

A.M. v Holy Resurrection Greek Orthodox Church of Brookville, N.Y.
2018 NY Slip Op 32242(U)
September 12, 2018
Supreme Court, New York County
Docket Number: 156132/16
Judge: Sherry Klein Heitler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 30

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A.M. and E.M., both minors, by and through their parents
and natural guardians, EFTIHIA MIHOS and EVANGELOS
MIHOS,

Index No. 156132/16
Motion Sequence 008

DECISION & ORDER

Plaintiffs,

-against-

HOLY RESURRECTION GREEK ORTHODOX
CHURCH OF BROOKVILLE, NEW YORK aka
GREEK ORTHODOX CHURCH OF THE HOLY
RESURRECTION, et al.,

Defendants.

-----X
SHERRY KLEIN HEITLER, J.S.C.

At a court conference on June 4, 2018, the court ordered the production of the personnel file of defendant Father Demetrios Kehagias (Personnel File). At the request of counsel for Father Kehagias the court agreed to review the Personnel File *in-camera* prior to production. On or about July 18, 2018 the court received a copy of the Personnel File, which has been Bates Stamped, as well as a privilege log prepared by Father Kehagias' counsel.

CPLR 3101(a) mandates that “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action....” As the Court of Appeals has held, the words “material” and “necessary” should be “interpreted liberally to require disclosure ... 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 Publishing Co.*, 21 NY2d 403, 406 (1968). The statute’s scope is “generous, broad, and is to be construed liberally,” (*Mann ex rel. Akst v Cooper Tire Co.*, 33 AD3d 24, 29 [1st Dept 2006]) and it has been interpreted “to give effect to the strong public policy favoring full disclosure to adequately prepare for trial....” *New York State Elec. & Gas Corp. v Lexington Ins. Co.*, 160 AD2d 261, 261 (1st Dept 1990). Moreover, “[p]retrial disclosure extends not only to

admissible proof but also to testimony or documents which may lead to the disclosure of admissible proof,' including material which might be used in cross-examination." *Polygram Holding, Inc. v Cafaro*, 42 AD3d 339, 341(1st Dept 2007) (quoting *Fell v Presbyterian Hosp. in City of N.Y. at Columbia-Presbyt. Med. Ctr.*, 98 AD2d 624, 625 [1983]). In determining whether disclosure is appropriate, "[t]he test is one of usefulness and reason." *Allen v Crowell-Collier Publishing, Co.*, 21 NY2d at 406.

The court has reviewed the Personnel File and the privilege log with these standards in mind. Many of the documents contained within the Personnel File are relevant to the issue - raised by Plaintiff - that there was an employer/employee relationship between Father Kehagias and the other defendants. Other documents in the Personnel File speak to Father Kehagias' education, work history, and character, and are neither privileged nor sensitive in nature. The remaining documents are either of a sensitive personal nature or relate to individuals/matters not at issue in this case.

Accordingly, it is hereby ORDERED that the Personnel File be produced as follows:

FOLDER 1A

Page	Discoverable
1	Yes
2	Yes
3-4	Yes
5-7	Yes
8	Yes
9	Yes
10-11	Yes
12-14	Yes
15-16	Yes
17	Yes
18	Yes
19-20	Yes
21	No
21-23	No
24-26	Yes
27	No
28-33	No

FOLDER 1B

Page	Discoverable
34-35	Yes
36-44	No

FOLDER 2A

Page	Discoverable
45-74	Yes
75	Yes
76-82	Yes

FOLDER 3A

Page	Discoverable
83	Yes
84-86	Yes (redacted as proposed by counsel)
87	Yes
88	No
89-91	No
92	Yes
93-96	No
97-98	No
99-104	No
105-106	Yes (redacted as proposed by counsel)
107-114	Yes
115-116	Yes (redacted as proposed by counsel)
117-130	Yes
131-134	Yes (except fourth paragraph on p. 132, sentences 7&8)
135-137	Yes (redacted as proposed by counsel)
138-143	Yes
144-145	Yes (redacted as proposed by counsel)
146	Yes
147-150	Yes (redacted as proposed by counsel)
151	Yes
152-155	Yes (redacted as proposed by counsel)
156-165	Yes

FOLDER 3B

Page	Discoverable
166-170	Yes
171-172	Yes (redacted as proposed by counsel)
173-180	Yes

FOLDER 4A

Page	Discoverable
181	Yes
182-183	No
184	No
185-186	No
187-228	No

FOLDER 5A

Page	Discoverable
229-233	No
234	Yes
235-236	Yes (redacted as proposed by counsel)
237	Yes
238	Yes (redacted as proposed by counsel)
239	Yes
240-246	Yes (redacted as proposed by counsel)
247	Yes
248-251	Yes (redacted as proposed by counsel)
252-261	Yes (redacted as proposed by counsel)
262	No
263-276	Yes (redacted as proposed by counsel)
277-286	Yes

And it is further ORDERED that counsel shall jointly prepare and submit a confidentiality agreement for this court's review within 30 days of the date of entry of this order. The confidentiality agreement shall apply to all discoverable documents contained within the Personnel File. Upon receiving notice that the confidentiality agreement has been So-Ordered, counsel for Father Kehagias shall produce the documents to all counsel as set forth in this order within 10 days of receipt of such notice.

This constitutes the decision and order of the court.

DATED: 9.12.18


SHERRY KLEIN HEITLER, J.S.C.