

**Dauman v Herzer**

2016 NY Slip Op 30349(U)

February 26, 2016

Supreme Court, New York County

Docket Number: 150412/2016

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 2

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PHILIPPE DAUMAN,

Petitioner,

**DECISION/ORDER**

Index No. 150412/2016  
Mot. Seq. No.: 001

-against-

MANUELA HERZER,

Respondent.

In connection with an action in the Superior Court  
of the State of California, in and for Los Angeles  
County, entitled:

IN RE ADVANCE HEALTH CARE DIRECTIVE  
OF SUMNER M. REDSTONE, BP168725

-----X  
**KATHRYN E. FREED, J.S.C.:**

RECITATION, AS REQUIRED BY CPLR2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS  
MOTION:

Seq. No. 001

PAPERS	NUMBERED
ORDER TO SHOW CAUSE, PETITION, AND AFFS. IN SUPPORT	1-4 (Exs. A-M)
MEMO. OF LAW IN SUPP.	5
AFFIRMATION IN OPPOSITION	6 (Exs. A-H)
MEMO. OF LAW IN OPP.	7

UPON THE FORGOING CITED PAPERS, THIS DECISION/ORDER OF THE MOTION IS AS FOLLOWS:

Petitioner Philippe Dauman moves, pursuant to CPLR 2304, 3101(a), 3103, and 3119(e) to  
1) quash a subpoena ad testificandum issued by respondent Manuela Herzer or, in the alternative,  
if a deposition is ordered, for a protective order imposing conditions and limitations on the  
deposition of petitioner, including sealing the transcript or a protective order rendering the transcript

confidential. At oral argument of the application on February 25, 2016, this Court, on the record, denied petitioner's motion to quash the subpoena and imposed certain limitations on the scope of the deposition. These limitations involved the length and subject matter of the deposition.

This decision and order is limited strictly to that portion of petitioner's application seeking a protective order relating to the confidentiality of the deposition. After oral argument, and after a review of the parties' papers and the relevant statutes and case law, that branch of the motion seeking a protective order is **granted**.

#### **FACTUAL AND PROCEDURAL BACKGROUND:**

Pursuant to an Advance Health Care Directive dated September 3, 2015 ("the September 2015 Directive"), respondent Manuela Herzer was designated health care agent for Sumner M. Redstone. Ex. B to Motion. On October 16, 2015, Redstone appointed petitioner Philippe Dauman as his designated health care agent. Herzer then filed a petition in the Superior Court of the State of California, County of Los Angeles, Central District ("the California Court"), styled *In re Advanced Health Care Directive of Sumner M. Redstone*, Case No. BP168725, for a determination that the September 2015 Directive remained effective and has not been revoked, and that Redstone lacked the capacity to revoke the said directive.

Redstone opposed Herzer's petition in the California proceeding. In support of Redstone's opposition, Dauman submitted a declaration regarding observations he made about Redstone's condition approximately one week before and just over two weeks after the September 2015 Directive was executed.

On or about January 5, 2016, Herzer served a subpoena ad testificandum on Dauman to

question him about Redstone's advance health care directive. Dauman, in turn, brought the instant motion seeking to quash the subpoena or, in the alternative, for a protective order. As noted above, the motion was resolved in all respects at oral argument of February 25, 2016, with the exception of that branch of Dauman's motion seeking a protective order or an order sealing the transcript of Dauman's deposition.

### **POSITIONS OF THE PARTIES:**

The parties agree that the transcript of Dauman's deposition should be sealed or that the transcript should remain confidential since the deposition could reveal privileged information regarding Redstone's medical condition. Further, assert the parties, the California Court has issued a confidentiality order in the proceeding commenced by Herzer in that court and thus any details regarding Redstone's condition which may come to light during Dauman's deposition could frustrate that order.

### **CONCLUSIONS OF LAW:**

Petitioner moves for a protective order pursuant to CPLR 3103, which can be granted upon motion or upon the court's "own initiative". CPLR 3103(a). Such relief can be granted in the discretion of the court. See *Matter of Estate of Francis Newton Souza v Lynn & Cahill LLP*, 80 AD3d 446 (1<sup>st</sup> Dept 2011).

Here, this Court, in its discretion, grants petitioner's application for a protective order directing that Dauman's deposition transcript remain confidential, effectively sealing the same. By so-ordered stipulation entered January 19, 2016, the California Court deemed all proceedings before

it confidential, with the issue of the admissibility of confidential materials to be raised at the time of trial. This Court sees no reason to disturb the confidentiality order issued in that proceeding. This is especially so given the agreement of the parties at oral argument to maintain the confidentiality of Dauman's deposition transcript.

Therefore, in light of the foregoing, it is hereby:

ORDERED that the branch of petitioner's application seeking a protective order, pursuant to CPLR 3103, to maintain the confidentiality of the deposition transcript of petitioner Philippe Dauman, is granted; and it is further,

ORDERED that this order does not affect the admissibility of the deposition transcript of petitioner Philippe Dauman at the trial of the matter styled *In re Advanced Health Care Directive of Sumner M. Redstone*, Case No. BP168725, pending in the Superior Court of the State of California, County of Los Angeles, Central District; and it is further,

ORDERED that this constitutes the decision and order of this Court.

DATED: February 26, 2016

ENTER:



HON. KATHRYN E. FREED, J.S.C.