

Harris v Reagan

2019 NY Slip Op 33913(U)

March 29, 2019

Supreme Court, Cortland County

Docket Number: 16-680

Judge: Molly R. Fitzgerald

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This opinion is uncorrected and not selected for official publication.

At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District, at the Broome County Courthouse in Binghamton, New York, heard on the 8th day of March, 2019.

PRESENT: HON. MOLLY R. FITZGERALD
SUPREME COURT JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CORTLAND

CALVIN L. HARRIS,

Plaintiff,

-against-

JOSEPH C. REAGAN,

Defendant.

**ORDER ON
MOTION TO COMPEL**

Index No. 16-680
RJI # 2016-0506-M

Defendant Joseph C. Reagan ("Reagan") has moved this Court under CPLR 3124, 3122(b), and 3126 for an Order: (a) declaring that Plaintiff Calvin L. Harris ("Harris") waived all objections to Reagan's discovery requests as a result of his failure to timely serve objections (or alternatively, with respect to his privilege objections, compelling Harris to serve a privilege log under CPLR 3122(b)); (b) compelling Harris to, by a date certain, produce an authorization permitting Reagan to obtain certified copies of Harris's tax filings for calendar years 2006 to present directly from the IRS; (c) compelling Harris to, by a date certain, produce all requested documents and information concerning attorney Stanton Drazen; (d) compelling Harris to, by a date certain, engage the services of an e-discovery vendor to forensically collect electronic records (including email) for review by Harris's attorneys, and to supplement his production, complying with the e-discovery production specifications requested by Reagan; (e) providing that a failure to comply with the court order will



result in a dismissal of the action; and (f) extending the document discovery deadline so as to permit Reagan to obtain the requested information and documents prior to the start of depositions; and (g) granting such other and further relief the court deems just and proper. In supplemental submissions and at oral argument, Reagan requested sanctions under CPLR 3126.

Plaintiff Harris opposed Reagan's motion, and in his opposition papers indicated a willingness to provide e-discovery, but only if the court shifted his e-discovery costs to Reagan.

The Court has reviewed: Reagan's motion papers (Notice of Motion, Affirmation of Dale A. Worrall, Esq., dated December 7, 2018 and accompanying exhibits, and Memorandum of Law and accompanying appendices), Harris's opposition papers (Affirmation of Steven H. Blatt, Esq., dated January 21, 2019 and accompanying exhibits), Reagan's reply papers (Affirmation of Dale A. Worrall, Esq., dated January 28, 2019 and accompanying exhibit), and Reagan's supplemental submission (Affirmation of Dale A. Worrall, Esq., dated February 27, 2019 and accompanying exhibits). On October 8, 2019 heard oral argument from Kelly S. Foss, Esq. on behalf of the movant, Defendant Reagan, and from Steven H. Blatt, Esq. on behalf of Plaintiff Harris. The oral argument transcript is attached hereto, and incorporated into this Order.

Based upon the Court's review of the parties' submissions and arguments, Reagan's motion is granted in part and denied in part. It is hereby,

ORDERED that Reagan's request for sanctions is DENIED.

ORDERED that Reagan's request for a tax authorization is DENIED AS MOOT based upon Harris's production of the requested signed authorization.

ORDERED that Reagan's request for an order compelling Harris to engage in e-discovery is GRANTED. Harris shall immediately retain an e-discovery vendor to collect for review by Harris's attorneys those repositories of electronically stored information which potentially contain responsive documents. The parties shall confer regarding the repositories to be collected, the manner of collection, and manner of data reduction, and the manner of review. Within 60 days of the oral argument on March 8, 2019, Harris's attorneys shall supplement Harris's production to include responsive electronic documents in the production format requested by Reagan.

ORDERED that Reagan's request for documents and information concerning Stanton Drazen is granted in part and denied in part. The portion of Reagan's motion which sought production of all documents in the Reed Smith LLP file is DENIED AS MOOT based upon Plaintiff's counsel's production of the entire Reed Smith file, and based upon counsel's representations at oral argument. The remainder of Reagan's request is GRANTED, as follows:

1. By March 29, 2019, Harris shall serve supplemental interrogatory responses identifying all attorney(s) who represent(ed) him in connection with his lawsuit against attorney Drazen.
2. The court understands that an email located in the Reed Smith production provides reason to think that Harris or Harris's attorney may be in possession of 20 boxes of paper documents received from attorney Drazen in 2013. Harris's attorneys shall immediately investigate whether such boxes exist. If so, within 30 days of the oral argument on March 8, 2019, Harris's attorneys shall review and produce responsive records from 10 of those boxes, as explained in the accompanying oral argument transcript. Within 60 days, Harris's attorneys must review and produce responsive records from the remaining 10 of those boxes.


3. Within 60 days of the oral argument on March 8, 2019, Harris shall otherwise complete his production of responsive records concerning attorney Drazen, including without limitation electronic records. The Court understands that Bellavia Blatt may possess responsive records (paper and/or electronic) concerning attorney Drazen, including without limitation emails or other documents of former Bellavia Blatt attorney Carol Crossett. In complying with this Order, Bellavia Blatt shall collect, review, and produce such responsive files in its possession, and the parties shall confer regarding the manner of collection and review of such records.

ORDERED that the portion of Reagan's motion requesting production of a privilege log for any documents withheld on the basis of privilege is GRANTED. Within fourteen (14) days of serving his final document production in accordance with the terms of this Order, if Harris has withheld any documents as privileged, he shall produce a list of such withheld documents on a privilege log in accordance with the requirements of CPLR 3122(b).

ORDERED that the portion of Reagan's motion requesting an extension of deadlines is granted, and shall be the subject of a separate Amended Scheduling Order.

ORDERED that Harris's request for cost-shifting is DENIED.

Dated: Mar 29, 2019
Binghamton, NY


Hon. Molly R. Fitzgerald,
Supreme Court Justice