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Order on Defendant's Motion to Quash (Melamud et al. v. Page, Perry & Associates)

Melvin K. Westmoreland
Fulton County Superior Court

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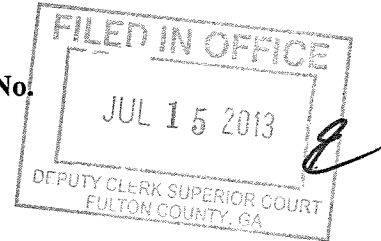
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY

ANATOLIY MELAMUD, LETOTECH,)
INC., QUANTPLAT, LLC and)
DEHAAN & CO. FINANCIAL)
PARTNERS, INC.,)
)
Plaintiffs,)
)
v.)
)
PAGE, PERRY & ASSOCIATES, LLC)
and J. STEVEN PARKER,)
)
Defendants.)
)
)
)
)
)
)

Civil Action File No.
2012CV219444



ORDER ON DEFENDANTS' MOTION TO QUASH

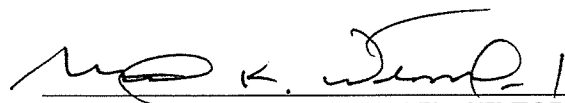
This matter is before the Court on Defendants' Motion to Quash and for Protective Order seeking to quash Plaintiffs' amended subpoena to Defendants' counsel, Hawkins Parnell Thackston & Young, LLP ("Hawkins"). On June 14, 2013, Plaintiffs' purported to serve via email an amended subpoena requesting all written communications between Defendants and the Receiver's counsel and the attendance of a Hawkins witness to appear at a deposition regarding oral communications between Defendants and the Receiver.

From 2007 through June 2012, Benjamin DeHaan purportedly operated Lighthouse, an investment vehicle, as his alter ego, misappropriating money he was purportedly managing on behalf of Lighthouse's clients, including Plaintiff Anatoliy Melamud. On June 9, 2012, the SEC filed suit against DeHaan and Lighthouse. On July 2, 2012, Lighthouse was placed into receivership and its assets were frozen. Plaintiffs are seeking communications between Defendants and the Receiver regarding the settlement of a purported professional malpractice action against Defendants. According to Plaintiffs, Defendants are seeking to leverage the arrangement with the Receiver to extort Plaintiff Mr. Melamud into dismissing the instant action. Specifically, they contend the Receiver is suggesting Mr. Melamud

may not receive his proportionate share of any settlement proceeds received from Defendants unless he dismisses this action. Plaintiffs contend “defamatory” statements made by defense counsel, which can be attributed to Defendants, are relevant to their claim for attorneys’ fees awarded on the basis of delay, harassment and improper conduct.

On the other hand, Defendants argue, among other things, Plaintiffs’ subpoena is untimely and not reasonably calculated to lead to the discovery of admissible evidence. The Court agrees. The Court entered a scheduling order providing a deadline of April 15, 2013, for all fact discovery. Therefore, Plaintiffs’ efforts to secure this evidence are tardy. Moreover, the Court finds Plaintiffs’ claim they only just learned of this information irrelevant in view of the Court’s position the information sought is not reasonably calculated to lead to the discovery of admissible evidence. Although Plaintiffs try to make a connection between some hypothetical disparaging comment made by Defendants and their claim for attorneys’ fees, the Court is not inclined to force counsel in this case to sit for a deposition after the close of discovery based on Plaintiffs’ conjecture. Furthermore, the goal of attorneys’ fees statutes, such as OCGA § 9-15-14 cited by Plaintiffs here, is to award such fees for overt conduct designed to abuse the litigation process. Contrary to Plaintiffs’ argument, these statutes do not exist to unearth the possibility of misconduct based on no more than a party’s hypothesis. As such, Defendants’ motion is **GRANTED**. Plaintiffs’ amended subpoena is quashed and Defendants are protected from any obligation thereunder to respond.

SO ORDERED this 15th day of July, 2013.


MELVIN K. WESTMORELAND, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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