

<b>Harris v Charlie Rose Inc.</b>
2021 NY Slip Op 31146(U)
April 6, 2021
Supreme Court, New York County
Docket Number: 154172/2018
Judge: Verna Saunders
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS PART IAS MOTION 36

Justice

INDEX NO. 154172/2018

KATHERINE BROOKS HARRIS, SYDNEY MCNEAL, and YUQING ("CHELSEA") WEI,

MOTION SEQ. NO. 007; 008

Plaintiffs,

DECISION + ORDER ON MOTION

CHARLIE ROSE INC., CHARLES PEETE ROSE JR. a/k/a CHARLIE ROSE,

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 145, 146, 147, 148, 155, 156, 157, 158, 159, 160, 161, 162, 171, 172, 173, 177, 178, 181, 183, 184, 185, 186, 187, 188, 189, 190, 192, 195

were read on this motion to/for

DISCOVERY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 149, 150, 151, 152, 153, 163, 164, 165, 166, 167, 168, 169, 170, 174, 175, 176, 179, 180, 182, 191, 196

were read on this motion to/for

DISCOVERY

Plaintiffs move this court pursuant to CPLR 3124 seeking to compel defendant Charlie Rose ("Rose") and Rose's counsel to disclose communications with non-party witness Yvette Vega ("Vega") and Vega's counsel, Margaret Brady ("Brady"), and to compel Vega and her counsel to disclose communications with Rose and Rose's counsel. Specifically, plaintiffs seek disclosure of communications with respect to plaintiffs' claims, Vega's deposition testimony and any changes made thereof, and Rose's agreement to pay Vega's attorney's fees. Defendants oppose the motion.

Vega was an executive producer for the Charlie Rose Show who worked for Rose for twenty-five years. Plaintiffs Harris and McNeal assert Vega had supervisory authority over them while they worked for Rose. Plaintiffs further assert that when they raised concerns about Rose's conduct to Vega, she was dismissive and failed to take remedial action.

In the instant motion, plaintiffs assert that in anticipation of defendants calling Vega to testify at a trial, they seek disclosure of communications between Rose and Vega relating to plaintiffs' claims. At deposition, Vega testified that she did not have communications with Rose about claims against him and at Rose's deposition he testified that he did not discuss claims against him with Vega, other than to inform her of the lawsuit. However, plaintiffs contend that they learned, through an e-mail message sent by Vega's attorney, Brady (intended for defendants' counsel but inadvertently sent to plaintiffs' counsel) that Rose is paying Vega's

1 The caption is hereby corrected to accurately reflect the actual name of defendant Charlie Peete Rose, Jr. as he is named herein. (See summons and complaint.)

attorney's fees and that Vega conferred with Rose regarding her deposition testimony. Plaintiffs argue that the e-mail message was non-privileged, revealed discoverable information, and itself was discoverable. Plaintiffs further argue that the e-mail suggests Rose and Vega failed to comply with discovery obligations and that they are entitled to probe into any influence Rose may have had over Vega's deposition testimony, as well as, Rose's payment of her attorney's fees. When additional disclosure was sought, defendants objected on the ground that the discovery requested was subject to the common-interest privilege. As such, plaintiffs now move the court arguing that disclosure of the communication between Rose and Vega, a third-party, is not privileged. As to defendant's common-interest argument, plaintiffs assert that Vega is not a co-defendant, co-plaintiff, or a person who can reasonably anticipate becoming a co-litigant thus, the common interest privilege does not apply. Plaintiffs seek an order compelling the requested disclosure contending that it relates to both Vega's and Rose's credibility.

In opposition, defendants assert that they responded to discovery requests regarding relevant communications between Rose and Vega but did not provide communications between attorneys as such communications are subject to common-interest attorney-client privilege, corporate attorney-client privilege, and the work product doctrine. Moreover, counsel for Rose aver that they had no direct communication with Vega and that communications between counsel to facilitate their legal representation of their clients are not discoverable.

Defendants' maintain that counsels for Rose and Vega were authorized by their clients to proceed on a privileged and confidential basis. Further, defendants argue that plaintiffs were satisfied with discovery produced, including the deposition testimonies of Rose and Vega, until they received an e-mail message intended for defense counsel. At deposition, both Vega and Rose testified about their non-privileged communications with each other and plaintiffs have not offered a reason to challenge the truthfulness of their respective testimonies. As to plaintiffs' argument that the common-interest privilege is inapplicable here, defendants argue that Vega has reason to anticipate being named as a party to the litigation as plaintiffs filed affidavits asserting that Vega was not diligent in responding to plaintiff's complaints regarding Rose's conduct. Based on their allegations, plaintiffs could name Vega as a defendant and due to the high-profile nature of this action, other plaintiffs and/or potential plaintiffs may assert similar allegations against Rose and Vega as plaintiffs did here. Additionally, plaintiffs here served Bloomberg with a non-party subpoena for disclosures and later commenced an action against him asserting the same allegations plaintiffs are asserting against Vega; to wit: failure to investigate. Thus, Vega can safely assume that she may too be named as a defendant in this action or in other actions involving Rose.

Defendants further argue that Vega is also protected by the corporate attorney-client privilege as she is a former employee who possesses knowledge of facts relevant to Charlie Rose, Inc.'s defense of plaintiffs' claims. Finally, with respect to the work product doctrine, counsel for Rose and Vega have agreed to disclose documents detailing the terms of Brady's retention as Vega's attorney, as well as, the amount of payments she has received, but not the actual bills detailing the services, conversations, notes, et cetera insofar as those details are attorney work product.

CPLR 3101(b) and (c) provide that privileged matter and an attorney's work product are absolutely immune from discovery. CPLR 4503(a) also provides that "a confidential communication made between the attorney and the client in the course of professional employment" is privileged.

Pursuant to the common-interest privilege doctrine, attorney-client communications disclosed to a third party remain privileged when the third party shares a common-interest with the client and the communication is made in furtherance of a common legal interest. Communications protected by the common-interest privilege include those pertaining to pending or reasonably anticipated litigation, to wit; communications between co-defendants, co-plaintiffs, or persons who can reasonably anticipate that they will become litigants. (*see Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 27 NY3d 616, 625-628 [2016].)

Attorney-client privilege also extends to a corporation's confidential communications with attorneys pertaining to their legal affairs. (*see Rossi v Blue Cross & Blue Shield*, 73 NY2d 588, 592 [1989].) The privilege may be invoked where communication between a corporation's attorneys and a corporation's employees are for the purpose of obtaining legal advice or facilitating the rendition of legal advice or service. (*id.* at 593, citing *In re Grand Jury Subpoena Served upon Bekins Record Stor. Co.*, 62 NY2d 324, 329 [1984].) The privilege is not extinguished upon separation from employment. Thus, protected communications between a former employee and a corporation's attorneys remain privileged and not subject to disclosure. (*see Radovic v City of NY*, 168 Misc 2d 58, 60-61 [Sup Ct, NY County 1996], citing *Ortiz v Rivera*, 193 AD2d 440 [1st Dept 1993].)

In the case at bar, plaintiffs assert they are entitled to further discovery with respect to communications between Rose/Rose's counsel and Vega/Vega's counsel. With respect to communications between Rose and Vega directly, plaintiffs concede they received disclosures including depositions. The deposition testimony of Vega is the same as that of Rose, that they did not engage in communications regarding allegations against him with respect to his conduct towards plaintiffs, with the exception of Rose informing Vega of the instant lawsuit. Insofar as their testimonies are not conflicting, there is no basis upon which to determine that the disclosures requested are incomplete.

As to communications between Rose's counsel and Vega or Vega's counsel and Rose, to the extent that these communications did not occur, as affirmed by defendants in opposition to the motion, there is no disclosure to provide.

With respect to communications between Rose's counsel and Vega's counsel, the court finds that these communications are protected by the common-interest privilege. The court finds defendants' analogous use of plaintiffs' action against Bloomberg compelling, in that Bloomberg was a non-party whom, after complying with plaintiffs' discovery demands, was ultimately sued for alleged inaction and/or improper action in response to plaintiffs' concerns surrounding Rose's conduct. The same circumstances exist here where plaintiffs assert that Vega failed to properly act in response to their concerns about Rose and thus, while Vega is currently a non-party, she too can reasonably anticipate becoming a litigant. Therefore, Vega's counsel's communications with Rose's counsel are subject to the common-interest privilege, as Vega and

her attorney can reasonably expect that Vega may become a litigant in this action or another action involving Rose. Accordingly, the email inadvertently sent to plaintiffs' counsel was privileged and should have been discarded upon receipt by plaintiffs' counsel.

However, as conceded to by defendants, plaintiffs are entitled to information regarding the fee arrangement between Rose and Vega's attorney, with the exception of bills detailing the attorney work product referenced. (see *Priest v Hennessy*, 51 NY2d 62, 69 [1980]; *De La Roche v De La Roche*, 209 AD2d 157, 158 [1st Dept 1994].)

Based upon the foregoing, plaintiffs' motion to compel is granted only with respect to disclosure pertaining to the fee arrangement between Rose and Vega's attorney. The motion is denied as to communications between Rose's attorney and Vega's attorney as they are privileged. All remaining arguments have been considered but need not be addressed given the findings above.


Accordingly, it is hereby

**ORDERED** that plaintiffs' motion to compel is granted to the extent that defendants shall produce the details of the fee arrangement between counsel for Vega and defendants, to the extent not already provided, on or before May 7, 2021; and it is further

**ORDERED** that plaintiffs' motion is denied in all other aspects in accordance with this decision; and it is further

**ORDERED** that the parties shall appear remotely for conference on this matter June 9, 2021, details for which shall be provided no later than June 2, 2021.

April 6, 2021

  
HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	