

Sookhu v Thanai

2019 NY Slip Op 32894(U)

August 13, 2019

Supreme Court, Bronx County

Docket Number: 24743/2016E

Judge: Laura G. Douglas

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX
PART 11**

Rookmatie Persaud Sookhu,

Plaintiff,

DECISION AND ORDER

Index No.: 24743/2016E

-against-

Deotee Thanai et al.,

Defendants.

Upon the foregoing papers, the Decision/Order on this Motion is as follows:

Defendants' motion for an order compelling plaintiff to attend a continued deposition is granted to the extent that plaintiff is directed to appear for a deposition solely limited to the areas of questions that were improperly blocked by plaintiff's counsel at the previous deposition.

This is a partition action between plaintiff and certain family members. After issue was joined, plaintiff appeared for a deposition on December 14, 2017. Plaintiff's counsel objected to certain questions as follows:

Question: Does your husband know why you're here today?

Answer: Yes.

Question: And what did you say to your husband?

Mr. Henry: Objection, spousal privilege.

At a subsequent deposition held on November 13, 2018, plaintiff's counsel objected to the following questions:

Question: Did you discuss this case with your husband?

Answer: Yes.

Question: Can you tell me the sum and substances of that conversation?

Mr. Henry: Objection. Privileged, spousal privilege.

In addition, plaintiff's counsel did not allow plaintiff to answer a line of questions concerning plaintiff's response to defendants' notice for discovery and inspection. Defense counsel asked the following question:

Question: Okay. Do you possess any documents demanded in my notice for discovery and inspection that were not turned over to your attorney?

Answer: Not that I know of.

Question: Do you want to review the notice for discovery and inspection now to make sure – why don't you do that? Here it is. And while you're doing that – I will wait for that

Answer: This is a lot of documents to go through. I don't think I can do this now.

Mr. Henry: I object to that question to the extent it requires breach of attorney-client privilege

In opposition to the motion, plaintiff argues that defendants' counsel's inquiry regarding the conversations between the spouses as they pertain to this action are protected under the spousal privilege. In addition, counsel argues that questions regarding plaintiff's response to defendants' notice for discovery and inspection are privileged as attorney-client communications.

Pursuant to the Uniform Rules of the Trial Courts 22 NYCRR § 221.2, a deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of a court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a witness not to answer except under these limited circumstances or pursuant to an objection set forth in CPLR 3115 (*Parker v Ollivierre*, 60 AD3d 1023 [2d Dept 2009]). Additionally, the Uniform Rules of the Trial Courts [22 NYCRR] § 221.1(b) provides that “[s]peaking objections [are] restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.” “[G]enerally, the proper procedure is to allow a witness to answer all questions subject to objections which are reserved for trial in accordance with CPLR 3115” (*Walter Karl, Inc. v Wood*, 161 AD2d 704, 706 [2d Dept 1990]). Here, plaintiff has failed to meet the burden that her conversations with her husband, if any, regarding the subject action were confidential and subject to the spousal privilege.

CPLR 4502(b) provides that a husband and wife shall not be required to disclose confidential communications made by one to the other during marriage. The burden of establishing that certain communications are privileged and protected from discovery under the spousal privilege is on the party asserting the privilege (*Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d 371, 377 [1991]). The issue of whether a spousal communication is confidential and subject to a privilege under CPLR 4502(b) is a question of fact for the court (*People v Wilson*, 64 NY2d 634 [1984]; *People v Dudley*, 24 NY2d 410 [1969]). The privilege is not designed to protect the daily and ordinary exchanges between the spouses, but only those “which would not have been made but for the absolute confidence in, and induced by, the marital relationship” (*People v Wilson*, 64 NY2d at 636, quoting *People v Melski*, 10 NY2d 78, 80 [1961]). Such confidential communications are those communications which “[i]t cannot be supposed that both husband and wife would have been willing to discuss ... in the presence of other persons or would have consented to a repetition of the conversation by either party ...” (*Warner v Press Pub. Co.*, 132 NY 181, 186 [1892]; quoted by *People v Melski*, 10 NY2d at 81). Plaintiff has not established that conversations relating to this partition action “. . . cannot be supposed that both husband and wife would have been willing to discuss ... in the presence of other persons or would have consented to a repetition of the conversation by either party ...”. This Court notes that at the initial deposition, plaintiff had not spoken about the instant action with her husband, as she considered it a matter between her and her family other than to inform her husband that she was heading to a deposition. In this Court’s view, plaintiff has raised nothing more than bald, conclusory allegations in support of the claim for privilege, which is insufficient.

With respect to plaintiff’s objections to questions relating to responses to the notice for discovery and inspection in which she raises attorney-client privilege, the objections are overruled. The attorney-client privilege shields from disclosure any confidential communications between an attorney and his or her client made for the purpose of obtaining or facilitating legal advice in the course of a professional relationship (*see* CPLR 4503[a][1]). Because the privilege shields from disclosure pertinent information and therefore “constitutes an ‘obstacle’ to the truth-finding process,” it must be narrowly construed (*Matter of Jacqueline F.*, 47 NY2d 215, 219 [1979]). The party asserting the privilege bears the burden of establishing its entitlement to protection by

showing that the communication at issue was between an attorney and a client “for the purpose of facilitating the rendition of legal advice or services in the course of a professional relationship”, that the communication is predominantly of a legal character, that the communication was confidential and that the privilege was not waived (*Rossi v Blue Cross & Blue Shield of Greater N.Y.*, 73 NY2d 588, 593-594 [1989]). Here, plaintiff’s counsel objected prematurely to the questions. Defendants’ counsel stated on the record that he is not seeking documents that were objected to in plaintiff’s response since the question that was asked was if she possessed any documents that were not turned over to her attorney.

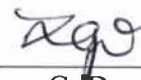
Based upon the foregoing, plaintiff is directed to appear for a further deposition solely limited to the areas of questioning that were improperly objected to by plaintiff’s counsel on or before September 24, 2019 at 10:00 a.m. at a mutually agreed upon location or the Bronx County Courthouse.

This constitutes the decision and order of this Court.

Dated:

8-13-19

Bronx, New York



Hon. Laura G. Douglas, J.S.C.