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| LaPenna Contr., Ltd. v Mullen |
| 2018 NY Slip Op 33971(U) |
| May 16, 2018 |
| Supreme Court, Ulster County |
| Docket Number: 17-1379 |
| Judge: Christopher E. Cahill |
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**STATE OF NEW YORK
SUPREME COURT**

ULSTER COUNTY

LAPENNA CONTRACTING, LTD.,

Plaintiff,

-against-

Decision & Order

Index No.: ~~17-1085~~

17-1379

**DAVID MULLEN, LYNN M. VELUTA-MULLEN,
and PRIMELENDING, a PLAINSCAPITAL
COMPANY,**

Defendants.

Supreme Court, Ulster County
Motion Return Date: January 22, 2018
RJI No. 55-17-00836

Present: Christopher E. Cahill, JSC

Appearances: FRANK A. LOMBARDI, ESQ.
Attorney for Plaintiff
38 Jordan Lane
Middletown, New York 10940

CHRISTOPHER J. SMITH, ESQ.
Attorney for Defendants
PO Box 3016
Middletown, New York 10940

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ULSTER COUNTY CLERK

Cahill, J.:

In this defamation action, which has since been joined with the plaintiff's action to foreclose a mechanic's lien, the "Mullen" defendants seek an order, apparently pursuant to CPLR § 3124, directing plaintiff to furnish them with all copies of the plaintiff's bank statements between July 1, 2016 and April 1, 2017 for all accounts into which payments

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for construction from the defendants were deposited. The defendants also request that plaintiff disclose to the Mullens “all court cases, litigations and legal proceedings which plaintiff and/or principal James V. LaPenna has been a party to . . .” Finally, the defendants request that plaintiff disclose all ““home improvement contracts”” it has entered into over the past ten years “and all construction projects with respect to which plaintiff and/or principal James V. LaPenna has acted as general contractor. . .” The plaintiff opposes the motion on the grounds that the material sought is irrelevant to the plaintiff’s defamation case and constitutes a fishing expedition. In that regard, the court notes that plaintiff’s action arises from defendants’ Facebook postings stating that Mr. LaPenna, plaintiff’s principal, committed “law violations” while performing construction work for them.

After reviewing the parties’ submissions, the court concludes that the motion must be denied. First, with regard to the Mullens’ request for bank records, Mr. LaPenna in his affidavit in opposition argues that these records are immaterial and irrelevant. The court agrees. As Mr. LaPenna states in his affidavit, all monies which the Mullens paid to the plaintiff were placed in plaintiff’s business accounts and used to buy materials and pay subcontractors, and that as far as he knows (and the Mullens have not alleged otherwise), this is borne out by the fact that no subcontractor or material supplier has filed a lien or otherwise asserted a claim against the Mullens. It is also important to note that in response to defendant’s interrogatories, the plaintiff furnished the names of every material

supplier and subcontractor for the Mullens' project.

As to defendants' request for all records of litigation against the plaintiff or James V. LaPenna individually, it must also be denied. Totally apart from the issue of whether this information is relevant, such information is a matter of public record. As defendants have included in their Exhibit D judgments entered against Mr. LaPenna in Greene and Orange Counties, and as this action is venued in Ulster County, the public records of those counties contain all the information defendants seek.

Last, as to defendants' request for home improvement contracts LaPenna entered into with other customers over the last ten years, and for disclosure of all projects in which the plaintiff was the general contractor, this is not relevant to a defense to a defamation action.

In reaching this conclusion, the court notes its agreement with the plaintiff that the defendants, in essence, acknowledge in paragraph 17 of their supporting submissions, that they lack proof that Mr. LaPenna committed any illegal acts which enforces plaintiff's position that these requests are a fishing expedition.

This decision/order is without costs to the defendants.

This shall constitute the Decision and Order of the court. The original Decision and Order and all other papers are being delivered to the Supreme Court Clerk for transmission to the Ulster County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR § 2220. Counsel is not relieved from the

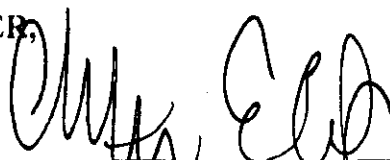
applicable provisions of that rule regarding notice of entry.

SO ORDERED.

Dated: Kingston, New York

May 16, 2018

ENTER,



CHRISTOPHER E. CAHILL, JSC

Papers considered: Notice of motion dated November 2, 2017, Smith supporting affirmation dated November 2, 2017, Mullen affidavit dated October 30, 2017 and annexed exhibits A to D; Lombardi opposing affirmation dated November 10, 2017, LaPenna opposing affidavit dated November 10, 2017 and annexed exhibit A.

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