**DR v Police Athletic League, Inc.**

2025 NY Slip Op 33189(U)

August 21, 2025

Supreme Court, New York County

Docket Number: Index No. 950229/2021

Judge: Adam Silvera

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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** **HON. ADAM SILVERA** **PART** **01**

***Justice***

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Plaintiff,

- v -

POLICE ATHLETIC LEAGUE, INC.,

Defendant.

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**INDEX NO.** 950229/2021

**MOTION DATE** 02/03/2025

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 40, 41

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

The allegations in this case concern events that occurred between 1984 through 1987, when plaintiff DR (Plaintiff) worked as a counselor at defendant Police Athletic League, Inc. (Defendant). On January 6, 2025, Plaintiff served a subpoena for deposition via Zoom upon non-party John J. Ryan, who worked as an executive director for the Defendant at the time of the events giving rise to this action. Mr. Ryan is 91 years-old and now retired.

Defendant and Mr. Ryan, by counsel (together, the Movants), move to quash the subpoena and for a protective order on the basis that Mr. Ryan suffers from dementia.[1] The movants argue that due to his condition, any testimony he could provide would unreliable. They also argue that the process of a deposition could be potentially harmful to him. In support of their motion, the Movants submit letters from Mr. Ryan's health care providers.

In opposition, Plaintiff argues that Mr. Ryan's testimony is highly relevant. Plaintiff's counsel affirms that its office previously interviewed Mr. Ryan, prior to learning he was

[1] Counsel for all parties were apprised of Mr. Ryan's condition through his wife, Suzan Ryan.

represented by counsel, and was informed of crucial information regarding the issue of notice. Plaintiff asserts that he does not intend to harass or annoy Mr. Ryan, but, rather, seeks to obtain relevant information before the opportunity is lost. Plaintiff requests that, at minimum, this Court should use its discretion to direct a swearability hearing to determine whether Mr. Ryan is competent to testify.

CPLR 3101 (a) (4) provides non-parties shall provide "…full disclosure of all matter material and necessary in the prosecution or defense of an action…upon notice stating the circumstances or reasons such disclosure is sought or required." *See Matter of Kapon v Koch*, 23 NY3d 32, 38 (2014). A party moving to quash a subpoena served upon a non-party bears the initial burden of demonstrating that the information sought is "utterly irrelevant" or that "the futility of the process to uncover anything legitimate is inevitable or obvious." *Id*. Further, where the purpose of a non-party subpoena "can only be to unreasonably annoy, harass and embarrass... courts should not hesitate to step in so as to prevent improper use of statutorily authorized disclosure devices." *Garvin v Garvin*, 162 AD2d 497, 500 (2d Dept 1990) (citations omitted).

Plaintiff argues that Mr. Ryan's testimony is essential to their case, while the Movants assert that, due to his condition, Mr. Ryan's testimony would be unreliable and potentially harmful to him. In balancing the competing interests of the parties involved, as is required in determining the appropriateness of a disclosure demand (*see Wander v St. John's Univ.*, 67 AD3d 904, 905 [2d Dept 2009]), the Court finds that the subpoena must be quashed. While it may be true that Mr. Ryan could have given relevant testimony at some point in his life, it is also true that his current capacity to testify has been irrefutably called into question and that testifying may be deleterious to his health.

For example, Mr. Ryan's treating psychiatrist Dr. Stephen P. Sullivan at Westchester Psychiatric Associates, P.L.L.C., wrote that: …Over the years that I have treated [Mr. Ryan], his dementia has significantly and steadily progressed…The patient does not have the capacity to meaningfully participate in any legal proceeding. He has no ability to understand the issues at hand, no ability to retain information, no ability to weigh/make decisions based on information, and no ability to appreciate the consequences of any decision. NYSCEF doc. no. 36. Additionally, and of particular concern, Mr. Ryan's treating physician Dr. Bindu N. Mathew at Weill Cornell Medical Center wrote that testifying will cause Mr. Ryan "…unnecessary harm and confusion." NYSCEF doc. no. 34.

Notably, Plaintiff does not call into question the veracity of Mr. Ryan's condition or the opinions contained in his medical records, nor does Plaintiff submit any case law or documentation supporting the proposition that a non-party who undisputably suffers from dementia, a disease which inherently calls a deponent's memory into question, must testify at a deposition. *See generally Brown v Ristich*, 36 NY2d 183, 189 [1975] ("A witness is said to be capable when he has the ability to observe, recall and narrate, i.e., events that he sees must be impressed in his mind; they must be retained in his memory"). Therefore, "[a]bsent any evidence placing [the proposed deponent's] condition in dispute, there is no basis to allow [his] testimony or to even conduct a swearability hearing pursuant to CPLR 2218."*3738 White Plains Rd. Realty Corp. v Cid*, 77 Misc 3d 1230(A) Civ Ct, Bronx County 2023).

Further, courts have issued protective orders where a non-party's participation in a deposition would be "dangerously deleterious to [their] emotional state." *Button v Guererri*, 298 AD2d 947 (4th Dept 2002) (quotation omitted) (holding that the trial court erred in granting motion to compel the deposition of a non-party with uncontroverted evidence of psychiatric issues); *see*

*also Verini v Bochetto*, 49 AD2d 752, 752 (2d Dept 1975) (holding that trial court improvidently exercised its discretion in failing to issue a protective order where deposition of non-party witness would aggravate his health issues).

Therefore, the Court quashes the subpoena served on Mr. Ryan and grants a protective order in his favor, on the grounds that he has a medical condition that affects his ability to testify and that he will experience anticipated adverse health consequences if compelled to testify. The potential prejudice to Plaintiff in rendering this decision cannot overcome the probable health consequences faced by Mr. Ryan if forced to testify.

Accordingly, it is

ORDERED that the motion of Police Athletic League, Inc. to quash the subpoena served upon non-party John J. Ryan, dated January 6, 2025, and for a protective order, is granted; and it is further

ORDERED that the remainder of the motion is denied as moot.

The foregoing constitutes the decision and order of the Court.

8/21/2025
DATE

HON. ADAM SILVERA

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| CHECK ONE: | | CASE DISPOSED | | | X | NON-FINAL DISPOSITION | |
| | X | GRANTED | | DENIED | | GRANTED IN PART | OTHER |
| APPLICATION: | | SETTLE ORDER | | | | SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | | FIDUCIARY APPOINTMENT | REFERENCE |