10-11-2018

Gordon Jones, II Order Denying Defendants' Motion to Quash Non-Party Subpoena

Elizabeth E. Long
Fulton County Superior Court

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

GORDON JONES, II, Plaintiff, v. IRONWOOD CAPITAL PARTNERS, LLC, TIMBERVEST, LLC, TEP INVESTORS, LLC, IRONWOOD HOLDINGS, LLC, JOEL BARTH SHAPIRO, WALTER WILLIAM ANTHONY BODEN, III, and DONALD DAVID ZELL, JR., Defendants.	)	CIVIL ACTION FILE NO. 2017-CV-294369 Bus. Case Div. 2

ORDER DENYING DEFENDANTS' MOTION TO QUASH NON-PARTY SUBPOENA

This matter comes before the Court on Defendants' Motion to Quash Non-Party Subpoena. For the reasons set forth below, Defendants' Motion to Quash is DENIED.

I. Factual and Procedural Background

In 2015, Plaintiff Gordon Jones ("Jones"), Defendant Timbervest, LLC ("Timbervest"), and Defendants Shapiro, Boden, and Zell (collectively, the "Individual Defendants") were all named defendants to a lawsuit initiated by AT&T Services, Inc. and related parties (the "AT&T Litigation"). Carolyn Seabolt served as general counsel to Timbervest during the AT&T Litigation—the settlement of which is central to the parties' claims and counterclaims in this matter. In that capacity, Ms. Seabolt provided advice and counsel to Timbervest, attended mediation of the AT&T Litigation, and was present during several meetings and discussions between Jones and the Individual Defendants regarding settlement of the AT&T Litigation and the parties' settlement payment obligations.

In late June 2018, Jones served a subpoena duces tecum on Ms. Seabolt, seeking documents and information concerning the AT&T Litigation and the mediation, settlement negotiations, documents, and demands for indemnification related thereto. Defendants moved to quash the subpoena as untimely, overbroad, and as seeking materials and testimony protected by the attorney-client privilege and work-product doctrine. The parties appeared for a hearing on Defendants' Motion to Quash on October 4, 2018, whereupon the Court heard argument from both sides.

II. Discussion

The Civil Practice Act provides that "the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive." O.C.G.A. § 9-11-45(a)(1)(C). "[T]he only requirements placed by the Georgia legislature on discovery requested from nonparties is that the documents must be relevant and nonprivileged." Hickey v. RREF BB SBL Acquisitions, LLC, 336 Ga. App. 411, 414 (2016) (punctuation omitted).

Defendants argue that the subpoena to Ms. Seabolt should be quashed as untimely because Jones served the subpoena after the close of discovery in this case. Because the discovery period was extended through and including June 30, 2018, and the subpoena was served on June 28, 2018, this argument is unavailing.

Defendants further argue that the subpoena seeks information which is not relevant to the instant dispute. On a motion to quash, the party serving the subpoena has the initial burden to show relevance. Bazemore v. State, 233 Ga. App. 892, 893 (1998). If the serving party meets his burden, then the burden shifts to the moving party to show that the subpoena is unreasonable and oppressive. Id. The Seabolt subpoena seeks documents and information concerning the AT&T

Litigation and the mediation, settlement negotiations, documents, and demands for indemnification related thereto. In their respective depositions, the Individual Defendants testified that the parties to the AT&T settlement agreement had a number of meetings and discussions with Ms. Seabolt concerning how to split the AT&T settlement payment and whether Mr. Jones was entitled to indemnification for his share of the settlement payment. See Jones' Response to Defendants' Motion to Quash, Exhibits A, B, and D. Defendants further identified Ms. Seabolt as a "person with knowledge of any fact relevant to the allegations in the Complaint" in response to Jones' First Interrogatories. Id. at Exhibit E. The subpoena seeks relevant information, and Defendants did not satisfy their burden to show that the subpoena is unreasonable and oppressive.

Finally, Defendants argue that the subpoena should be quashed as seeking information subject to the attorney-client privilege and/or work-product doctrine. Privilege is absolute, and if a matter is privileged it is not discoverable. Atlantic Coast Line R.R. v. Daugherty, 111 Ga. App. 144 (1965). Defendants argue that the Individual Defendants were all members of Timbervest, and communications between them and Ms. Seabolt seeking legal advice are privileged and non-discoverable. Plaintiff argues that Defendants waived any attorney-client privilege via the Individual Defendants' repeated testimony as to communications with Ms. Seabolt during their respective depositions. The Court finds that, regardless of whether or not Defendants have waived any attorney-client privilege or work-product protections, Ms. Seabolt has relevant knowledge that is *not* protected (e.g. direct communications between Ms. Seabolt and Jones). Thus, the subpoena to Ms. Seabolt will not be quashed on privilege grounds. Rather, Defendants may assert objections based on privilege to individual document requests or deposition questions where appropriate.

III. Conclusion

Based upon the foregoing, Defendants' Motion to Quash Non-Party Subpoena is DENIED. The subpoena *duces tecum* to Carolyn Seabolt seeks relevant information which is not subject to blanket objection based on attorney-client privilege. Jones is directed to re-issue the subpoena within ten (10) days of this Order if the parties are unable to mutually agree to an amended deadline for compliance.

SO ORDERED this 11 day of October, 2018.

Elizabeth E. Long

ELIZABETH E. LONG, SENIOR JUDGE
Metro Atlanta Business Case Division
Fulton County Superior Court
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Served upon registered service contacts through eFileGA

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