

Anderson v Union Baptist Church

2014 NY Slip Op 31542(U)

June 17, 2014

Sup Ct, NY County

Docket Number: 150090/2013

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 15

ANTONIO D. ANDERSON,

Plaintiff,

INDEX NO. 150090/2013

- v -

MOTION DATE

UNION BAPTIST CHURCH, CHARLES COOK AND
PAMELA WRIGHT,

MOTION SEQ. NO. 3

Defendants.

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

1, 2

Answer — Affidavits — Exhibits _____

3

Replying Affidavits _____

4

Cross-Motion: Yes X No

The action was brought by Plaintiff to recover damages from Defendants for the alleged breach of an employment agreement.

Defendants move to strike Plaintiff’s Note of Issue and Certificate of Readiness dated January 15, 2014, to establish a discovery schedule, or in the alternative, to preclude Plaintiff from offering evidence at the time of the trial as to the items for which Plaintiff has refused to provide Defendants.

Defendants contend that to date, Plaintiff has refused to provide an authorization for counseling records from Dr. Franklin Richardson, which is relevant to Plaintiff’s claim of emotional distress, and to provide responses to Defendants’ Post EBT Demands relating to Plaintiff’s social media accounts (specifically, the “URL’s, Passwords and User Names that Plaintiff has utilized or is currently utilizing on websites to apply for jobs” and “the passwords and login

information for the Plaintiff's social medial accounts, specifically Twitter, LinkedIn, and Facebook.”)

In the Complaint, Plaintiff alleges that he “has suffered damages which include, but are not limited to, pecuniary loss and emotional distress.” Defendants further submit portions of Plaintiff's deposition, wherein Plaintiff testified that he sought treatment with Dr. Richardson that was “Pastoral, Social and Emotional, helping him navigate through life and dealing with stress.” Plaintiff also testified that he has had eight to ten sessions of counseling for his emotional distress and that he would continue to seek counseling with Dr. Richardson.

Defendants contend that although Plaintiff's counsel agreed to provide an authorization for Dr. Richardson's records as set forth the December 8, 2013 letter, Plaintiff's counsel thereafter sent another letter, dated December 16, 2013, revoking the previously granted authorization to review records from Dr. Richardson.

In opposition, Plaintiff contends that it has properly denied Defendants access to an authorization for Dr. Richardson's records based on the clergy-penitent privilege under CPLR 4505. Plaintiff's counsel states, “After being removed from his position as Pastor ..., Plaintiff sought guidance from Dr. Franklin Richardson as to how to cope with depression and futility. Plaintiff has indeed impaired his innermost feelings and thoughts to Dr. Richardson in hopes that he can make peace with his circumstances within himself.”

CPLR §3101(a) generally provides that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.” The Court of Appeals has held that the term “material and necessary” is to be given a liberal interpretation in favor of the disclosure of “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity,” and that “[t]he test is one of usefulness and reason” (*Allen v. Cromwell-Collier Publishing Co.*, 21 N.Y.2d 403, 406 [1968]).

CPLR § 4505 provides, “Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion or duly accredited Christian Science practitioner, shall not be allowed to disclose a confession or confidence made to him in his professional character as a spiritual advisor.”

“Of course, not every communication between a cleric and a congregant will justify application of the privilege.” *People v. Carmona*, 82 N.Y. 2d 603, 609

[1993]. “[T]he privilege may not be invoked to enshroud conversations with wholly secular purposes solely because one of the parties to the conversation happened to be a religious minister.”

Here, Plaintiff has placed his emotional distress at issue, and therefore, the authorization for Dr. Richardson’s records is material and necessary to Defendants’ defense. Plaintiff shall therefore provide the authorization for Dr. Richardson’s records.

The Court further notes that it is unclear from the parties’ submissions whether Dr. Richardson, is a member of a congregant or “a clergyman, or other minister . . .,” and thus whether CPLR § 4504 applies in the first instance.

As for Plaintiff’s Post EBT request requesting URL’s, passwords and user names that Plaintiff has utilized or is utilizing on websites to apply for jobs, Plaintiff responds that “Plaintiff has already submitted all relevant job search applications and will continue to do so . . . However, there is a grave potential for misuse if Plaintiff is ordered to divulge his username and passwords for job search engines, Facebook, Twitter, and LinkedIn accounts.”

“To warrant discovery, defendants must establish a factual predicate for their request by identifying relevant information in plaintiff’s Facebook account - that is, information that ‘contradicts or conflicts with plaintiff’s alleged restrictions, disabilities, and losses, and other claims.’” *See Tapp v. New York State Urban Dev. Corp.*, 102 A.D. 3d 620, 620-21 [1st Dept. 2013].

Defendants contend, in conclusory fashion, “Plaintiff has made his mental state an issue in this case, and as social media is largely used for individuals to express their state of mind at any given time.” Here, Defendants fail to specifically identify how Plaintiff’s social media information is relevant, in that it “contradicts or conflicts with plaintiff’s alleged restrictions, disabilities, and losses, and other claims.” *See Tapp*, 102 A.D. 3d at 620-21.

Wherefore, it is hereby

ORDERED that Defendants’ motion to strike the Note of Issue is denied; and it is further

ORDERED that Defendants' motion is granted only to the extent that Plaintiff shall produce an authorization for Dr. Richardson's counseling records within 30 days.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: JUNE 17, 2014



HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION X NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE