

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SULLIVAN

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MARC ANTHONY,  
Plaintiff,

INDEX NO. E2023-260  
AFFIRMATION IN OPPOSITION  
TO CROSS-MOTION AND IN  
FURTHER SUPPORT OF MOTION  
TO COMPEL

-against-

KAITLIN HAAS, individually,  
and THE TOWN BOARD  
OF THE TOWN OF HIGHLAND  
Respondents.

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Stacey Van Malden, an attorney duly admitted to the practice of law in the courts of the State of New York affirms the following under penalty of perjury:

1. I am attorney for the Plaintiff herein.
2. As such, I am fully familiar with the facts and circumstances in this matter.
3. I make this Affirmation in Opposition to non-party Joseph Abraham's Motion to Quash the Subpoena issued to him to testify at a deposition in the above captioned matter, and in further support of Plaintiff's motion to compel Mr. Abraham to testify.
4. Mr. Abraham makes three arguments in his moving papers.
5. Initially he states that he was improperly served at a home he owns, but in which he alleges he does not reside.
6. His next argument is that the subpoena is invalid on its face for failure to comply with CPLR §3101(a)(4).

7. Lastly he argues that he cannot be compelled to testify because of New York's Press Shield Law, codified at Civil Rights Law § 79-h.
8. Plaintiff would submit to the Court that the first two grounds to Quash may easily be remedied, if necessary, provided that the Court finds that Mr. Abraham can be compelled to testify, other wise they would be moot.

**The Information Sought is not Confidential, and Therefore Discoverable**

9. Mr. Abraham avers in his cross-motion that the unredacted Constable Report was received anonymously.
10. He does not aver that the confirmation of the report from "the Town" was confidential.
11. Anonymous is not equivalent to confidential.
12. Anonymous is defined by Black Law Dictionary (2nd Edition) as "Nameless; wanting a name or names."
13. Confidential is defined in that same source as: "Intrusted with the confidence of another or with his secret affairs or purposes; intended to be held in confidence or kept secret."
14. Mr. Abraham does not assert anywhere in his Affirmation that the information he received was confidential, merely anonymous.
15. Thus, because the information sought is not from a confidential source, then the information may be compelled if the plaintiff can demonstrate that the information: (i) is highly material and relevant; (ii) is critical or necessary to the maintenance of a party's claim, defense or proof of an issue material thereto; and (iii) is not obtainable from any alternative source.  
CRL §79-h(c).

16. As set forth in the Amended Complaint/Petition of the Plaintiff, Plaintiff has a claim for

Defamation against Defendant Kaitlin Haas.

17. The following paragraphs from this pleading set forth his claim:

35. Instead of providing proper notice to Plaintiff of any charges made against him, Kaitlin Haas, without the authority of the Town Board, caused unredacted copies of her alleged investigation into Plaintiff's alleged actions to be published in the Sullivan County Democrat.
36. These items were published in the August 19, 2022 issue of the Democrat.
37. The Sullivan County Democrat is a Newspaper serving Sullivan County, New York, and is widely read by its residents, business owners, and other Town Supervisors and Town Boards responsible for staffing of their police forces and Constabularies.
38. Plaintiff has suffered monetary and other consequences as a result of the publication of false, negative allegations about his character, and his work ethic.
39. In the article in the Sullivan County Democrat, allegations against Plaintiff were made public even though Plaintiff had never received a written copy of said charges, nor been given the opportunity for a hearing.
40. Upon information and belief, the information in the article in the Democrat was provided to the Democrat by Defendant Kaitlin Haas.
41. Defendant Kaitlin Haas had previously released a redacted copy of the allegations to the general public.
42. Defendant Kaitlin Haas was not authorized by the Town Board to release the unredacted copy of the Board's investigative report.
43. The report was one sided, and released without said charges being subject to a hearing.
44. Once the unredacted article was published, the redacted version was easily compared to the unredacted allegations, identifying Plaintiff to the general public as well.
45. The article actually names the defendant.
46. The article details "substantiated" charges against the plaintiff which are absolutely false.
47. The article states that Plaintiff "did not have Peace Officer Training," "did not have Taser training" and "did not have handgun qualifications to permit him to carry a weapon while on duty."
48. These allegations subjected Plaintiff to public contempt, ridicule and disgrace.

49. Upon information and belief, Kaitlin Haas further stated and caused to be published falsely, that a “representative from the New York Division of Criminal Justice Services” related this information to her.
  50. However, based upon actual New York State records, Plaintiff has more than adequate Police Officer training and qualifications, as well as Taser and Handgun qualifications.
  51. These demonstrably false statements were made by Ms. Haas, with her knowledge of their falsity.
18. The information that is sought from Mr. Abraham is simply who at the Town confirmed the authenticity of the report.
  19. Based upon his affirmation, Mr. Abraham is in possession of this information.
  20. If indeed Kaitlin Haas was the person who confirmed the information, information which was not authorized by the Town to be disclosed, this would prove the allegations in the complaint regarding defamation.
  21. Ms. Haas has already admitted at her deposition that she and Board member Christopher Tambini prepared the report. Exh XM 1.
  22. However, neither have admitted to confirming the information to the Sullivan County Democrat.
  23. The name of the person that confirmed the report is therefore highly material and necessary, for without it, plaintiff’s claim for defamation fails.
  24. As per a press release dated October 4, 2023, the Town stated that they had “not publicly released details” of the Constable Report prior to that date. Exh XM 2.
  25. Thus all Board members have gone on record as stating they did not disclose or confirm this information, and there is no alternate source for this information.

26. Simply put, if Mr. Abraham states that Kaitlin Haas confirmed the report, then Plaintiff prevails.
27. If Mr. Abraham does not, the plaintiff's claim for defamation fails.
28. Because Plaintiff's request for information is not confidential, and the elements of Civil Rights Law §79-h(c) have been met, Mr. Abraham must be compelled to reveal the information requested.
29. In addition, and not addressed by Mr. Abraham's moving papers, it was submitted to the Court in Plaintiff's initial moving papers that Mr. Abraham has waived this privilege. (PP 33-38, Plaintiff's Motion to Compel).

#### **Mr. Abraham was Properly Served**

30. Mr. Abraham states in his affirmation that he while he owns the property where he was served, he does not reside there.
31. However, Mr. Abraham does not offer any other actual place of abode.
32. Mr. Abraham does admit to actually receiving process.
33. Mr. Abraham cites to the case of Feinstein v. Bergner, 48 NY2d 234 (1979), for the proposition that "without service at the location where the person actually lives... service has not been accomplished.
34. The Feinstein case, as well as Perdomo v. Chau Shing Wong, 275 AD2d 357 (2nd Dept. 2000), are "Nail and Mail" cases, not a cases in which a person of suitable age and discretion is served.

35. Feinstein does state that the, “primary statutory purpose” of CPLR §308 is to ensure that defendants receive actual notice of the pendency of litigation against them, which certainly occurred in this matter. 48 NY2d @ 240.
36. In Raschel v. Rish, 69 N.Y.2d 694, 696, 504 N.E.2d 389, 390, 512 N.Y.S.2d 22, 23 (1986), also cited by Mr. Abraham, the Court of Appeals stated regarding service of process that, “the guiding principle must be one of notice "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (citing, *Mullane v Central Hanover Trust Co.*, 339 U.S. 306, 314; *see also*, *Bossuk v Steinberg*, 58 NY2d 916, 918-919).
37. When Mr. Abraham received actual notice, service of the subpoena was proper.

**The Subpoena met the Requirements of CPLR §3101(a)(4)**

38. The Subpoena served upon Mr. Abraham was very specific in the information sought, to wit: “Any documents in your possession which refers to Marc Anthony, the Town of Highland Constabulary, or to an article published in the Sullivan County Democrat on or about April 19 or 22, 2022 regarding the Town of Highland Constabulary.”
39. There can be no question that the circumstances of why the disclosure is required is right upon the face of the subpoena.
40. That this is so is confirmed by Mr. Abraham’s moving papers in which he asserts that he will not give the requested testimony based upon the Press Shield Law.
41. If the subpoena was not specific enough, then Mr. Abraham would have no basis for his present application.

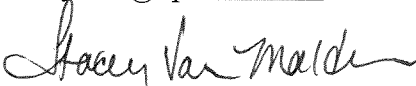
42. In citing to Matter of Kapon v. Koch, 23 N.Y.3d 32, 11 N.E.3d 709, 988 N.Y.S.2d 559 (2014), Mr. Abraham only submits to the Court half of the rule of the case.
43. The full holding of Kapon, is the following: "the subpoenaing party must first sufficiently state the "circumstances or reasons" underlying the subpoena (either on the face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is "utterly irrelevant" to the action or that the "futility of the process to uncover anything legitimate is inevitable or obvious." Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought is "material and necessary" to the prosecution or defense of an action, i.e., that it is relevant."
44. Mr. Abraham has not, and cannot meet his burden, as set forth supra.

WHEREFORE, it is most respectfully requested that Mr. Abraham's Cross-motion be denied in its entirety, that Plaintiff's motion be granted in its entirety, and for such other and further relief that this Court may deem just and proper.

Dated: June 12, 2024

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By:

  
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