

Impellizzeri v Campagni
2018 NY Slip Op 33827(U)
April 4, 2018
Supreme Court, Onondaga County
Docket Number: 2016EFS124
Judge: Donald A. Greenwood
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**At a Motion Term of the Supreme
Court of the State of New York,
held in and for the County of
Onondaga on March 13, 2018.**

**PRESENT: HON. DONALD A. GREENWOOD
Supreme Court Justice**

**STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA**

DAVID IMPELLIZZERI,

Plaintiff,

v.

**CINDY CAMPAGNI, DENISE BARBER,
LORI FEENEY, SHARON KLAIBER,
MAINE THOMPSON and LISA BRACKETT,**

Defendants.

**AMENDED DECISION
AND ORDER
ON MOTION**

**Index No.: 2016EF5124
RJI No.: 33-17-4285**

**APPEARANCES: JOSEPH S. COTE, III, ESQ., OF COTE & VAN DYKE, LLP
For Plaintiff**

**EDWARD McARDLE, ESQ., OF NEW YORK STATE OFFICE OF THE
ATTORNEY GENERAL
For Non-Party Upstate University Hospital**

**CHRISTINE SULLIVAN, ESQ., OF GALE, GALE & HUNT, LLC
For Defendant Cindy Campagni**

Plaintiff commenced this action against the defendants in November of 2016 alleging tortious interference with his employment relationship, defamation, intentional infliction of emotion harm and seeking punitive damages with respect to his termination from his position as a family nurse practitioner at Community General Hospital, which was subsequently acquired by the State of New York and began operations at the Upstate University Hospital Community Campus. Non-party Upstate University Hospital (Upstate) and defendant Cindy Campagni have

moved to quash Judicial Subpoenas Duces Tecum previously signed by this Court on January 5, 2018, which sought an extensive schedule of documents sought by the plaintiff from Upstate, including, *inter alia*, interrogation records from plaintiff's questioning, defendant Campagni's employment and resignation records, notice of discipline records, records related to an arbitration in this matter, documentation regarding a settlement concerning Upstate and Campagni, as well as generalized demands. In addition, a protective order was sought. Plaintiff cross-moved to compel the production of certain documents. All counsel have worked diligently to come to an agreement with respect to the discovery dispute and participated in a conference with this Court on March 12, 2018. Subsequent to said conference the New York State Attorney General's Office on behalf of Upstate has submitted the documents which remain in disputes for an *in camera* review by the Court.

The CPLR provides that "there shall be full disclosure of all matter material and necessary in the prosecution or defense of an action, regardless of burden of proof..." CPLR § 3101(a). While the rules concerning disclosure are to be liberally construed, this Court possesses broad discretion to supervise discovery and determine what is material and necessary. *See, Mora v. RGB, Inc.*, 17 AD3d 849 (3rd Dept. 2005). This Court is likewise authorized to, on its own initiative or on the motion of a party, issue a protective order which denies, limits, conditions or regulates the use of any disclosure device so as to prevent unreasonable annoyance, expense, embarrassment, disadvantage or other prejudice to any persons or to the court. *See, CPLR § 3103.*

Objections of Upstate:

Upstate's remaining objections relate to four documents and it argues that said documents constitute both privileged matter and attorney work product and that they are thus exempt from disclosure. *See, CPLR § 3101(b)(c)*. Whether a particular document is or is not protected by attorney/client privilege or work product document is necessarily a fact specific determination requiring an in camera review. *See, Baliva v. State Farm Mutual Auto Insurance Co.*, 275 AD2d 1030 (4th Dept. 2000). "The attorney/client privilege finds expression in statute (CPLR § 4503) and Ethical Code (Code of Professional Responsibility, EC4-1) in the strongly rooted in the constitutional right to counsel (US Const 6 Amend: NY Const. Art. 1 § Code 6). It exists to ensure that all who seek legal advice will confide in counsel secured in knowledge that confidential communications will not be exposed (citation omitted). In order to invoke the privilege there must be an attorney/client relationship and the communications must be made in confidence for the purpose of obtaining legal advice..." *Manufacturers and Traders Trust company v. Servotronics, Inc.*, 132 AD2d 392 (4th Dept. 1987). Upon review of said documents, this Court finds as follows:

Document 7 (Bates Stamp: 000256-000280). Said documents are exempt from disclosure as privileged matter as well as attorney's work product as they discuss preparation of a response to a complaint filed by defendant Campagni with the New York State Division of Human Rights with counsel. *See, CPLR § 3101(b) and (c)*.

Documents 10 and 11 (Bates Stamp: 000314-000315). Said documents are exempt from disclosure as privileged matter as they concern documentation from Upstate counsel concerning a settlement demand from defendant Campagni. *See, CPLR § 3101(b) and (c)*.

Document 42 (Bates Stamp: 000413). Said documents are likewise exempt from disclosure as privileged matter as they concern a communication from Upstate counsel concerning a settlement demand from counsel for defendant Campagni. *See, CPLR § 3101(b) and (c).*

Objections of Defendant Campagni

With respect to the documents submitted to the Court that remain in dispute, defendant Campagni contends that said documents are protected by Public Officer's Law sections 87(2) and 89(2) and that her privacy interest pursuant to those provisions in protecting the documents outweighs the document's minimal relevancy at best to the allegations at issue in the lawsuit. *See, Dean Witter Reynolds, Inc. v. New York State Executive Department of Division of Human Rights*, 98 AD2d 676 (1st Dept. 1983). In addition, defendant Campagni asserts the attorney-client privilege exemption. *See CPLR § 3101 (b)*. Having reviewed said documents *in camera*, the Court rules as follows.

Documents 1, 2, 3 and 4 (Bates Stamp: 000193-000236). Pages 000193 through 000198 consists of form letters and blank forms from the Division of Human Rights and contain no specific information concerning defendant specifically. As such, they are not material or relevant in this litigation. Pages 000199 to 000213 consist of defendant Campagni's complaint with the Division of Human Rights, which is material and relevant to the issues in this case. Page 000214 concerns an internal Upstate e-mail and is not relevant to the issues in this matter. Pages 000215 to 000222 are notes relating to defendant Campagni's orientation upon hiring and

are not material or relevant to the issues in this case. Pages 000226 to 000236 are a duplication of pages 000199 to 00213.

Document 5 - not requested.

Documents 6 through 11 (exclusive of Documents 7, 10 and 11, which are addressed above). **Documents 8 and 9** (Bates Stamp: 000281-000313) relate to defendant Campagni's employment application and references and are not material or relevant and if any minimal relevance and defendant's privacy interests is outweighed by any potential minimal relevancy. *See, Dean Witter, supra.*

Document 12 - not requested.

Documents 13 through 16 (Bates Stamp: 000317-000331) and **Documents 19 and 20** (Bates Stamp: 000341-000342). Said documents concern defendant Campagni's separation from employment from Upstate and are relevant to plaintiff's allegations concerning defendant Campagni's overall job performance and the co-defendants' knowledge that she was not a credible witness.

Document 21 - not requested.

Documents 22 through 27 (Bates Stamp: 000345-000352). Said documents relate to internal correspondence concerning, *inter alia*, defendant Campagni's settlement, including communication with counsel and constitutes privileged matter as well as attorney work product. *See, CPLR § 3101 (b) and (c).*

Documents 28 to 30 - not requested.

Documents 31 to 36 (Bates Stamp 000361-000382). Said documents concern communication between Upstate counsel and employees, as well as notes prepared by employees for and provided to counsel and are protected by the attorney/client privilege. *See, CPLR § 3101 (b)*.

Documents 37 and 38 - not requested.

Documents 39 through 47 (with the exception of Document 42, as addressed above). (Bates Stamp: 000403-000428). Pages 00403-00412, in addition to page 000416, relate to communication with counsel and are thus exempted from disclosure as privileged matter. *See, CPLR § 3101 (b)*. Pages 000417-000425 concern general forms issued by the New York State Division of Human Rights and are provide no material or relevant information. Pages 000425 - 000428 concerns communication from counsel and are thus and are thus exempted from disclosure as privileged matter. *See, CPLR § 3101 (b)*.

Document 48 - not requested.

Document 49 (Bates Stamp: 000430-000432) concerns communication between Upstate employees and counsel and are thus constitute privileged matter. *See, CPLR § 3101 (b)*.

In so ruling, all counsel is reminded that this Court's determination is solely addressed to discoverability and does not constitute a holding concerning admissibility at trial. *See, Chan v. Otis Elevator Co.*, 147 Ad2d 395 (1st Dept. 1989). Admissibility of such evidence is not the concern in the context of disclosure. *See, Steam Pipe Explosion v. Consolidated Edison, Inc.*, 127 AD3d 554 (1ST Dept. 2015).

NOW, therefore, for the foregoing reasons, it is

ORDERED, that the plaintiff is entitled to disclosure of pages 000199-000213, **000317-000331** and 000341-000342, which are to be provided to plaintiff's counsel by no later than April 27, 2018, and it is further

ORDERED, that the plaintiff is not entitled to the remainder of the documents and a protective order is hereby issued pursuant to CPLR § 3103.

Dated: April 4, 2018
Syracuse, New York

ENTER


DONALD A. GREENWOOD
Supreme Court Justice

Papers Considered:

1. Orders to Show Cause, signed on January 9, 2018.
2. Affirmation of Christine A. Sullivan, Esq. in support of motion to quash subpoena duces tecum, dated January 5, 2018, and attached exhibits.
3. Affirmation of Edward F. McArdle, Esq. in support of motion to quash judicial subpoena duces tecum, dated January 8, 2018, and attached exhibits.
4. Affirmation of Edward F. McArdle, Esq. in support of motion to quash, fix conditions and modify subpoena and for a protective order, dated January 8, 2018, and attached exhibits.
5. Amended Order to Show Cause signed on January 22, 2018.

6. Plaintiff's Notice of Cross-Motion, dated February 16, 2018.
7. Affirmation of Joseph Cote, Esq. in support of plaintiff's cross-motion, dated February 16, 2018.
8. Affidavit of Jamie Colucci in support of plaintiff's motion, dated February 6, 2018.
9. Plaintiff's Memorandum of Law, dated February 15, 2018.
10. Affirmation of Christine A. Sullivan, Esq. in opposition to plaintiff's cross-motion, dated February 20, 2018, and attached exhibits.
11. Affirmation of Christine A. Sullivan, Esq. in further support, dated March 19, 2018.
12. In camera submission for Court review submitted by non-party State University of New York.