

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ANGELA K. GENTRY, Individually and as Executrix of the Estate of TROY LEE GENTRY,	:	CV-19-1195
	:	
vs.	:	CIVIL ACTION - LAW
	:	
HERLIHY HELICOPTERS INC., a/k/a, d/b/a HELICOPTER FLIGHT SERVICES INC., et al., Defendants.	:	<i>Motions to Quash for Protective Order, and for Sanctions</i>

ORDER

AND NOW, following argument on Defendant Lycoming Engine’s (“Lycoming”)¹ Motion to Quash Subpoena, Motion for Protective Order, and Motion for Sanctions (“Omnibus Motion”) and review of the applicable law, the Court issues the following ORDER.

Background

The instant matter arises from a helicopter crash that occurred in Medford, New Jersey on September 8, 2017, resulting in the death of Troy Lee Gentry (“Decedent”). Angela K. Gentry (“Plaintiff”), both personally and as Executrix of Decedent’s Estate, subsequently commenced an action in the Superior Court of New Jersey on February 20, 2018, against Herlihy Helicopters. On July 17, 2019, Plaintiff filed a Praecipe for the Issuance of a Foreign Non-Party Subpoena in this Court directing Lycoming’s accident investigator to attend and testify in connection with the 2018 New Jersey action. On August 2, 2018, Plaintiff served the domesticated subpoena on Lycoming.

After discussion between counsel, Lycoming indicated that it would produce a representative for non-party deposition on October 1, 2019. However, following this discussion, on September 6, 2019, Plaintiff initiated a second action related to the crash in the Superior Court of New Jersey naming Lycoming and several other entities as defendants. On that same date, Plaintiff also initiated an action against

¹ A division of Avco Corporation.

Lycoming in the Circuit Court of the Fifteenth Judicial District in and for Palm Beach County Florida. Lycoming thereafter had the Florida action removed to federal court.

Lycoming subsequently contacted Plaintiff and provided notice that, as it had been named as a party in the New Jersey and Florida suits, it would not participate in the non-party deposition. After receiving a response from Plaintiff that they believed Lycoming was still obligated to comply with the subpoena, on September 30, 2019, Lycoming filed this Omnibus Motion.

Analysis

Plaintiff does not challenge the accident investigator's status as an agent of Lycoming, and therefore a party to the New Jersey and Florida actions. Therefore, the key issue in need of determination is whether this Court has the authority to enforce a non-party, domesticated subpoena after the subpoenaed party has become a named defendant in a foreign action (or in this instance, in two foreign actions). Pennsylvania has adopted the Uniform Interstate Depositions and Discovery Act ("UIDDA"), pursuant to which parties may submit a foreign subpoena to this Court in order to compel a local party to provide discovery or deposition testimony.²

The UIDDA does not explicitly state that domesticated subpoenas are limited to non-party witnesses, although the Pennsylvania courts have generally interpreted it to mean such.³ However, the UIDDA is expressly compliant with the Pennsylvania Rules of Civil Procedure and other relevant State statutory law.⁴ Following review of the relevant rules and statutory law, this Court concludes that within Pennsylvania, the procedurally proper way to obtain discovery from a party to

² See 42 Pa.C.S.A. §§ 5331-5337.

³ See e.g., *Zevola v. B. Braun Med. Inc.*, No. 3011 EDA 2018, 2019 WL 5266905 at *2 n.4 (Pa. Super. Oct. 17, 2019) ("Pennsylvania has adopted the [UIDDA], which makes *non-party witnesses* subject to compulsory deposition and subpoena by a court in another state's jurisdiction.") (emphasis added).

an action is through service of a *request* upon that party.⁵ Similarly, the correct practice to compel a party's attendance at a deposition is by serving a notice of deposition rather than a subpoena.⁶ As discovery permitted under the UIDDA must be compliant with the procedures of the discovery state,⁷ the Court finds that enforcement of a domesticated subpoena against a party to an action would contravene the UIDDA.

Additionally, in construing the UIDDA, the Court must give consideration to promoting uniformity of the law with respect to the subject matter among states that enact it.⁸ Following this principle, the Court recognizes that the subpoena *ad testificandum* involved in the instant matter was issued pursuant to New Jersey Court Rule 4:14-7, which specifically compels the deposition attendance of a *witness*. To the extent that the subpoena *ad testificandum* would be rendered void in New Jersey once Lycoming became a party to the action, in the interest of promoting uniformity of the law the same must be true in this Court.

This result comports with the UIDDA's purpose in granting parties access to relevant discovery that would otherwise be outside of the jurisdiction of the presiding court. After Plaintiff named Lycoming as a defendant in the New Jersey action, this jurisdictional limitation to discovery was resolved. In allowing Plaintiff to circumvent New Jersey's rules of discovery for the alleged purpose of procedural economy, this Court would be contravening its interest in promoting judicial comity between the states.⁹

⁴ 42 Pa.C.S.A. § 5336 (identifying specifically that the UIDDA is compliant with Pa.R.C.P. 4009.21–27, the subchapter detailing the procedures governing the issuance of non-party subpoenas).

⁵ See Pa.R.C.P. 4009.1(a) (“Any party may serve a request on a party pursuant to Rules 4009.11 and 4009.12 or a subpoena upon a person not a party pursuant to Rules 4009.21 through 4009.27[.]”).

⁶ See Pa.R.C.P. 234.1, 1989 Explanatory Comment; see *also* Pa. R.C.P. 4007.1 (“A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action . . . A party noticed to be deposed shall be required to appear without subpoena.”).

⁷ 42 Pa.C.S.A. § 5336, Uniform Law Comment.

⁸ 42 Pa.C.S.A. § 5334. New Jersey has adopted the UIDDA through Court Rule 4:11-4.

⁹ See *Smith v. Firemans Ins. Co. of Newark, New Jersey*, 590 A.2d 24, 27 (Pa. Super. 1991) (“Comity is the principle that the courts of one state or jurisdiction will give effect to laws and

Conclusion

Pursuant to the forgoing Order, Lycoming's Motion to Quash Subpoena and for Motion Protective Order are GRANTED. However, the Court declines to find that Plaintiff's behavior was intentionally dilatory, obdurate, vexatious, or otherwise in bad faith.¹⁰ Therefore, Lycoming's Motion for Sanctions is DENIED.

IT IS SO ORDERED this ___ day of November 2019.

BY THE COURT:

Eric R. Linhardt, Judge

ERL/cp

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judicial decisions of another state out of deference and mutual respect, rather than out of duty.”)
(internal citations omitted).

¹⁰ See 42 Pa.C.S. § 2503.