

McManus v Windholm
2007 NY Slip Op 32548(U)
August 14, 2007
Supreme Court, New York County
Docket Number: 0111352/2006
Judge: Walter Tolub
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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JAMES J. MCMANUS,

Plaintiff,

Index No.111352/2006
Mtn. Seq. 001

-against-

ANDREW WINDHOLM and SOUTHERN WINE &
SPIRITS OF NEW YORK, INC.,

Defendants.

FILED
AUG 17 2007
NEW YORK
COUNTY CLERK'S OFFICE

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WALTER B. TOLUB, J.:

By this motion, Plaintiff seeks the issuance of a subpoena duces tecum pursuant to CPLR §2307 and §3120. Plaintiff additionally seeks an order compelling the Police Department of the City of New York and the Manhattan District Attorney's Office to each produce their respective files relating to the criminal investigation and prosecution of Defendant Widholm. Plaintiff's motion is denied in its entirety.

Background

Southern Wine & Spirits of New York, Inc. ("Southern Wine") is a business that sells and distributes alcoholic beverages. Defendant Andrew Widholm ("Widholm") was employed by Southern Wine. On or about September 27, 2005, Southern Wine organized and hosted a marketing event known as the Southern Wine & Spirits Trade Testing and Holiday Package Show ("Event") where it sold

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and served alcohol. Plaintiff James J. McManus was a guest at the Event and claims that while in attendance, Defendant Widholm struck Plaintiff with his fist, causing injuries. Widholm was later criminally prosecuted for this incident in the case captioned People v. Widholm. (Docket No. 2005 NY 075248). This civil action followed, with Plaintiff claiming that Defendant Southern Wine was negligent in hiring and allowing Widholm to serve alcohol. Specifically, Plaintiff claims that Defendant Widholm became intoxicated while working at the Event. Plaintiff further asserts that Defendant Southern Wine knew prior to the incident, and prior to hiring Widholm, that Widholm was dangerous and violent.

Plaintiff now seeks to compel the New York City Police Department and the Manhattan District Attorney's Office to produce complete copies of the Widholm file used in People v. Widholm. Plaintiff claims that information contained in those files may lead to useful information in the underlying tort action.

Discussion

The purpose of a subpoena duces tecum is to compel the production of *specific* documents that are relevant and material to facts at issue (Velez v. Hunts Point Multi-Service Center, Inc., 29 Ad3d 104, 109 [1st Dept 2006] *emphasis added*). CPLR

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§2307 provides that a subpoena duces tecum be issued by the court to get "books, papers, and other things" from a "library, or a department, or bureau of a municipal corporation or of the state, or an officer thereof" (CPLR §2307). In order for the court to issue a subpoena duces tecum to a nonparty, the party requesting the subpoena must demonstrate that special circumstances exist, including the unavailability of the information from other sources (Newman v. Lotwin, 247 Ad2d 318 [1st Dept 1998]). The failure to demonstrate the unavailability of information from other sources is sufficient in and of itself to quash a subpoena for nonparty files (Tsachalis v. City of Mount Vernon, 262 Ad2d 399, 401 [1st Dept 1999]). Once the moving party establishes special circumstances, a subpoena duces tecum is justified (Matter of Validation Review Associates, Inc., 237 Ad2d 614, 615 [2d Dept 1997]).

CPLR §3120 requires the party seeking a nonparty subpoena to identify individual items or categories of items and to "describe each item and category with reasonable particularity." (CPLR §3120(2)); See also Velez v. Hunts Point Multi-Service Center, Inc., 29 Ad3d 104, 109 [1st Dept 2006]). While documents may not have to be specifically designated, a "'vast categorical demand for documents' may constitute a new kind of abuse of the discovery device." (Konrad v. 136 East 64th St. Corp., 209 AD2d

228, 228 [1st Dept 1994]) citing Siegel, 1993 Supp Practice Commentary, McKinney's Cons Law of NY, Book 7B CPLR C3120:4, 1994 Pocket Part, at 48). A party's demand for the entire litigation file lacks reasonable particularity of items sought (Thomas v. Holzberg, 227 AD2d 175, 175 [1st Dept 1996]). Only when a vast categorical demand is "relevant, describes documents with 'reasonable particularity', does not impose an undue burden, and does not represent a 'fishing expedition,'" is the request for documents permitted (Konrad v. 136 East 64th St. Corp., 209 AD2d 228, 228 [1st Dept 1994]).

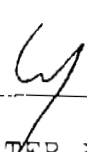
A public interest privilege exists to protect "confidential communications between public officers, and to public officers, in the performance of their duties, where the public interest requires that such confidential information should not be divulged" (Matter of World Trade Ctr. Bombing Litig., 93 NY2d 1, 8 [1999]). The party seeking disclosure of statements made by a witness to prosecutors "must demonstrate a compelling and particularized need for access" (Sanchez v. City of New York, 201 Ad2d 325, 326 [1st Dept 1994]). Once it is shown that disclosure would be more harmful to the interests of the government than the interests of the party seeking the information, the overall public interest on balance would be better served by

nondisclosure (Cirale v. 80 Pine St. Corp., 35 NY2d 113, 118 [1974]).

Here, not only are Plaintiff's documents overbroad, but also, Plaintiff has failed to establish special circumstances demonstrating that the information sought to be discovered from the nonparties could not be obtained from other sources. Plaintiff has not demonstrated a compelling and particularized need for access to information protected by the public interest privilege. As such, Plaintiff's motion seeking a nonparty subpoena duces tecum compelling the production of entire files pertaining to the investigation and prosecution of Defendant Widholm is denied. Accordingly, it is

ORDERED that plaintiff's motion for subpoena duces tecum is denied in its entirety.

Dated: 8/14/07



HON. WALTER B. TOLUB, J.S.C.

FILED
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