹

The Court notes the decision in *People v. Zwack*, 188 Misc.2d 761.

²

The continued operative effect of these rules is questionable at best, in light of Judiciary Law §218,'s sunset provision.[June 30, 1997]