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D.C. Superior Court

CIVIL PROCEDURE

REQUEST FOR BROAD PROTECTIVE ORDER REQUIRES GOOD CAUSE SHOWN

Précis: A request to issue an extremely broad protective order precluding the dissemination of pre-trial discovery documents, depositions, and other materials, or any information derived from them, requires a showing of "good cause," particularly when much of the information is already in the pleadings and motions already filed in the case, is not subject to any privilege or confidentiality, has already been "leaked," or did not derive from the discovery process itself.

Abstract: Plaintiff, a former employee of the Democratic National Committee, raised sexual orientation discrimination and retaliation claims under the D.C. Human Rights Act arising from his termination, together with defamation claims against several DNC officers arising from public statements that they made about the reasons for his termination. The Defendant sought an extremely broad Rule 26(c) Protective Order regarding documents produced in discovery, prohibiting the parties, their counsel, employees, agents, and all others working with them from disseminating or revealing any document produced during discovery herein, including depositions, exhibits, or summaries or notes, or any information derived from any of the above, with only certain limited exceptions. The Court held that the request was "overly broad and would be difficult to enforce if the intent was to prohibit disclosure of discovery materials to the public." In addition to the fact that none of the items at issue fell within any privilege or confidentiality protection, the Court noted that exhibits to pleadings and motions were already on file in the Clerk's Office and that the case was not under seal, thus making them public documents for anyone to peruse. Moreover, some of the documentation at issue was not produced by discovery but from independent sources and therefore could not be subject to a protective order in any event. Finally, other materials had already been published in the media or "leaked" to the press, making the issue moot as to them. The Court could not conclude that the Defendant had shown that it would be harmed by disclosure of such materials. While it is true, the Court noted, that pre-trial discovery materials are not necessarily subject to public availability because much of the information contained in them is only tangentially related to the suit, perhaps relevant only insofar as they might lead to admissible evidence, the principles of Rule 26(c) still require that some articulable "good cause" be shown before a highly restrictive protective order may issue. Nevertheless, noting a court's "substantial discretion" in regulating discovery in civil cases, the Court concluded that the Defendant in this case had "failed to state with some specificity how it may be harmed by the disclosure of a particular document or piece of information." Good cause not having been shown sufficiently to issue such a broad order, the Defendant's Rule 26(a) Motion for Protective Order was denied.

HITCHCOCK v. DEMOCRATIC NATIONAL COMMITTEE

C.A. No. 07-003040. Decided May 20, 2008. JEANETTE CLARK, J. *Lynne Bernabei*, Esq. for the Plaintiff. *Joseph E. Sandler*, Esq. for Defendant. *Barry Reingold*, Esq. for Non-Party Witness Claire Lucas.

ORDER DENYING DEFENDANT DNC'S MOTION FOR PROTECTIVE ORDER

Upon consideration of defendant Democratic National Committee's ("DNC") Motion for a Limited Protective Order, Plaintiff's opposition thereto, DNC'S Reply, Plaintiff's Response, and the record herein, the Motion is denied.

I. FACTUAL AND PROCEDURAL HISTORY

On January 2, 2008, the Court granted the parties' Joint Motion for Entry of Stipulated Confidentiality Agreement and Protective Order to treat certain documents as "Confidential Information" and to use them as set forth in the stipulated order. The DNC filed a Motion for Limited Protective Order on January 30, 2008; Plaintiff filed an Opposition thereto on February 5, 2008; a Reply brief was filed by the DNC on February 11, 2008; and on February 12, 2008, Plaintiff filed a Response to Defendant's Motion for a Limited Protective Order.

II. STANDARD OF REVIEW

Pursuant to Super. Ct. Civ. R. 26(c), the trial court may grant a protective order "[u]pon motion by a party or by the person from whom discovery is sought, and for good cause shown . . . . may make any order which justice requires to protect a party or person from annoyance,

Request — cont'd on page 1206

TABLE OF CASES

D.C. Superior Court

Also in this issue

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Request *Continued from page 1205*

embarrassment, oppression, or undue burden or expense . . ." The D.C. Court of Appeals has explained that:

> 'To prevent abuse of the discovery process, the order may impose specific terms and conditions for discovery and may require that confidential information be disclosed in a certain manner, or not be disclosed at all.' *Mampe v. Ayerst Labs.*, 548 A.2d 798, 803 (D.C. 1988); *see also Seattle Times Co. v. Rhinehart*, 467 20, 82 L. Ed. 2d 17, 104 S. Ct. 2199 (1984).

Roberts-Douglas v. Meares, 624 A.2d 405, 416 (D.C. 1992). Indeed, "a court has substantial discretion in deciding to grant a protective order, and its decision to do so will not ordinarily be disturbed on appeal unless that discretion has been abused. (citation omitted)." *Mampe, supra* at 803.

As an initial matter,

> "[b]efore a protective order may be entered , . . . , the party seeking it must make a showing of good cause, stating with some specificity how it may be harmed by the disclosure of a particular document or piece of information (citations omitted).

Id. Next,

> "[t]he burden then shifts to the party seeking discovery to establish that the disclosure is both relevant and necessary to the action . . . To show necessity, the party seeking discovery must demonstrate that the information is necessary to the preparation of its case for trial, including proving its own theories and rebutting those of its opponent. (citation omitted)."

Id.

III. ANALYSIS

In the instant action, the DNC seeks an order to prohibit "the parties, their counsel, their employees, agents and all those acting in concert with them" from "disseminat[ing] or reveal[ing] any document produced during discovery in this case, any transcript of any deposition or any exhibit to a deposition, or information contained therein or summaries or notes made therefrom to any person or entity other than [certain exceptions]." DNC's Proposed Order at 1. In other words, the DNC, requests "a limited protective order simply prohibiting the parties from disseminating documents and deposition transcripts to the public." Motion at 6.

The overly broad request made by the DNC would be onerous and difficult to enforce if the intent was to prohibit disclosure of discovery materials to the public which are not currently covered by the existing Stipulated Confidentiality Agreement and Protective Order that was issued by the Court on January 2, 2008. On the other hand, the DNC, would allow discovery materials to be attached to pleadings filed in court. *See* DNC Proposed Order at 2. Therefore, such information that was not filed under seal with the court, would be disclosed to the public and could raise similar objections by the DNC.

Moreover, the record evidence shows that both parties have admitted that they or their agents have disclosed information to the news media or over the internet. Motion at 6; Plaintiff's Response to Defendant's Motion for Limited Protective Order at 5. Furthermore, although the DNC extensively complains about the e-mails regarding Rev. Daughtry, such information was not generated as a result of the instant case and could not have been subject to a protective order, if one had been issued. The e-mails concerning Rev. Daughtry appear to have been generated by third parties, not subject to the jurisdiction of this Court in this case. On the other hand, the two internal DNC e-mails were

Entertainment Law Review Deals With Hot Topics, Cases

On June 11 the D.C. Bar Arts, Entertainment, Media and Sports Law Section will host the luncheon program "Entertainment Law in Review," which will tackle the various trends and issues in today's practice of entertainment law.

Stan Soocher, associate professor of Music and Entertainment Industry Studies at the University of Colorado Denver, will discuss significant court cases in this area of law, including the lawsuit filed by Detroit rock band The Romantics against the maker of the "Guitar Hero" video game over the use of its 1980 hit song "What I Like About You."

Soocher also will talk about scuffles over band names; the proper use of disclaimers for docudramas and other fact-based productions; the dos and don'ts of talent agency agreements; the Allman Brothers Band's pursuit of fair record royalties; and how singers Mariah Carey and Beyoncé Knowles, and the animated film *Finding Nemo,* defeated claims of copyright infringement.

Cosponsored by the Intellectual Property Law Section, the program takes place from 12 to 2 p.m. at the D.C. Bar Conference Center, 1250 H Street NW, B-1 level.

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From *Inside the Bar* at www.dcbar.org

produced by the DNC during discovery and published in a media outlet in January 2008. Furthermore, Mr. Bond's transcripts were generated in the context of the discovery conducted in the instant case and were leaked to the press. *See* Defendant's Motion at 6.

However, the court does not find that the DNC has shown good cause as to how it would be harmed by disclosure of *all* future discovery materials. As to the second prong of the court's inquiry under *Mampe, supra*, the Court notes that the DNC is not seeking to prevent the disclosure of information to Plaintiff. Rather, the DNC seeks to limit the distribution of discovery materials to third parties who are not connected to the litigation.

To be sure,

> [P]retrial depositions and interrogatories are not public components of a civil trial. Such proceedings were not open to the public at common law, *Gannett Co. v. DePasquale,* 443 U.S. 368, 389 (1979), and, in general, they are conducted in private as a matter of modern practice. (citations omitted). Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.

Seattle Times, supra at 33; *Mokhiber v. Davis*, 537 A.2d 1100, 1111 (D.C. 1988). Notwithstanding the fact that the public at large has no constitutional right to pretrial discovery, the DNC has failed to "state[] with some specificity how it may be harmed by the disclosure of a particular document or piece of information. (citation omitted)." *Mampe,* 548 A.2d at 804. The court went on to state that "[i]t has not shown how it would be harmed or embarrassed by public disclosure of particular documents." *Id.* (emphasis added). Accordingly, the Court is constrained to deny the Motion because the DNC has not met its burden of articulating sufficient facts in support of its Motion to limit the dissemination of discovery. Therefore, good cause was not shown to grant the Motion.

III. CONCLUSION

For the reasons stated above, the Motion is denied.

WHEFORE, it is this 20th day of May 2008

ORDERED, that the DNC's Motion is

DENIED.

Cite as *Hitchcock v. Democratic National Committee* 136 DWLR 1205 (May 20, 2008) (Clark, J.)(D.C. Super. Ct.)

DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION

NOTICE OF JUDICIAL VACANCY

Members of the bar, bench and public are hereby notified by the District of Columbia Judicial Nomination Commission ("the Commission") that a vacancy on the District of Columbia Court of Appeals will occur as a result of the retirement of The **Honorable Michael W. Farrell as an Associate Judge** effective July 1, 2008.

Within 60 days of a vacancy, the Commission is to submit to the President of the United States the names of three persons for possible nomination and appointment to the Court. D.C. Code § 1-204.34. Accordingly, the Commission invites individuals to notify the Commission of their interest in being considered for this vacancy. Qualified applicants must be citizens of the United States, active members of the District of Columbia Bar, bona fide residents of the District of Columbia, and, for the five-year period immediately preceding the nomination, must be engaged in the active practice of law in the District of Columbia, on the faculty of a law school in the District of Columbia, or employed as an attorney by the United States or the District of Columbia government. For the precise eligibility requirements, please refer to D.C. Code § 1-204.33(b).

All persons interested in applying for a judicial vacancy should review the instructions and application materials on the Commission's website, http://jnc.dc.gov. For additional information, the Commission can be contacted via telephone or email, or by visiting the Commission's office. Interested persons who have not filed an application with the Commission within the previous twelve months must submit a completed application to the Commission. Interested persons who have submitted a completed application within the previous twelve months must notify the Commission in writing of their interest in being considered for this vacancy. All application materials must be received by July 1, 2008. All applications and correspondence should be addressed to the Honorable Emmet G. Sullivan, Chairperson, Judicial Nomination Commission, 515 5th Street, NW, Suite 235, Washington, D.C., 20001. In addition to the required paper copies of the application and/or letter of interest submitted to the Commission, a copy in PDF format must be sent via electronic mail to Judge Sullivan, Chairperson, at JNC@dcd.uscourts.gov. Incomplete applications will not be considered.

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