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Docket: 18-2289-BLS1

Parties: LEWIS PR vs. ANDREW MURPHY

Date: February 22, 2019

Judge: /s/Mitchell H. Kaplan Justice of the Superior Court

MEMORANDUM OF DECISION AND ORDER ON THE DEFENDANT'S MOTION TO QUASH SUBPOENA ISSUED TO VERIZON WIRELESS

This case involves claims of breach of a restrictive covenant contained in an Asset Purchase Agreement (APA). The plaintiff, Lewis PR, is company based in San Francisco. In 2013, it purchased a company, DMG, owned by the defendant Andrew Murphy and his partner that was involved in the public relations business. The APA contained non-solicitation and non-competition provisions that restricted Murphy from competing with Lewis for a period of 5 years. In 2018, after the 5 year restrictive period had expired, Murphy announced that he had joined a public relations firm founded by two other former employees of DMG and, subsequently Lewis, called Three Rings. Lewis alleges that Murphy engaged in conduct that violated the restrictive covenant before it expired. Murphy acknowledges that he continued to have contact with Three Ring's founders, after his relationship with Lewis ended, as they were close friends. He denies that he engaged in conduct that violated the APA.

The case is before the court on Murphy's emergency motion to quash a subpoena duces tecum served on the Keeper of the Records of Verizon Wireless. The subpoena requests that Verizon produce records reflecting all telephone bills, text message data, and call data for Murphy's cell phone for a period of 20 months.

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DISCUSSION

The court rejects Lewis' contention that because the subpoena was served on Verizon, a non-party, Murphy does not have standing to object to its scope. Under Mass. R. Civ. P. 26(c): "Upon motion by a party. . . , and for good cause shown, the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression,. . . including one or more of the following: (1) that discovery not be had,;. . . (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; . . . The fact that Lewis served the subpoena on Verizon before Murphy could file a motion for a protective order does not mean that Murphy has no avenue to ask the court to protect him from abusive discovery requests.

In this case, the subpoena at issue is stunning in its over breadth. By its terms it would request information concerning communications with a spouse, children, doctors, friends and others. Filing a complaint does not provide a party with license to inspect all of a person's private communications with others for a 20 month period in hopes that it will produce some information that might be of use in a civil law suit. Certainly, demand can be made from a party for all documents reflecting communications with another person or entity, if there is good cause to believe that such communications would be evidence of a violation of a restrictive covenant. A party who is served with appropriately tailored interrogatories or record requests must respond in comprehensive manner. A subpoena could be served on the counternarty to such communications, if there is good reason to believe that wrongful communications occurred. A narrowly drawn subpoena on a cell phone service or other provider of communication services could be appropriate if a party had evidence that another party had provided false discovery

responses. We have, however, not reached the point where the filing of a lawsuit is sufficient to trump a defendant's privacy interests in all of their communications, whether or not related to a claim.

ORDER

For the foregoing reasons, the motion to quash is ALLOWED.

/s/Mitchell H. Kaplan Justice of the Superior Court