

Portillo v Carlson

2014 NY Slip Op 32356(U)

August 27, 2014

Sup Ct, Suffolk County

Docket Number: 10-32511

Judge: Joseph A. Santorelli

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SHORT FORM ORDER

INDEX No. 10-32511
CAL No. _____

COPY

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 10 - SUFFOLK COUNTY

P R E S E N T :

Hon. JOSEPH A. SANTORELLI
Justice of the Supreme Court

MOTION DATE 6/2/14
SUBMIT DATE 8/26/14

Mot. Seq. # 01 - MG

-----X

RENE ORLANDO PORTILLO,

Plaintiff,

-against-

KEVIN CARLSON,

Defendant.

-----X

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Upon the following papers numbered 1 to 10 read on this motion to quash judicial subpoena duces tecum; Notice of Motion/ Order to Show Cause and supporting papers 1 - 6; ~~Notice of Cross Motion and supporting papers~~; ~~Answering Affidavits and supporting papers 7 - 18~~; Replying Affidavits and supporting papers 19 - 22; ~~Other~~; ~~(and after hearing counsel in support and opposed to the motion)~~ it is,

ORDERED, that the motion is hereby decided as follows:

In this action non-party Allstate Insurance Company, hereinafter referred to as "Allstate", moves for an order quashing the subpoena served upon it by plaintiff Rene Orlando Portillo. Allstate contends that the subpoena fails to contain the requisite notice advising Allstate as to why this information is being sought. Plaintiff opposes this application in all respects.

It is axiomatic that there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by any other person, upon notice stating the circumstances or reasons such disclosure is sought or required (CPLR §3101(a)(4); see also *Tannenbaum v. Tannenbaum*, 8 AD3d 360; *Degliuomini v. Degliuomini*, 308 AD2d 501). Disclosure against a non party witness is improper absent a showing of special circumstances. (See, *Dioguardi v. St. John's Riverside Hospital*, 144 AD2d 333). The existence of special circumstances may be shown by establishing that the information sought cannot be obtained from other sources. A mere showing that the information is relevant is not enough to establish special circumstances.

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Moreover, where information may be ascertained by some other means, the existence of special circumstances is doubtful. (*See, Gates v. State*, 339 NYS2d 568 (Ct. Of Claims, 1972)).

A motion to quash a subpoena shall be made promptly in the court in which the subpoena is returnable. If the subpoena is not returnable in a court, a request to withdraw or modify the subpoena shall be first made to the person who issued it and a motion to quash may thereafter be made in the Supreme Court. Reasonable conditions may be imposed upon the granting or denial of a motion to quash or modify. (*See, CPLR §2304*).

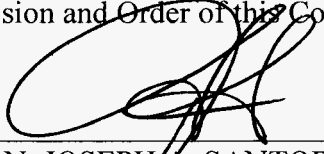
The court may at any time on its own initiative or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts. (*See, CPLR §3103*).

CPLR §3101(a)(4) indicates that where disclosure is sought from a nonparty, the nonparty shall be given notice stating the circumstances or reasons such disclosure is sought or required. Courts have found that the purpose of such requirement is “presumably to afford a nonparty who has no idea of the parties’ dispute... an opportunity to decide how to respond.” (*See, Kooper v. Kooper*, 74 A.D.3d 6, quoting *Velez v. Hunts Point Multi-Serv. Ctr., Inc.*, 29 A.D.3d 104). Indeed, Courts have found that a subpoena duces tecum served on a nonparty is facially defective and unenforceable if it does not contain the requisite notice stating the circumstances or reasons such disclosure required. (*See, Kooper, supra* at 13).

The Court has examined the subpoena and finds that it does not contain any notice advising the nonparty, Allstate, of the reasons for the disclosure. Therefore the nonparty’s motion to quash the subpoena served by plaintiff is granted.

The foregoing constitutes the decision and Order of this Court.

Dated: August 27, 2014



 HON. JOSEPH A. SANTORELLI
 J.S.C.

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION