

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RYAN LEE MILLER,	:	No. 20-0131
Plaintiff	:	
vs.	:	CIVIL ACTION – LAW
	:	
TODD BARTLEY, et al.	:	
Defendants	:	

OPINION AND ORDER

AND NOW, after argument held on November 8, 2021 on Plaintiff’s Motion to Compel Defendant Bartley’s Responses to Interrogatories and Requests for Production of Documents and Plaintiff’s Motion to Compel Defendant Colonial Radio Group’s Responses to Interrogatories and Requests for Production of Documents, the Court hereby issues the following OPINION and ORDER.

BACKGROUND

Plaintiff commenced this action on January 24, 2020 by filing a Complaint against Defendants Todd Bartley (“Bartley”) and Colonial Radio Group of Williamsport, LLC d/b/a Fox Sports Williamsport (“CRG”), Fox Sports Radio, Premiere Networks, Inc., Fox Broadcasting, LLC, Fox Corporation, and iHeart Media, Inc. (the “Media Defendants”). Plaintiff sued Bartley both in his individual capacity and as the agent of the Media Defendants. The Complaint contained counts for defamation, invasion of privacy, and intentional infliction of emotional distress arising out of a number of articles allegedly authored by Bartley and published to CRG’s website, alleging that the stories contained false statements that damaged Plaintiff’s reputation and portrayed him in a false light.

MOTIONS TO COMPEL

On October 11, 2021, Plaintiff filed a Motion to Compel Defendant Bartley's Responses to Interrogatories and Requests for Production of Documents. Plaintiff averred that he served Bartley with discovery requests on August 4, 2020, and that the written responses provided on September 8, 2020 were "deficient in several regards...."¹ On January 28, 2021, Plaintiff's counsel sent a letter to Bartley's counsel requesting supplemental responses; Plaintiff alleges that by unverified letter dated March 2, 2021 Bartley supplemented "some, but not all," of his previous responses and did not rectify all of the deficiencies.²

On October 21, 2021, Plaintiff filed a Motion to Compel Defendant Colonial Radio Group's Responses to Interrogatories and Requests for Production of Documents. Plaintiff similarly contended that he served discovery requests on CRG on August 4, 2020, was provided incomplete answers on September 8, 2020, and sent a follow-up request on January 28, 2021. Plaintiff indicates that the March 2, 2021 letter informally supplementing some of Bartley's discovery responses stated "[e]ach response here is applicable to Defendant Bartley, as he was the Managing Member of Colonial Radio Group. Therefore, please refer above to all responses to any Interrogatory or Request directed to Defendant Colonial Radio Group."

ARGUMENT AND ANALYSIS

Plaintiff contends that Bartley's responses to seven separate requests, and CRG's responses to nine separate requests, are insufficient.

¹ Bartley Motion, ¶ 4.

² *Id.* at ¶ 5.

A. Bartley Interrogatory No. 10

Interrogatory No. 10 requested “the date, month, and year when work began or contributions were made” for the relevant articles; “the job title and description of duties; the nature of the work performed or contributions made”; “the salary or remuneration for the work performed or contributions made”; and “the name, address, and telephone number of the individual’s immediate supervisor.” Plaintiff first argues that this information “is directly relevant to Defendant Bartley’s motive in publishing the subject articles.” If, for instance, Bartley is paid for each visitor to CRG’s website, he may have a financial incentive to publish salacious, inflammatory, or scandalous articles; such an incentive would not exist if Bartley was paid a flat salary unrelated to the traffic to CRG’s website. Plaintiff additionally argues that it “is well-settled that where punitive damages are an available remedy, the financial condition of the Defendant... is directly relevant to an assessment of the amount of damages appropriate to punish the defendant and to [deter] future tortious acts and malicious conduct.”³

Bartley objected to relevance generally, and noted that Pennsylvania Rule of Civil Procedure 4003.7 states “[a] party may obtain information concerning the wealth of a defendant in a claim for punitive damages only upon order of court setting forth appropriate restrictions as to the time of the discovery, the scope of the discovery,

³ Plaintiff cites, *inter alia*, Restatement (Second) of Torts § 908. Section 908(2), which has been adopted by the Supreme Court of Pennsylvania, states “[i]n assessing punitive damages, the trier of fact can properly consider... the wealth of the defendant.” In *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800 (Pa. 1989), the Supreme Court of Pennsylvania explained that, in punitive damages cases, “the wealth of the tortfeasor is relevant. In making its determination, the jury has the function of weighing the conduct of the tortfeasor against the amount of damages which would deter such future conduct... [and thus] must weigh the intended harm against the tortfeasor’s wealth.” *Id.* at 803.

and the dissemination of the material discovered.” As no Court Order has issued, Bartley argues, Interrogatory No. 10 is improper, inasmuch as it seeks wealth information for punitive damages purposes.

The Court agrees with Bartley that, in the absence of an agreement of the parties,⁴ wealth discovery may not occur except as delineated in a Court Order. It is also clear, however, that information concerning Bartley’s pay structure generally is relevant to the issues and is not protected by any privilege. Therefore, the Court will order Bartley to describe when and how he was paid for the articles at issue, providing a full breakdown of whether any payment was per article, per word, or depended on traffic to CRG’s site, total clicks, ad revenue, or any other factor beyond base annual salary. The Court will not order Bartley to provide any information as to his personal wealth, such as total salary, personal assets, personal liabilities, or other financial considerations. Should Plaintiff determine to seek wealth discovery in accordance with Rule 4003.7, Plaintiff must move for a Court Order “setting forth appropriate restrictions,” and the Court will consider such a request after providing an opportunity for both parties to be heard.

B. Bartley Interrogatory No. 16

Interrogatory No. 16 directed Bartley to identify “any steps [Bartley] took to support, confirm, and/or corroborate the statements made in Interrogatory Nos. 14 and 15.” Bartley replied to this interrogatory by stating that “it is [his] practice... to corroborate anything from at least one additional source,” but did not further clarify.

⁴ See *Pa. R.C.P. 4002*.

Bartley objected to the need to provide any additional information by invoking the Pennsylvania Shield Law, which Plaintiff claims does not apply.

The Pennsylvania Shield Law is codified at 42 Pa. C.S. 5942, and states in relevant part:

“(a) General Rule.—No person engaged on, connected with, or employed by any newspaper of general circulation or any press association or any radio or television station, or any magazine of general circulation, for the purpose of gathering, procuring, compiling, editing or publishing news, shall be required to disclose the source of any information procured or obtained by such person, in any legal proceeding, trial or investigation before any government unit.”

The Supreme Court of Pennsylvania has explained that the Shield Law “protects a [journalist’s] source of information from compelled disclosure.”⁵ Plaintiff argues “the Pennsylvania Shield Law only protects against the disclosure of information that would reveal the identity of a confidential source,” and asserts that requiring Bartley to explain the “steps [he] took to support, confirm, and/or corroborate” the allegedly defamatory statements at issue would not offend that protection. Bartley argues that any information beyond what he has already provided would likely expose the identity of his sources, and thus the Shield Law applies.

The Courts have consistently interpreted the Shield Law to provide broad protection not just against the compelled disclosure of names of sources of information but against “documents [with] the potential to reveal sources of information which the [Shield Law] intended to protect.”⁶ The strength of this protection is evidenced by the holding of the Supreme Court of Pennsylvania in

⁵ Neither party disputes that Defendant Bartley’s activities constitute journalism of the kind covered by the shield law; the parties’ dispute is over the scope of the protection provided and any exceptions.

⁶ *Com. v. Bowden*, 838 A.2d 740, 748 (Pa. 2003).

Castellini v. Scranton Times, L.P. that the Shield Law applies even when the communication between the journalist and source itself is alleged to constitute a fraudulent or criminal act.⁷ However, the protection only extends to documents “where production of such documents, even if redacted, could breach the confidentiality of the identity of a human source and thereby threaten the free flow of information from confidential informants to the media.”⁸ Furthermore, the Shield Law “was not intended to allow a media defendant to use any of its sources and information as proof of verification or evidence of responsibility when it opts to rely upon the privilege.”⁹ Such a defendant may “introduc[e] extrinsic evidence to establish the validity of the information or to demonstrate that they acted responsibly in the dissemination of the information,” and such evidence is “simply to be weighed by the fact finder in assessing whether the plaintiff has met the burden of proof.”¹⁰ However, a defendant who invokes the Shield Law to protect disclosure clearly must assume some risk that any resultant inability to explain the reliability of the source or information will be held against it by the factfinder.

Here, the positions of the parties are clear after argument: Bartley avers that he has turned over all information that would not likely lead to the discovery of confidential sources, and that providing any additional information – such as more specific information regarding the explicit steps he took to verify information in this

⁷ *Castellani v. Scranton Times, L.P.*, 956 A.2d 937 (Pa. 2008). See also *DiPaolo v. Times Publishing Co.*, 142 A.3d 837, 844 (Pa. Super. 2016) (“the shield law... is an absolute privilege that protects a journalist from compelled disclosure of a confidential source”).

⁸ *Bowden*, 838 A.2d at 752.

⁹ *Sprague v. Walter*, 543 A.2d 1078, 1083 (Pa. 1988) (emphasis in original).

¹⁰ *Id.*

case – would risk revealing those sources. Plaintiff argues that this logically cannot be the case, given how little detail Bartley has provided in response to the question.¹¹

The crux of the issue, therefore, is whether – and how – a court can review a defendant’s invocation of the Shield Law. To the extent Plaintiff asks for specific documents, the Court may order these produced, redacted, with a privilege log to be reviewed *in camera*.¹² When a discovery request asks a defendant to respond to interrogatories by detailing specific steps he has taken, the defendant’s assertion that he cannot do so without revealing information likely to expose the identity of a source creates a finer problem.

In general, “[t]he party invoking a privilege must initially set forth facts showing that the privilege has been properly invoked.”¹³ For many privileges, once a party has made that showing, “the party seeking disclosure” may overcome the privilege by “set[ting] forth facts showing that disclosure should be compelled... because an exception to the privilege applies.”¹⁴ In any given situation, the Shield Law’s status as an “absolute privilege” likely functions to preclude the party seeking disclosure from making such a showing, but it does not excuse the party invoking the Shield Law from making some initial showing that the Shield Law applies. A bald assertion cannot be sufficient to invoke such a powerful protection.

¹¹ Plaintiff characterizes Bartley’s response as providing his “usual custom or practice,” rather than the “specific steps Defendant Bartley took” with regard to the relevant statements *in this case*.

¹² This is implicit in *Bowden*’s holding that the Shield Law only protects those documents that “even if redacted, could breach the confidentiality of the identity of a human source.” Requests for documents are discussed in greater detail *infra*.

¹³ *Fisher v. Erie Insurance Exchange*, 258 A.3d 451, 461 (Pa. Super. 2021) (quoting *Yocabet v. Presbyterian*, 119 A.3d 1012 (Pa. Super. 2015)).

¹⁴ *Id.*

Here, it is not facially obvious how revealing “any steps [Defendant Bartley] took to support, confirm, and/or corroborate the statements made in Interrogatory Nos. 14 and 15” would, or likely could, lead to the disclosure of the identities of confidential sources.¹⁵ The Court has a duty to ensure Bartley’s invocation of the Shield Law is appropriate as a matter of law. Therefore, the Court will Order Bartley to provide to the Court, for *in camera* review, what his response to Interrogatory No. 16 would be in the absence of protections of the Shield Law, as well as an explanation of why the disclosure of this information responsive to Interrogatory No. 16 would risk revealing the identity of a confidential source. The Court will then determine whether the Shield Law is applicable to protect the disclosure of this information.

C. Bartley Interrogatories No. 18 and No. 19

Plaintiff describes Interrogatories No. 18 and No. 19 as seeking “information regarding Defendant Bartley’s benefit or expected benefit (whether financially or otherwise)” from making the relevant statements. The parties’ arguments concerning these interrogatories is identical to that of Bartley Interrogatory No. 10 – Plaintiff contends the answers are relevant to both motive and personal wealth, and Bartley objects to relevance generally and to wealth discovery specifically under Rule 4003.7.

As with Interrogatory No. 10, the Court will order Bartley to answer these interrogatories as to his motivations, financial or otherwise, for publishing the

¹⁵ For example, a response indicating a defendant “spoke to Confidential Source 1 via telephone on” a given date would not *per se* risk revealing the identity of that confidential source.

statements at issue. The Court will not order Bartley to provide any information as to his personal wealth, such as total salary, personal assets, personal liabilities, or other financial considerations; if Plaintiff seeks this information and is unable to come to an agreement with Bartley, Plaintiff must petition the Court for an Order delineating the contours of wealth discovery.

D. Bartley Requests for Production of Documents No. 7 and No. 8

Request for Production of Documents No. 7 seeks “any and all documents, text messages, emails, notes, memoranda, photographs, videos, and/or audio recordings related to the investigation, research, writing, and/or publication of the [subject articles]....” Request for Production of Documents No. 8 seeks “any and all documents, emails, notes, memoranda, photographs, videos, and/or audio recordings received by the Myrtle Beach Police Department in the investigation, research, writing, and/or publication of the [subject articles]....” Bartley objects to these requests on Shield Law grounds.

As discussed above, the Shield Law only applies to documents “where production of such documents, *even if redacted*, could breach the confidentiality of the identity of a human source and thereby threaten the free flow of information from confidential informants to the media.”¹⁶ As Plaintiff notes, the Supreme Court of Pennsylvania has similarly held that “unpublished documentary information gathered by a television station is discoverable by a plaintiff in a libel action to the extent that the documentary information does not reveal the identity of a personal source of

¹⁶ *Bowden*, 838 A.2d at 752 (emphasis added).

information or may be redacted to eliminate the revelation of a personal source of information.”¹⁷

Bartley asserts that he has already provided Plaintiff with 250 redacted pages of communications between himself and other parties, and further asserts that all information that can be redacted has been provided. The compelled disclosure of any further notes or documentation, Bartley claims, would violate the Shield Law inasmuch as it would risk revealing the identity of confidential sources even with redaction.

Plaintiff has asked this Court to order Bartley to provide any previously undiscovered materials responsive to Requests for Production of Documents No. 7 and No. 8 with a privilege log. Although the Rules of Civil Procedure do not explicitly require a privilege log, Pennsylvania Courts have recognized privilege logs as “an acceptable format in which to identify documents, the applicable privilege, and the reason for the privilege claimed.”¹⁸ The creation of a privilege log allows a Court to conduct *in camera* review of materials to determine which are protected from disclosure under the relevant privilege or protection.¹⁹

Here, Bartley’s assertion of the Shield Law, and Plaintiff’s request for a privilege log, constitute the exact situation in which a privilege log and *in camera* review are appropriate. Bartley has claimed that he has turned over all responsive documents that can be redacted. Therefore, the Court will order Bartley to provide

¹⁷ *Hatchard v. Westinghouse Broadcasting Co.*, 532 A.2d 346, 351 (Pa. 1987). Plaintiff notes the Supreme Court of Pennsylvania cited this language with approval in *Castellini* in 2008.

¹⁸ *Fisher v. Erie Insurance Exchange*, 258 A.3d 451, 461 n.8 (Pa. Super. 2021).

¹⁹ See, e.g., *Meyer-Chatfield Corp. v. Bank Financial Services Group*, 143 A.3d 930 (Pa. Super. 2016).

the Court with all documents responsive to Requests for Production of Documents No. 7 and No. 8 which have not been turned over because they would risk revealing the identity of confidential sources, even if redacted, along with a privilege log identifying these documents and explaining why they cannot be redacted or discovered. The Court will review these documents and the privilege log to determine which of the responsive documents are protected as a matter of law.

E. Bartley Request for Production of Documents No. 10

At argument, Plaintiff indicated he was withdrawing this request, as Bartley had provided the requested information in a supplemental response.

F. CRG Interrogatory No. 12

CRG Interrogatory No. 12 requests CRG state “whether and how [CRG] is compensated for authoring and/or publishing articles” on the website. The parties’ positions with respect to this interrogatory are similar to their positions regarding Bartley Interrogatory No. 10. For the reasons detailed above, the Court will order CRG to provide a detailed description of its compensation structure relating to the articles at issue, but will not direct CRG to provide discovery as to its assets, liabilities, or financial state in general at this time.

G. CRG Interrogatory No. 14

CRG Interrogatory No. 14 is identical in content to Bartley Interrogatory No. 10, and the parties’ arguments are likewise identical. For the reasons detailed above, the Court will order CRG to provide a detailed description of its compensation structure relating to the articles at issue, but will not direct CRG to provide discovery as to its assets, liabilities, or financial state in general at this time.

H. CRG Interrogatories No. 19 and 20

CRG Interrogatories No. 19 and No. 20 “request[] Defendant CRG identify the ‘date, month, and year any contacts were made between [CRG] and each fact witness’ for the subject articles.” CRG objected to these requests on Shield Law grounds.

As discussed in Subsection B above, a party asserting a privilege must make an initial showing that the privilege is applicable, and the Court has a duty to ensure that the claimed privilege is applicable as a matter of law. Therefore, the Court will Order CRG to provide to the Court, for *in camera* review, what its response to Interrogatories No. 19 and No. 20 would be in the absence of protections of the Shield Law, as well as an explanation of why the disclosure of this information responsive to Interrogatories No. 19 and No. 20 would risk revealing the identity of a confidential source. The Court will then determine whether the Shield Law is applicable to protect the disclosure of this information.

I. CRG Interrogatories No. 21 and 22

CRG Interrogatories No. 21 and 22 are identical in content to Bartley Interrogatories No. 18 and 19, and the parties’ arguments are likewise identical. For the reasons detailed above, the Court will order CRG to explain any benefit – financial or otherwise – it expected to receive by publishing the articles at issue, but will not direct CRG to provide discovery as to its assets, liabilities, or financial state in general at this time.

J. CRG Request for Production of Documents No. 7 and No. 8

CRG Requests for Production of Documents No. 7 and No. 8 are identical in content to Bartley Requests for Production of Documents No. 7 and No. 8, and the parties' arguments are likewise identical. For the reasons detailed above, the Court will order CRG to provide the Court with all documents responsive to Requests for Production of Documents No. 7 and No. 8 which have not been turned over because they would risk revealing the identity of confidential sources, even if redacted, along with a privilege log identifying these documents and explaining why they cannot be redacted or discovered. The Court will review these documents and the privilege log to determine which of the responsive documents are protected as a matter of law.

K. CRG Request for Production of Documents No. 10

At argument, Plaintiff indicated he was withdrawing this request, as CRG had provided the requested information in a supplemental response.

ORDER

For the foregoing reasons, the Court hereby ORDERS as follows:

1. Within twenty (20) days of the date of this Order, Bartley shall respond to Interrogatory No. 10 by describing when and how he was paid for the articles at issue, providing a full breakdown of whether any payment was per article, per word, or depended on traffic to CRG's site, total clicks, ad revenue, or any other factor beyond base annual salary. Bartley need not provide any information concerning his personal wealth beyond what he was paid for the articles at issue.

2. Within thirty (30) days of the date of this Order, Bartley shall provide to the Court, for *in camera* review, what his response to Interrogatory No. 16 would be in the absence of protections of the Shield Law, as well as an explanation of why the disclosure of this information responsive to Interrogatory No. 16 would risk revealing the identity of a confidential source.
3. Within twenty (20) days of the date of this Order, Bartley shall respond to Interrogatories No. 18 and No. 19 to the extent they relate to the specific articles at issue. Bartley need not provide any information concerning his personal wealth.
4. Within thirty (30) days of the date of this Order, Bartley shall provide the Court with any documents responsive to Requests for Production of Documents No. 7 and No. 8 which have not been turned over for *in camera* review, as well as a privilege log explaining why production of the documents would risk revealing the identity of confidential sources even if redacted. The Court will review these documents and the privilege log *in camera* and determine which of the responsive documents are protected as a matter of law.
5. Within twenty (20) days of the date of this Order, CRG shall respond to Interrogatories No. 12 and No. 14 by describing when and how it was compensated for the articles at issue, providing a full breakdown of whether any payment was per article, per word, or depended on traffic to CRG's site, total clicks, ad revenue, or any other factor. CRG need

- not provide any wealth discovery beyond the pay structure concerning the articles at issue.
6. Within thirty (30) days of the date of this Order, CRG shall provide to the Court, for *in camera* review, what its response to Interrogatories No. 19 and No. 20 would be in the absence of protections of the Shield Law, as well as an explanation of why the disclosure of this information responsive to Interrogatories No. 19 and No. 20 would risk revealing the identity of a confidential source.
 7. Within twenty (20) days of the date of this Order, CRG shall respond to Interrogatories No. 21 and 22 to the extent they relate to the specific articles at issue. CRG need not provide any wealth discovery.
 8. Within thirty (30) days of the date of this Order, CRG shall provide the Court with any documents responsive to Requests for Production of Documents No. 7 and No. 8 which have not been turned over for *in camera* review, as well as a privilege log explaining why production of the documents would risk revealing the identity of confidential sources even if redacted. The Court will review these documents and the privilege log *in camera* and determine which of the responsive documents are protected as a matter of law.

IT IS SO ORDERED this 3rd day of March 2022.

By the Court,

Eric R. Linhardt, Judge

ERL/jcr

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