Case Number: PC-2015-3821
Filed in Providence/Bristol County Superior Court
Submitted: 2/9/2016 3:50:23 PM
Envelope: 498625
Reviewer: Alexa Goneconte

HEARING DATE: FEBRUARY 24, 2016

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

JOHANNA HARRIS
Plaintiff

v.

JEFFREY DANA, in his capacity as City Solicitor of the City of Providence; JORGE O. ELORZA, in his capacity as Mayor of the City of Providence; and SAMUEL D. ZURIER, in his capacity as Chairman of the Committee on Claims and Pending Suits, Providence City Council; and JAMES J. LOMBARDI, III, in his capacity as Treasurer of the City of Providence
Defendants

C.A. No. PC-2015-3821

DEFENDANTS' MOTION TO QUASH AND MOTION FOR PROTECTIVE ORDER

Defendants, Mayor Jorge O. Elorza and Jeffrey Dana (hereinafter "Defendants"), hereby move to quash the subpoenas to be served upon them by Plaintiff, Johanna Harris.[1] These Defendants also move this Court for a Protective Order pursuant to Rules 45 and 26 of the Rules of Civil Procedure.

The subpoenas served upon Defendants should be quashed for several reasons. There is ample case law to support the fact that Plaintiff has the burden to demonstrate that the discovery she seeks is not available through less intrusive discovery means and that the individual to be deposed has unique or superior knowledge regarding the subject matter. See Monti v. State, 151 Vt. 609, 611-13, 563 A.2d 629, 631 (1989); see also Abarca v. Merck & Co., 2009 WL 2390583 at *3 (E.D. Cal. Aug. 3, 2009) (noting that virtually every court that has addressed this issue has

[1] At the time of the filing of this Motion, the subpoenas had not been served upon the Defendants. Plaintiff indicated in her objection to a separate motion that "Plaintiff has already submitted proper subpoenas" to Defendants on February 4, 2016, and "[t]hese individuals will shortly be served with subpoenas to appear at a deposition, if they have not already been served." See Plaintiff's Objection to Motion to Quash, ¶ 5.

observed that such discovery creates a tremendous potential for abuse or harassment). As the Monti court reasoned, "[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. 151 Vt. at 611-12, 563 A.2d at 631. Furthermore, the court pointed out that "[t]he few states that have had occasion to reach this question have adopted this standard as well. Id. "[P]ublic policy requires that the time and energies of public officials be conserved for the public's business to as great an extent as may be consistent with the ends of justice in particular cases." Id. (citing Community Fed. Sav. & Loan Ass'n v. Federal Home Loan Bank Bd., 96 F.R.D. 619, 621 (D.D.C. 1983)).

Indeed, the knowledge held by a deponent in such a scenario must be truly unique, and a deposition will not be allowed when the information could be had through less burdensome discovery methods, such as interrogatories or deposition testimony of other persons. See, e.g., Community Federal Sav. & Loan Ass'n v. FHLB, 96 F.R.D. 619 (D.D.C. 1983). Specifically, the Monti court instructed that trial courts should weigh the necessity to depose or examine an executive official against, among other factors, the substantiality of the case in which the deposition is requested; the degree to which the witness has first-hand knowledge or direct involvement; the probable length of the deposition and the effect on government business if the official must attend the deposition; and whether less onerous discovery procedures provide the information sought. Id. (citations omitted). The court offered alternatives such as written interrogatories, deposition upon written questions, the designation of another representative to speak for the State on oral deposition, or seeking the information first from other sources. Id.

Here, Plaintiff has not—and cannot—show that the Mayor possesses unique or superior knowledge regarding the subject matter of her case, particularly because the events complained of unfolded prior to his taking office. Mayor Elorza was sworn into office after the attorney's fees that comprise the subject matter of this lawsuit were incurred. See Plaintiff's Amended Petition at ¶ 34 (attached hereto as Exhibit A) (alleging that she "apprised" the Mayor of the litigation in March of 2015, and apparently takes issue with the Mayor not assisting her in handling the matter).

Furthermore, Plaintiff has not undertaken any less burdensome discovery methods; she has not propounded any interrogatories or requests for production in an effort to conduct discovery in her lawsuit, nor has she deposed any other individuals. Instead, she has moved straight to this clear harassing tactic. Subpoenaing the Mayor to testify at deposition without having met any of the above-described prerequisites is precisely the type of abuse contemplated by the many courts who have disallowed such depositions to go forward. See, e.g., Monti, 151 Vt. at 611-13, 563 A.2d at 631.

Likewise, the Motion to Quash as to the subpoena served upon City Solicitor Dana should be quashed as well, and for similar reasons. Plaintiff alleges in her Petition that City Solicitor Dana failed to return her calls relative to the legal expenses at the heart of the instant litigation. See Exhibit A at ¶ 34. Again, akin to the situation with the Mayor, City Solicitor Dana began work in his capacity as City Solicitor after the change in the City's administration, meaning he did not work as City Solicitor during the timeframe relevant to Plaintiff's cause of action. For these reasons, City Solicitor Dana does not possess unique or superior knowledge regarding the subject matter of Plaintiff's case, nor can Plaintiff demonstrate same. As indicated

previously, Plaintiff has not undertaken any less burdensome discovery methods and has instead she has moved straight to this harassing tactic.

In fact, these deficiencies closely parallel those present in Walden v. City of Providence, No. C.A. 04-304A, 2008 WL 625014, at *1 (D.R.I. Mar. 4, 2008), where Defendants' motions to quash were granted on very similar issues. There, a Providence mayor and a police chief who had been sued in their official capacities had not been involved in the subject matter of the plaintiffs' lawsuit, but rather had begun their tenure as Providence officials after those events had transpired. The plaintiffs failed to establish the relevance of the testimony from those Providence officials, and, therefore, the Court granted the motions to quash the subpoenas that had been served upon them. Walden, 2008 WL 625014, at *3.

In sum, there is no evidence in the record to support the assertion that either Defendant had any involvement in the issues giving rise to the allegations contained in Plaintiff's Petition, or any involvement whatsoever in any relevant events predating the incurring of the complained-of legal expenses. An undue burden would be placed on the City and its Mayor if these Defendants are required to testify at depositions, and Plaintiff has not met her burden of demonstrating the required elements outlined above. There is no legitimate purpose in requiring the Mayor and City Solicitor Dana to testify at deposition except to harass, annoy and cause an time-consuming, burdensome, and disruptive and undue burden.

Finally, Plaintiff mistakenly believes that her mandamus action remains viable, when in fact this Court has previously examined the issue and found that a mandamus action does not lie.[2] Instead, the action, if it is to survive, must proceed under the statutory framework set forth

[2] At the January 26, 2016 hearing on Plaintiff's Motion for Judgment on the Pleadings, Judge Licht indicated that Plaintiff's mandamus action is not sustainable because she had an adequate remedy at law. The transcript of that hearing has been requested.

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in R.I.G.L § 45-15-5. To that end, these subpoenas are fundamentally improper as they are directed to non-parties.

Therefore, Defendants respectfully submit that this Court should quash the subpoenas served upon Defendants and, further, this Court should impose a Protective Order upon these Defendants to prevent further similar attempts by Plaintiff to sidestep proper procedure.

DEFENDANTS,
JEFFREY DANA and JORGE O. ELORZA,
By Their Attorney,

/s/ Dennis E. Carley

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CERTIFICATE OF SERVICE

I hereby certify that, on the 9th day of February, 2016,

[X] I filed and served this document through the electronic filing system on the following parties:

Johanna Harris
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The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

[ ] I served this document through the electronic filing system on the following parties:

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[ ] I caused this document to be [ ] mailed or [ ] hand-delivered to the attorney for the opposing party (and/or the opposing party if self-represented) whose name(s) and address(es) are as follows:

/s/ Jessica A. Shelton

JAS:slh
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