

Rent Stabilization Assn. of N.Y.C., Inc. v McKee

2020 NY Slip Op 32416(U)

July 24, 2020

Supreme Court, New York County

Docket Number: 155789/2018

Judge: Barbara Jaffe

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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. BARBARA JAFFE PART IAS MOTION 12EFM

Justice

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INDEX NO. 155789/2018

RENT STABILIZATION ASSOCIATION OF N.Y.C.,
INC.,

MOTION DATE _____

Plaintiff,

MOTION SEQ. NO. 002

- v -

MICHAEL MCKEE, TENANTS POLITICAL
ACTION COMMITTEE, INC., MET COUNCIL, INC.
D/B/A METROPOLITAN COUNCIL ON HOUSING,
AND REAL RENT REFORM CAMPAIGN,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 61-94
were read on this motion for discovery.

Defendants Michael McKee and Tenants Political Action Committee, Inc. (TPAC) move
pursuant CPLR 3124 for an order compelling plaintiff to produce certain discovery. Plaintiff
opposes.

I. PERTINENT BACKGROUND

By amended summons and complaint dated June 25, 2018, plaintiff alleges that
defendants defamed it on May 2, 2018, when McKee, on behalf of TPAC, attended a New York
City Council Committee on Housing and Buildings meeting and stated:

[I]n 2010 when the Democrats had a one-vote majority in the State Senate, the real estate
industry, the RSA, the Rent Stabilization Association went to three Democratic senators
and promised them a [sic] \$150,000 in campaign funds if they would vote against two of
our bills that came to the floor [...] and they did indeed follow through on that pledge to
give them \$150,000 each. Two of them, and this is kind of heartwarming to see that two
of them lost anyway. One of them is still in the Senate, David Valesky of Syracuse [...]

Plaintiff also alleges that defendants also defamed him on June 20, 2018, when McKee

told a reporter that plaintiff “bought off three Democratic Senators,” specifically referencing Valesky and two former state senators, Darrel Aubertine and Craig Johnson. As a result of the defamatory statements, plaintiff alleges damage to its professional and business reputation. (NYSCEF 82, 93).

By demand dated October 10, 2018, movants sought, *inter alia*:

10. All documents and communications during the Relevant Time Period between you or your members and New York State Legislators relating to or concerning donations and contributions to Craig Johnson, Friends of Craig Johnson, Darrel Aubertine, Friends of Aubertine, David Valesky of Valesky for Senate.

11. Documents sufficient to show the persons and entities that were RSA Members during the relevant time period.

The relevant period is defined as November 4, 2008 to the present. (NYSCEF 64).

At his deposition held on October 22, 2018, McKee denied having evidence that plaintiff had given \$150,000 to three state senators and that the statement, “They bought off three Democratic Senators,” arose from conversation he had with legislators and their staff, and a review of campaign finance filings from 2010. (NYSCEF 83).

In its response dated November 20, 2018, plaintiff objected to request 10 as vague, ambiguous, overbroad, irrelevant, duplicative, unduly burdensome, designed solely to harass, as the relevant time period it is too large in scope, and as movants thereby seek documents and communications between plaintiff’s members and New York State legislators. It objected to request 11 as vague, ambiguous, overbroad, irrelevant, unduly burdensome, and designed solely to harass. (NYSCEF 65).

At his deposition held on October 17, 2019, plaintiff’s director of government affairs testified that plaintiff has 25,000 members, and that “if there is legislation that is being acted upon, or proposed rules, we inform our members, and then hopefully encourage our members to

engage elected officials as to what their position is.” (NYSCEF 73).

II. CONTENTIONS

A. Movants (NYSCEF 61-79)

According to movants, plaintiff is a trade association that acts on behalf of and through its members, and thus, documents concerning its members, and not just the organization, are relevant. They reference the testimony of plaintiff’s director of government affairs as evidence of a “symbiotic relationship” between plaintiff and its members and McKee’s reference to the entire real estate industry and thus, they argue, its communications with members are relevant.

B. Plaintiff (NYSCEF 80-93)

Plaintiff contends that movants are using the discovery process to harass it, relying on statements made by McKee and published online by a reporter in which he says that he intends to “use the discovery process to rip the veil off the connections between the real estate money and Albany legislation.” It denies that movants’ requests are connected to the allegedly defamatory statements, as they seek documents concerning plaintiff’s members, as opposed to plaintiff itself, asserting that not all members of the real estate industry are members of it. Moreover, although movants seek documents from November 4, 2008 to the present, McKee referenced events only from 2010, and thus, it argues, any request seeking documents from other than 2010 are irrelevant, as additionally supported by McKee’s testimony. It denies that documents from its members are within its control and alleges that it produced copies of publicly available records showing that plaintiff’s contributions in 2010 were lawful and did not include a \$150,000 payment to the three senators.

C. Movants’ reply (NYSCEF 94)

Movants contend that the documents they seek will show that plaintiff, through its

members, contributed to the 2010 campaigns of the senators and that McKee's statements are true. They deny abusing the discovery process and assert that the temporal scope of their requests is appropriate, as contributions could have been made before 2010 and communications concerning contributions could have been made before or after 2010. They also deny that plaintiff has produced any communications concerning its members' political contributions to 2010 campaigns and maintain that plaintiff has not submitted member lists which would be responsive to request 11.

III. ANALYSIS

Pursuant to CPLR 3101(a), “[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action ...” What is “material and necessary” is generally left to the court's sound discretion and may include “any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity.” (*Andon ex rel. Andon v 302-304 Mott St. Assocs.*, 94 NY2d 740, 746 [2000], quoting *Allen v Crowell-Collier Pub. Co.*, 21 NY2d 403, 406 [1968]). A party may seek an order compelling compliance or a response to any request, notice, interrogatory, demand, question, or order under CPLR article 31. (CPLR 3124).

A statement's truth is “an absolute defense” to a defamation claim. (*Stepanov v Dow Jones & Co.*, 120 AD3d 28, 34 [1st Dept 2014]).

Here, McKee's allegedly defamatory statements reference a promise made in 2010 and kept by the real estate industry and plaintiff to donate \$150,000 in campaign funds. Plaintiff's members are necessarily included as members of the real estate industry, and thus, affording a liberal and broad of interpretation of what is material and necessary, as is required when setting the scope of disclosure (*see Anonymous v High Sch. for Env'tl. Studies*, 32 AD3d 353, 358 [1st

Dept 2006] [disclosure statute to be “interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist in the preparation for trial”]), their communications to the state senators are subject to disclosure as sought in request 10.

Defendants are entitled to the disclosure of evidence that may establish the truth of the entirety of McKee’s allegedly defamatory statements even though plaintiff does not directly challenge all of the assertions contained therein. (*Rivera v NYP Holdings Inc.*, 63 AD3d 469, 469 [1st Dept 2009] [defendants entitled to opportunity to demonstrate truth of articles “as a whole,” thereby warranting disclosure as to assertions not directly challenged in complaint]). Likewise, here, promises of plaintiff’s members to donate money to the senators’ campaigns are probative of the truth of McKee’s allegedly defamatory statements. The period specified by movants is not overly broad, even though McKee stated that the promise was made in 2010, as communications related to that promise may have been made after or beforehand.

To the extent that plaintiff denies possession of communications between members and the state senators, absent a supporting affidavit, the denial is insufficient. (*Jackson v City of New York*, 185 AD2d 768, 770 [1st Dept 1992]).

As the communications of plaintiff’s members are also probative of the truth of the allegedly defamatory statements, their identities within the specified period are material and necessary.

McKee’s statement of intent to misuse the discovery process is immaterial, as movants’ requests are within the scope of disclosure. In any event, plaintiff offers no evidence that movants have abused the disclosure process.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that defendants Michael McKee and Tenants Political Action Committee, Inc.'s motion to compel is granted to the extent of directing plaintiff to produce, within 60 days of the date of this order, all documents responsive to requests 10 and 11 or an affidavit establishing that the documents are not in its possession; and it is further

ORDERED, that the parties either enter into a stipulation encompassing their compliance conference on or before September 23, 2020, or appear for the conference in room 341, 60 Centre Street, New York, New York, on September 23, 2020 at 2:15 pm or virtually if necessary.

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7/24/2020
DATE

BARBARA JAFFE, J.S.C.

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