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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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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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