

Matter of Bloomberg v Fontaine
2022 NY Slip Op 33946(U)
November 21, 2022
Supreme Court, New York County
Docket Number: Index No. 159158/2022
Judge: Sabrina Kraus
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

-----X

INDEX NO. 159158/2022

IN THE MATTER OF THE APPLICATION OF MICHAEL
BLOOMBERG,

MOTION DATE 01/08/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

TIFFANY FONTAINE, NYGEL O'BANNON, WENDELL
MCCOY, GREGOIRE POIRIER

**DECISION + ORDER ON
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 26, 27, 28, 30,
31, 32, 33, 34

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS

BACKGROUND

Michael Bloomberg (Bloomberg) was a candidate for President of the United States in 2020. The Respondents are Massachusetts field organizers who worked as employees of Mike Bloomberg 2020, Inc. (Campaign), a Delaware non-profit corporation and the authorized campaign committee for Bloomberg’s presidential campaign. Respondents brought a putative class action pending in Massachusetts Superior Court in which they claim that the Campaign staff allegedly made an oral “promise” to other staffers that they would be employed through the November 2020 election, whether or not Bloomberg was the Democratic nominee.

On July 1, 2021, the Massachusetts Superior Court dismissed Bloomberg from the Massachusetts Action for lack of personal jurisdiction, concluding that Bloomberg, a resident of New York, was neither an officer of the Campaign, nor was engaged in “active entrepreneurial or managerial conduct” in Massachusetts.

In July 2022, Respondents emailed counsel for the Campaign to inquire if they would accept a notice of deposition for Bloomberg. Counsel for the Campaign informed Respondents that “the Campaign does not control [Mr. Bloomberg]”. A week later, Respondents attempted to serve Bloomberg with a subpoena pursuant to CPLR § 3119 at a New York City residence, requesting Bloomberg appear for a deposition on July 29, 2022. Respondents made two attempts to serve Bloomberg within 24 hours, one attempt in the evening of July 27, 2022, and the second again the next morning, at the same address. Respondents made no further attempt at service.

On August 15, 2022, Respondents moved in the Massachusetts Action to compel the Campaign to accept service of a deposition notice or subpoena for Bloomberg.

On August 19, 2022, the Superior Court ruled that, “[u]pon review, this motion is allowed.” The Campaign appealed to the Single Justice of the Massachusetts Appeals Court, which affirmed the Superior Court’s order and directed the Campaign “to accept service of either a deposition notice or a subpoena.” The order expressly noted that Bloomberg could file an “appropriate motion” to “quash any subpoena or otherwise challenge the appropriateness of any attempted deposition under Mass. R. Civ. P. 45(b).”

On October 3, 2022, Respondents emailed to counsel for the Campaign and Bloomberg the First Subpoena. The First Subpoena states that Bloomberg’s appearance is commanded on October 12, 2022, nine days after it was emailed to counsel.

On October 7, 2022, Petitioner filed a Petition and Order to Show in this court to quash the First Subpoena and for a protective order to prevent his deposition (Index No. 158652/2022).

On October 19, 2022, Respondents emailed to counsel for the Campaign and Bloomberg the Second Subpoena. The Second Subpoena states that Bloomberg's appearance is commanded on November 10, 2022.

On October 20, 2022, Respondents delivered a check to the law offices of counsel for Petitioner that was for \$15.00 as a "witness fee" along with a copy of the Second Subpoena.

PENDING MOTION

On October 26, 2022, Petitioner commenced this matter by the filing of a Petition, pursuant to CPLR § 402, and an Order to Show Cause seeking an Order, pursuant to CPLR §§ 2304, 3101, 3103, and 3119 of the Civil Practice Law and Rules, quashing the Second subpoena seeking Bloomberg's deposition on November 10, 2022, in connection with an out-of-state action and issuing a protective order preventing Respondents from taking the deposition of Mr. Bloomberg.

On October 31, 2022, Respondents filed opposition.

On November 9, 2022, the parties conference the motion with the law clerk and agreed to withdraw the First Subpoena issued and the Petition and Order to Show Cause under index 158652/2022. The instant was submitted for disposition.

DISCUSSION

CPLR § 3119 (c) provides, in pertinent part that service of a subpoena issued under authority of a court of record of a state other than New York "... must be served in compliance with sections two thousand three hundred two and two thousand three hundred three of this chapter."

CPLR § 2303 provides in pertinent part that (a) “[a] subpoena requiring attendance or a subpoena duces tecum shall be served in the same manner as a summons...”

In accordance with CPLR §308, a summons must be served either personally, or to a person of suitable age and discretion or, as a last resort, by conspicuous place service.

The Second Subpoena, which is the subpoena at issue in this matter, was served on Bloomberg’s campaign by email, which is not in accordance with the CPLR. Respondents never sought the courts permission for substituted service under CPLR § 308(5). For that reason, the motion to quash the Second Subpoena for improper service is granted.

The portion of Petitioner’s motion seeking a protective order preventing Respondents from taking Bloomberg’s deposition is denied, as the relief requested is more appropriately left to the Massachusetts court in which the action is pending. In certifying the decision to allow Respondents to serve Bloomberg’s campaign, the Massachusetts Appeals court stated, Petitioner could “otherwise challenge the appropriateness of any attempted deposition under Mass. R. Civ. P. 45(b).”

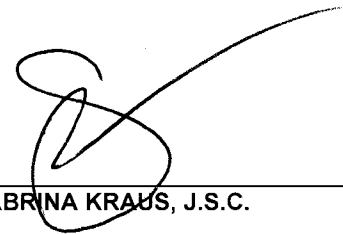
Wherefore, it is hereby

ORDERED the petition and motion to quash the subpoena is granted to the extent provided above; and it is further

ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on Respondent, and on the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.



11/21/2022

DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE