

Brummer v Wey

2019 NY Slip Op 32234(U)

July 25, 2019

Supreme Court, New York County

Docket Number: 153583/2015

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

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CHRISTOPHER BRUMMER,

Index No. 153583/2015

Plaintiff

- against -

DECISION AND ORDER

BENJAMIN WEY, FNL MEDIA LLC, and NYG
CAPITAL LLC d/b/a NEW YORK GLOBAL
GROUP,

Defendants

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APPEARANCES:

For Plaintiff

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For Defendants Wey and NYG Capital LLC

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LUCY BILLINGS, J.S.C.:

Defendants Wey and NYG Capital LLC move to quash and for a protective order against plaintiff's subpoena to Verizon Online LLC dated April 2, 2019, insofar as the subpoena seeks documents and testimony about the activity of specified internet protocol (IP) addresses in August, October, and November 2018 and January 2019. C.P.L.R. §§ 2304, 3103(a). Defendants request this relief because the subpoena seeks information about activity 18-24 months after the amended complaint filed January 13, 2017, and therefore unnecessary to plaintiff's prosecution of his action.

An IP address is a unique series of numbers that identify

the source of a device used to communicate over a computer network. Artiles v. Kelly, 159 A.D.3d 449, 449 (1st Dep't 2018); Amatilli v. Bratton, 156 A.D.3d 559, 559 (1st Dep't 2017). Plaintiff seeks the IP addresses accessed by three email addresses, mrbenjaminwey@gmail.com, lingerlavender@gmail.com, and kashkash888@gmail.com, used as registration and contact email addresses for internet accounts that controlled the websites where the defamatory statements alleged in the amended complaint were published. See Leser v. Penido, 96 A.D.3d 578, 578 (1st Dep't 2012); Tener v. Cremer, 89 A.D.3d 75, 76-77 (1st Dep't 2011). Plaintiff insists that he seeks this information to show defendants' control over those websites that published the defamatory statements to which this action pertains and that he claims continue to publish defamatory statements about him.

Plaintiff admits, however, that he already obtained records from Verizon Online about the IP addresses' activity over earlier periods, which are more likely to show control of the alleged defamatory websites at the relevant time when they published the statements alleged in the January 2017 amended complaint. Plaintiff further admits that he needs the disclosure sought by his subpoena dated April 2, 2019, because defendants have continued to defame him on the same websites since he filed his amended complaint January 13, 2017.

Plaintiff's subpoena dated April 2, 2019, well may elicit information that will connect defendants to specified IP addresses from August 2018 to January 2019. Defendants'

connection to those IP addresses during that period, however, is immaterial to the claims in the amended complaint and does not assist in the prosecution of plaintiff's action, because plaintiff already possesses the material information to which that later connection might lead. Liberty Petroleum Realty, LLC v. Gulf Oil, L.P., 164 A.D.3d 401, 405 (1st Dep't 2018); DeLeonardis v. Hara, 136 A.D.3d 558, 558 (1st Dep't 2016); Kripke v. Benedictine Hosp., 222 A.D.2d 764, 765-66 (3d Dep't 1995). See EIFS, Inc. v. Morie Co., 298 A.D.2d 548, 549 (2d Dep't 2002); Pedone v. Schlotman, 249 A.D.2d 526, 526 (2d Dep't 1998). Had plaintiff gathered no other evidence connecting defendants to those IP addresses, defendants' connection during August 2018 to January 2019 might lead to evidence showing their connection two years earlier. Plaintiff concedes, however, that he already has obtained from Verizon Online evidence connecting defendants to those IP addresses during periods covered by the January 2017 amended complaint. Verizon Online's production of documents in response to plaintiff's subpoenas covering earlier periods showed the telephone number associated with defendant Wey's internet account in records associated with the defamatory websites: the very evidence plaintiff needs to connect defendants to those websites at the relevant times. Therefore the only reason for obtaining the later information now sought is to support unpleaded claims for defamation not covered by the current complaint. DeLeonardis v. Hara, 136 A.D.3d at 558; Parimist Funding Corp. v. Rydzinski, 215 A.D.2d 738, 749 (2d Dep't 1995).

Plaintiff contrasts defendant Wey's testimony in a separate action, that in 2015 Wey was responsible for the content of articles published on the websites that published the defamatory statements to which this action pertains, with his deposition testimony in this action, that he was responsible for the websites' publications only during 2013-2014. This inconsistent testimony, however, does not provide plaintiff any greater entitlement to information about Wey's responsibility for the websites' publications in 2018-2019. Plaintiff already may use that inconsistent testimony to undermine Wey's credibility about his responsibility for the websites' publications during the period covered by the amended complaint.

As plaintiff points out, the IP addresses sought may in fact connect to persons other than defendants, who may have controlled the defamatory websites' publications, through whom defendants may have committed their tortious actions, and who may be potential witnesses. Again, this evidence is material and useful to plaintiff's prosecution of this action only insofar as the evidence bears on the period covered by the amended complaint: information plaintiff already has obtained from Verizon Online.

For all the reasons explained above, plaintiff's subpoena to Verizon Online LLC dated April 2, 2019, insofar as the subpoena seeks documents and testimony about the activity of IP addresses in 2018-2019, will not lead to any information bearing on the claims in this action that plaintiff does not already possess. Kapon v. Koch, 23 N.Y.3d 32, 38 (2014); Liberty Petroleum Realty,

LLC v. Gulf Oil, L.P., 164 A.D.3d at 405; DeLeonardis v. Hara, 136 A.D.3d at 558. Therefore the court grants the motion by defendants Wey and NYG Capital LLC to quash and for a protective order against the subpoena insofar as it seeks that information. C.P.L.R. §§ 2304, 3103(a).

DATED: July 25, 2019

Lucy Billings

LUCY BILLINGS, J.S.C.

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