

Breest v Haggis

2019 NY Slip Op 31935(U)

July 5, 2019

Supreme Court, New York County

Docket Number: 161137/2017

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ROBERT R. REED PART 43

Justice

-----X		INDEX NO.	<u>161137/2017</u>
HALEIGH BREEST			02/12/2019, 03/16/2019,
	Plaintiff,	MOTION DATE	<u>03/16/2019</u>
	- v -		
PAUL HAGGIS,		MOTION SEQ. NO.	<u>004 005 008</u>
	Defendant.		

DECISION AND ORDER

-----X
The following e-filed documents, listed by NYSCEF document number (Motion 004) 48, 49, 50, 51, 52, 53, 54, 55, 56, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 77

were read on this motion to QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 124, 137, 138, 139, 140, 141, 142, 176

were read on this motion to QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 104, 105, 106, 107, 108, 109, 110, 111, 146, 147, 148, 149, 150, 151, 177

were read on this motion to QUASH SUBPOENA, FIX CONDITIONS.

Motion sequences 004, 005, and 008 are combined for disposition, and are granted in part and denied in part.

This is an action to recover upon a claim of gender-motivated violence. Plaintiff alleges that she met defendant at a film premiere while working as a publicist for her then-employer. At some time during the event, plaintiff alleges that defendant offered her a ride home, and that, during such ride, he insisted she go to his apartment. It is there, at defendant's apartment, plaintiff alleges, that defendant raped and sexually assaulted her.

In motion sequences 004, 005, and 008, defendant moves to quash, in substantial portion, pursuant to CPLR 2304, plaintiff's subpoena to non-parties Creative Artists Agency (defendant's agency), Laurence S. Becsey (LCB) d/b/a The Intellectual Property Group (defendant's personal

manager), and Hwy 61 (a company in which defendant co-owns). Items 1-6 in plaintiff's subpoena seek from the non-parties all documents pertaining to plaintiff or any other claim of alleged misconduct against defendant, and Items 7-10 seek all documents relating to any settlements defendant has entered into regarding any actual or threatened lawsuits against defendant.

CPLR 3101 requires full disclosure of all matter material and necessary in the prosecution or defense of an action. Accordingly, "an application to quash a subpoena should be granted 'only where the futility of the process to uncover anything legitimate is inevitable or obvious' ... or where the information sought is utterly irrelevant to any proper inquiry" (*Anheuser-Busch, Inc. v. Abrams*, 71 NY2d 327). "[I]t is the one moving to vacate the subpoena who has the burden of establishing that the subpoena should be vacated under such circumstances (*see Ledonne v. Orsid Realty Corp.*, 83 AD3d 598). In arguing the irrelevance of the documents sought, defendant states that none of the non-parties investigate, litigate or settle claims of sexual assault on behalf of defendant and that plaintiff cannot establish that the requested documents are material and necessary. Documents sought in items 1-6, to this court, appear at least potentially to be material and necessary to this action. The items are narrowly tailored and seek information of potential relevance to the instant action and to plaintiff's cause of action under the NYC Victims of Gender Motivated Violence Protection Act. Defendant has failed to make a sufficient showing that the information sought is utterly irrelevant.

In reviewing items 7-10 of the subpoena, however, the items as drafted are overly broad and could prove to be an undue burden to any entity that must produce the requested documents. More specifically, there is no reason for this court to conclude that the substantive terms of the settlement agreements sought would produce any relevant information or that such settlement

agreement themselves are material and necessary to the instant action separate and apart from documents to be provided in response to requests 1-6. The court, in this regard, is mindful of its role in supporting the public policy in favor of the resolution of complex litigation by settlement, including those arrived at with the assistance of carefully negotiated confidentiality provisions (*see, generally, Hulse v. A.B. Dick Co.* 162 Misc.2d 263, 266-269).

Accordingly, it is

ORDERED that the portion of motion sequence 004 seeking to quash the production of documents responsive to items 7-10 is granted; and it is further

ORDERED that motion sequence 004 is denied in part, in that Creative Artists Agency, within 20 days, should produce documents sought in items 1-6 of plaintiff's subpoena to the extent responsive documents are not specifically privileged, and, to the extent that the documents responsive to the requests are privileged, Creative Artists Agency should provide a privilege log detailing the asserted privilege; and it is further

ORDERED that the portion of motion sequence 005 seeking to quash the production of documents responsive to questions 7-10 is granted; and it is further

ORDERED that motion sequence 005 is denied in part, in that Laurence S. Becsey (LCB) d/b/a The Intellectual Property Group, within 20 days, should produce documents sought in items 1-6 of plaintiff's subpoena to the extent responsive documents are not specifically privileged, and, to the extent that the documents responsive to the requests are privileged, Laurence S. Becsey (LCB) d/b/a The Intellectual Property Group should provide a privilege log detailing the asserted privilege; and it is further

ORDERED that the portion of motion sequence 008 seeking to quash the production of documents responsive to questions 7-10 is granted; and it is further

ORDERED that motion sequence 008 is denied in part, in that Hwy 61, within 20 days, should produce documents sought in items 1-6 of plaintiff's subpoena to the extent responsive documents are not specifically privileged, and, to the extent that the documents responsive to the requests are privileged, Hwy 61 should provide a privilege log detailing the asserted privilege; and it is further

ORDERED that counsel are directed to appear for a compliance conference in Part 43, located at 60 Centre Street, Room 412, on August 15, 2019 at 11:00 a.m.

This constitutes the decision and order of the court.

7/5/2019
DATE


ROBERT R. REED, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE