

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

MARGARET HOWELL,

Plaintiff,

v.

CL20-2006

DAVID HARDEN, et al.

Defendants.

ORDER GRANTING MOTION TO QUASH SUBPOENA WITHOUT PREJUDICE

This matter came before the Court on October 2, 2020 on the Motion of Non-Party Journalist, Zachary Petrizzo, to Quash Plaintiff's Subpoena Duces Tecum based on a claim of privilege under the First Amendment. Because the Court finds that Plaintiff has not met her burden of establishing that the information sought is unavailable by other means, Mr. Petrizzo's Motion is Granted without prejudice.

As acknowledged by both parties, Virginia recognizes a qualified privilege relating to a journalist's confidential sources. The Virginia Supreme Court has clearly stated in *Brown v. Commonwealth*, 214 Va. 755, 757, 204 S.E.2d 429, 431 (1974):

" ... the privilege of confidentiality should yield only when the defendant's need is essential to a fair trial."

In determining whether the privilege applies, Virginia Courts have applied the three-part balancing test set forth in *LaRouche v. Nat'l Broadcasting Co., Inc.* 780 F.2d 1134, 1139 (4th Cir. 1986). The second prong of that test requires the party seeking information to show that the information sought is not available by any means other than compelled disclosure from the journalist. *Id.*

In the instant case, the subpoena was served on Mr. Petrizzo before the Complaint was served on either Defendant. Plaintiff contends that Defendants are the source of the information in Mr. Petrizzo's article, and therefore, almost all of the information sought from Mr. Petrizzo can be sought directly from Defendants in this case through various forms of discovery, including Interrogatories (Rule 4:8), Requests for Production of Documents (Rule 4:9), Requests for Admissions (Rule 4:11), and depositions (Rule 4:5). The Court has not been provided responses to any of these discovery vehicles, nor have Defendants raised any objections thereto, which would support Plaintiff's claim that the evidence sought can only be obtained from Mr. Petrizzo. Absent such evidence, the Court finds Plaintiff has failed to "exhaust the reasonable alternative means for obtaining this information" required by the second prong of *LaRouche*. *Id.*

Plaintiff further contends that seeking discovery from Defendants is futile because much of the information she seeks would only be in Mr. Petrizzo's possession. Items in this category include drafts of Mr. Petrizzo's article and communications he may have had with individuals other than Defendants.

Again, no evidence was tendered to the Court as to whether Defendants received or otherwise reviewed drafts of Mr. Petrizzo's article, such that the Court can find that the information sought can only be obtained directly from Mr. Petrizzo.

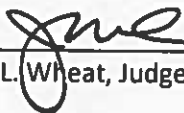
Finally, while it is true that Mr. Petrizzo's communications with individuals other than the Defendants, to the extent they exist, may not be accessible to Plaintiff except through a subpoena to Mr. Petrizzo, Plaintiff affirmatively contends that Defendants are the source of the defamatory information in Mr. Petrizzo's article. Plaintiff's contention that Mr. Petrizzo's communications with individuals other than Defendants may, nevertheless, contain relevant information to support her statutory and common law conspiracy and defamation claims against Defendants, without more, is mere speculation and not sufficient to overcome Mr. Petrizzo's claim of privilege. *See, Horne v. WTVR, LLC, 893 F.2d 201, 213 (4th Cir. 2018).*

For all these reasons, Mr. Petrizzo's Motion to Quash is granted without prejudice for further proceedings on this issue if Plaintiff is able to establish: (1) she has exhausted reasonable alternative means for obtaining the information sought; (2) the specific information sought is relevant and necessary to prove her claims; and (3) there exists a compelling interest which weighs in favor of disclosure. The Court makes no findings at this time whether the subpoena, as currently drafted, is overbroad and unduly burdensome, as Plaintiff must meet the standard articulated above before this issue is ripe for decision by the Court.

Signatures are dispensed with in accordance with Rule 1:13 of the Supreme Court of Virginia; however, the parties may file written objections with the Court no later than November 6, 2020.

Entered this ~~20th~~ day of ~~October~~ 2020.

Jud *N...*
JW



Judith L. Wheat, Judge