

Morocho v 1350 Broadway LLC
2026 NY Slip Op 31856(U)
April 30, 2026
Supreme Court, New York County
Docket Number: Index No. 152002/2023
Judge: Arlene P. Bluth
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

CRISTHIAN JUNIOR GUAPI MOROCHO,

Plaintiff,

- v -

1350 BROADWAY LLC, ESRT 1350 BROADWAY, L.L.C.,
LEGACY BUILDERS/DEVELOPERS CORP., MUNSTER
DRYWALL & CARPENTRY INC,

Defendants.

-----X

LEGACY BUILDERS/DEVELOPERS CORP.

Plaintiff,

-against-

MUNSTER DRYWALL & CARPENTRY INC.

Defendant.

-----X

INDEX NO. 152002/2023
MOTION DATE 04/28/2026
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

Third-Party
Index No. 595581/2023

The following e-filed documents, listed by NYSCEF document number (Motion 001) 84, 85, 86, 87, 88, 89, 90, 91, 92

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

Plaintiff’s motion to quash a subpoena served on plaintiff’s wife is decided as described below.

Background

In this Labor Law action, plaintiff moves to quash a subpoena served on his wife and for an order limiting any testimony from her to the extent it seeks marital communications. He insists that his wife did not witness the incident and that she does not possess information pertaining to liability. Plaintiff insists that he has not waived the marital privilege and that

defendants are improperly seeking marital communications about what plaintiff may have discussed with his wife about the accident at issue in this case.

In opposition, defendant Munster Drywall and Carpentry Inc. (“Munster”) contend that plaintiff’s wife has sought to give this testimony on her own volition and that it has not harassed or intimidated her into giving her account. It contends that plaintiff waived the marital privilege by bringing a civil suit for damages. Munster claims that its owner was told by plaintiff’s wife that plaintiff admitted he hurt his leg playing soccer and that he faked the accident at issue.

In reply, plaintiff contends that the only basis for his wife’s testimony is an entirely hearsay and speculative citation to testimony from David Haugh (owner of defendant Munster Drywall) who asserted that his wife claimed plaintiff said he faked the injury.

Discussion

Although the underlying letter communications (*e.g.*, NYSCEF Doc. No. 89) between the parties raises the suggestion that the proposed witness is plaintiff’s ex-wife, plaintiff asserts (and Munster did not meaningfully object) that he is still married to the person from whom Munster seeks testimony. Therefore, for purposes of this motion, the Court considers plaintiff to be married to the potential witness.

CPLR 4502(b) provides that “Confidential communication privileged. A husband or wife shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during marriage.” “One spouse may not waive the privilege and voluntarily testify to a confidence without the consent of the other spouse if the other is still living. Any waiver must be joint” (Alexander, *Prac Commentaries*, CPLR C4502:2).

Here, there is no doubt that the discussion between a husband and wife about the nature of the alleged incident constitutes a confidential communication that falls, at least as an initial matter, under the ambit of the marital privilege. Munster’s insistence that plaintiff’s wife voluntarily wants to come forward is of no moment as the privilege lies with both spouses and both must agree to waive it. “A husband or wife shall not be required, or, without consent of the other if living, allowed, to disclose a confidential communication made by one to the other during marriage. While not all spousal communications are privileged, confidential communications induced by the marital relation and prompted by the affection, confidence and loyalty engendered by the relationship clearly are. In making this determination, spousal communications are presumed to have been conducted under the mantle of confidentiality, and the burden is on the party seeking to overcome the privilege to demonstrate that the communications were not made in confidence” (*Smartmatic USA Corp. v Fox Corp.*, 227 AD3d 578, 578-79, 212 NYS3d 74 [1st Dept 2024] [internal quotations and citations omitted]).

The next question is whether an exception applies. Munster cites to *Prink v Rockefeller Ctr.* (48 NY2d 309, 422 NYS2d 911 [1979]) for the proposition that anytime a plaintiff brings an affirmative case for damages, he necessarily waives the marital privilege. But the reach of *Prink* does not extend that far. That case deals with wholly inapposite facts—the plaintiff there died after falling from a 36th floor office window; the desired testimony, from his wife, concerned plaintiff’s treatment from a psychiatrist prior to his death (*id.* at 313). The issue, understandably, was whether plaintiff had committed suicide or fallen due to negligence and details about plaintiff’s mental condition were put at issue, particularly because there were no witnesses to the accident and he had passed away. A case about whether or not plaintiff accidentally or

intentionally fell out of a window justified the waiver of both the marital and physician privileges.

Here, Munster wants hearsay evidence from plaintiff's spouse (there is no dispute that she did not personally witness the accident) about confidential communications between a husband and wife. That does not, in this Court's view, support a finding that marital privilege should be deemed to be waived simply because plaintiff brought a civil lawsuit. Unlike *Prink*, where the plaintiff's mental condition was a key element of the prima facie case and plaintiff was not available to testify, plaintiff's case is not about his mental capacity. To accept Munster's formulation of the marital privilege is to deem that, in practice, there is no such privilege for any party (plaintiff or defendant) that asserts an affirmative claim in civil court. That view is not supported in case law or in a plain reading of the applicable CPLR section.

Munster's insistence that the crime-fraud exception applies is without merit as it did not meet its prima facie burden for that exception. To be sure, now that they have been alerted to the theory that that plaintiff may have "faked" the accident, Munster and other defendants are entitled to explore that assertion. But that discovery must come from witnesses who might have relevant evidence (such as the people with whom plaintiff plays soccer) or from medical records suggesting that the accident did not cause plaintiff's injuries. On this record, the Court is simply unable to find that the marital privilege was waived based only on plaintiff bringing this case or on a double hearsay statement offered at a deposition by a witness who did not personally observe the alleged accident.

Obviously, this Court has no idea whether or not (or for what reason) plaintiff's wife may want to testify against her husband. But on this record, when the husband objects to the

testimony of alleged conversations he had with his wife during the marriage, there is no basis to find that the marital privilege was waived based solely on her alleged desire to be deposed.

The Court makes no advisory findings about purported harassment of plaintiff's wife and no permission is required in this part for a party to make additional motions.

Accordingly, it is hereby

ORDERED that plaintiff's motion is granted to the extent that defendants' subpoena for the testimony and the production of records from plaintiff's wife is quashed.

See NYSCEF Doc. No. 78 regarding the next conference.



4/30/2026

DATE

ARLENE P. BLUTH, 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