

**Gottwald v Geragos**

2021 NY Slip Op 32154(U)

October 25, 2021

Supreme Court, New York County

Docket Number: Index No. 162075/2014

Judge: Shawn T. Kelly

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 57

-----X

LUKASZ GOTTWALD,

Plaintiff,

- v -

MARK GERAGOS, GERAGOS & GERAGOS, A  
PROFESSIONAL CORPORATION,

Defendant.

INDEX NO. 162075/2014

MOTION DATE 06/28/2021

MOTION SEQ. NO. 012

**DECISION + ORDER ON  
MOTION**

-----X

HON. SHAWN KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 012) 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 636, 637

were read on this motion to/for DISCOVERY

Pursuant to an Interim Order, Defendants Mark Geragos and Geragos & Geragos, A Professional Corporation (“Defendants”) were ordered to produce the following documents for an *in camera* review: (a) 44 documents which Defendants have withheld on their Privilege Log Line Numbers 0026, 0027, 0028, 0029, 0030, 0031, 0033, 0042, 0043, 0044, 0045, 0052, 0053, 0055, 0056, 0057, 0058, 0059, 0060, 0096, 0101, 0104, 0111, 0112, 0113, 0140, 0141, 0142, 0143, 0144, 0145, 0146, 0147, 0148, 0153, 0154, 0155, 0156, 0157, 0158, 0159, 0165, 0166 and 0167; (b) complete copies of the 3 documents bearing Bates numbers GandG\_000288 through GandG\_000289 and GandG\_002531.

As the parties claiming an attorney-client privilege, defendants bear the burden to demonstrate confidential communications between an attorney and a client in the course of the attorney's employment. (CPLR §4503; *Spectrum Sys. Intl. Corp. v Chemical Bank*, 78 NY2d

371, 377–78 [1991]); *Gulf Ins. Co. v Transatlantic Reins. Co.*, 13 AD3d 278, 280, 788 NYS2d 44 [1st Dept 2004]).

Trial courts are “vested with broad discretion to supervise the discovery process, and [their] determinations in that respect will not be disturbed in the absence of demonstrated abuse.” (*Ulico Cas. Co. v Wilson, Elser, Moskowitz, Edelman & Dicker*, 1 AD3d 223, 224 [1st Dept 2003]). Defendants, as the parties opposing disclosure, bear the “burden of satisfying each element of the attorney-client privilege . . . .” (*Miranda v Miranda*, 184 AD2d 286, 286 [1st Dept 1992]). To do so, Defendants must establish their “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 New York*, 73 NY2d 588, 593-594 [1989]).

Privilege may extend to communications of “one serving as an agent of either attorney or client” (*Robert V. Straus Prods. v Pollard*, 289 AD2d 130, 131 [2001] [internal quotation marks and citation omitted]; *Hudson Ins. Co. v Oppenheim*, 72 AD3d 489, 489–90, 899 NYS2d 29 [2010]). For the agency exception to apply, the party claiming privilege must demonstrate that the client had a reasonable expectation of confidentiality under the circumstances, and that disclosure to the third party was necessary for the client to obtain informed legal advice. The necessity element means more than just useful and convenient, but rather requires that the involvement of the third party be nearly indispensable or serve some specialized purpose in facilitating the attorney-client communications (*Fine v ESPN, Inc.*, 2015 WL 3447690, at \*10

[NDNY2015]; *Gottwald v Sebert*, 58 Misc 3d 625, 632–33, 63 NYS3d 818, 823–24 [2017], *aff'd*, 161 AD3d 679, 79 NYS3d 7 [2018]).

New York’s work product rule should be narrowly applied as “not every manifestation of a lawyer’s labors enjoys the absolute immunity of work product.” (*Hoffman v Ro-San Manor*, 73 AD2d 207, 211 [1st Dept 1980]; *Chem. Bank v Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 70 AD2d 837, 837-38 [1st Dept 1979]). Rather, work product is “limited to ‘documents prepared by counsel acting as such, and to materials uniquely the product of a lawyer’s learning and professional skills, such as those reflecting an attorney’s legal research, analysis, conclusions, legal theory or strategy.’” (*In re N.Y.C. Asbestos Litig.*, 109 AD3d 7, 12 [1st Dept 2013] [*quoting Brooklyn Union Gas Co. v Am. Home Assurance Co.*, 23 AD3d 190, 190-91 [1st Dept 2005]).

Upon *in camera* review of the documents, the following Privilege Log Line Numbers are to be produced as they do not fall under protection of either attorney-client privilege or construe attorney work product: 0027, 0028, 0030, 0031, 0033, 0052, 0053, 0055, 0056, 0057, 0058, 0059, 0060, 0096, 0101, 0104, 0111, 0112, 0113, 0144, 0145, 0146, 0147, 0148, 0155, 0156, 0157, 0158, 0159, 0167 and the document Bates stamped GandG\_002531. The following documents are properly marked privileged or work product and are not subject to disclosure Privilege Log Line Numbers: 0026, 0029, 0042, 0043, 0044, 0045, 0140, 0141, 0142, 0143, 0153, 0154, 0165, 0166 and the documents Bates stamped GandG\_000288 and GandG\_000289.

Accordingly, it is hereby

ORDERED that plaintiff’s motion to compel is granted in part; and it is further

ORDERED that defendant shall produce to plaintiff within 14 days of Notice of Entry of this order the following documents: Privilege Log Line Numbers 0027, 0028, 0030, 0031, 0033, 0052, 0053, 0055, 0056, 0057, 0058, 0059, 0060, 0096, 0101, 0104, 0111, 0112, 0113, 0144,

0145, 0146, 0147, 0148, 0155, 0156, 0157, 0158, 0159, 0167 and the document Bates stamped GandG\_002531.

10/25/2021  
DATE

  
SHAWN KELLY, J.S.C.

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