

Ramirez v BHL Transp., Inc.

2007 NY Slip Op 30131(U)

March 2, 2007

Supreme Court, Suffolk County

Docket Number: 0011484

Judge: Thomas F. Whelan

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 33 - SUFFOLK COUNTY

PRESENT:

Hon. THOMAS F. WHELAN
Justice of the Supreme Court

MOTION DATE 11/30/06
ADJ. DATES 12/8/06
Mot. Seq. # 004 - MG

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EDUARDO RAMIREZ, as Administrator of the	:	DANKNER & MILSTEIN, ESQS.
Estate of Cecilia Ramirez and Fiorella Ramirez and	:	Attys. For Plaintiffs
RENEE MARGOT VILLAVICENCIO and	:	41 E. 57 th St.
LILIANA ARELLANO, as Co-Administrators of	:	New York, NY 10022
the Estate of Ernesto Villavicencio and LUIS	:	
RAMIREZ,	:	ROBERT P. TUSA, ESQ.
	:	Attys. For Defs. Von Blume & Blum
Plaintiffs,	:	898 Veterans Memorial Hwy.
	:	Hauppauge, NY 11788
-against-	:	
	:	CHRISTINE MALAFI, ESQ.
BHL TRANSPORT, INC., HOLGER PEREZ,	:	Atty. For County of Suffolk & SCPD
JOSHUA VON BLUME, JANET BLUM,	:	100 Veterans Memorial Hwy.
COUNTY OF SUFFOLK and SUFFOLK	:	Hauppauge, NY 117888
COUNTY POLICE DEPARTMENT,	:	
	:	LAWRENCE, WORDEN & RAINIS, PC
Defendants.	:	Attys. For BHL, Perez, Arnold Bakeries
	:	& Lease Plan
	:	425 Broad Hollow Rd.
	:	Melville, NY 11747
	:	
	:	LEVINE & GROSSMAN, ESQS.
	:	Attys. For Luna
	:	114 Old Country Rd.
	:	Mineola, NY 11501
	:	

: RUSSO, APOZNANSKI & HELLREICH
:
: Attys. For Vigna Luis Ramirez
:
: 875 Merrick Ave.
:
: Westbury, NY 11590
:
:
: THOMAS J. SPOTA
:
: Suffolk County District Attorney
:
: 200 Center Dr.
:
: Riverhead, NY 11901

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Upon the following papers numbered 1 to 10 read on this motion to renew
_____; Notice of Motion/Order to Show Cause and supporting papers 1 - 3; Notice of Cross
Motion and supporting papers _____; Answering Affidavits and supporting papers 4-5
Affidavits and supporting papers 9-10; Other 6 (affidavit); 7-8 (affidavit); (~~and after hearing counsel in~~
~~support and opposed to the motion~~) it is,

ORDERED that this motion by defendants, BHL Transport, Inc. and Holger Perez, seeking an Order to unseal the criminal records related to the arrest and prosecution of plaintiff, Luis Ramirez, arising out of the events and circumstances of the subject incident, is granted; and it is further

ORDERED that the movant is directed to serve a certified copy of this Order upon the Clerk of the District Court of the County of Suffolk, who, upon receipt of said certified copy, shall deliver to the law offices of Lawrence, Worden & Rainis, P.C., 425 Broadhollow Road, Suite 120, Melville, New York 11747, telephone number 631-694-0033, a certified copy of the criminal records of Luis E. Ramirez, regarding the arrest and prosecution of him under District Court Docket No. 2002SU05103; and it is further

ORDERED that a compliance conference is scheduled for **March 28, 2007**, at 9:30 a.m., in Part 33, at the courthouse located at 1 Court Street, Riverhead, New York; and it is further

ORDERED that movant shall serve a copy of this Order with Notice of Entry upon counsel for the plaintiffs and the defendants within twenty (20) days of the date herein pursuant to CPLR 2103(b)(1), (2) and (3) and upon the Office of the Suffolk County District Attorney and thereafter file the affidavits of service with the Clerk of the Court.

Defendants, BHL Transport, Inc. and Holger Perez (hereinafter collectively "BHL") previously moved before this Court for an Order to unseal the criminal records of plaintiff, Luis Ramirez. By Order, dated September 5, 2006, the Court denied the application without prejudice with leave to renew after service of a copy of the motion upon the District Attorney of the County of Suffolk (hereinafter "District Attorney"). Familiarity with the facts will be assumed and only relevant facts will be restated where necessary.

BHL now moves for renewal of its motion having served the District Attorney. In response to the motion, the District Attorney has submitted an affidavit wherein he takes no position regarding the motion to unseal the records relying on the Court's discretion.


As the Court noted in its previous motion on this issue under Criminal Procedure Law § 160.50, when a criminal proceeding has terminated in favor of the accused, the records are sealed. However, where, as in the instant matter, a party puts into issue in a civil action elements common both to the civil action and to the criminal prosecution, that party waives the privilege (*see Abrams v Skolnik*, 185 AD2d 407, 585 NYS2d 818 [3d Dept 1992]; *Taylor v New York City Tr. Auth.*, 131 AD2d 460, 516 NYS2d 237 [2d Dept 1987]). "The privilege, which is intended to protect the accused, may not be used as a sword to gain economic advantage in a civil action" (*Kalogris v Roberts*, 185 AD2d 335, 586 NYS2d 806 [2d Dept 1992] *citations omitted*); *see also Rodriguez v Ford Motor Co.*, 301 AD2d 372, 753 NYS2d 63 [1st Dept 2003]). Waiver of the privilege occurs where the protected individual commences a civil action or proceeding and in doing so, affirmatively places in issue elements that are common or related to the prior criminal action (*see Gebbie v Gertz Div. of Allied Stores of New York, Inc.*, 94 AD2d 165, 463 NYS2d 482 [2d Dept 1983]).

There is no question that by commencing this civil action, Ramirez placed into question his conduct under the facts and circumstances of this unfortunate and tragic accident. CPLR 3101(a) requires full disclosure upon request of "all evidence material and necessary in the prosecution or defense of an action regardless of the burden of proof." The Court of Appeals has indicated that the words "material and necessary" are to be interpreted to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity" (*Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406, 288 NYS2d 449 [1968]; *see also The Roman Catholic Church of the Good Shepard v Tempco Sys.*, 202 AD2d 257, 608 NYS2d 647 [1st Dept 1994]).

Therefore, in applying the principles of this broad discovery mandate, all facts which are material and relevant to plaintiff's action, are discoverable and defendants' motion is granted.

Accordingly the motion is granted as herein indicated. This constitutes the Order and decision of the Court.

DATED: 3/2/07



THOMAS F. WHELAN, J.S.C.