

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CIRCUIT CIVIL DIVISION

CASE NO. 2016-030273-CA-01

SECTION: CA 44

**Colin Veitch
Plaintiff,**

vs.

**Kevin Sheehan
Defendant.**

**ORDER ON PLAINTIFF'S MOTION TO COMPEL NON-PARTIES ROBERT
SULLIVAN, ARNOLD WEISSMAN, AND THOMAS STIEGHORST
TO APPEAR FOR DEPOSITIONS**

THIS MATTER came before the Court on the above motion, and the Court having reviewed the motions, memoranda, and being otherwise fully advised in the premises, it is

ORDERED and ADJUDGED as follows;

Plaintiff, Colin Veitch, issued subpoenas to non-party witnesses, Robert Sullivan ("Mr. Sullivan"), Arnold Weissman ("Mr. Weissman"), and Thomas Stieghorst ("Mr. Stieghorst"). The non-party witnesses asserted that the scope of information sought by Plaintiff is protected by the journalist privilege set forth in § 90.5015, Fla. Stat. (2017). Plaintiff for his part asserts that the information sought is not privileged, and even if the privilege applies, it is overcome by the balancing test provided in the statute.

The Plaintiff filed its initial motion, the non-parties filed its response to the Plaintiff's motion, the Plaintiff then filed a reply. The non-parties requested a hearing on the motion or alternatively, an opportunity to file a sur-response. The Court gave the non-parties the option to

have a hearing (a date was provided) or in lieu of a hearing file a sur-response. The non-parties elected to file a sur-response. Upon having provided thoughtful consideration to each of the submissions filed in support and in opposition to the motion under review, the Court issues its ruling accordingly.

The catalyst that triggered the issue under review is an email sent by Defendant, Kevin Sheehan (“Mr. Sheehan”) to Travel Weekly that allegedly resulted in the removal of an article about Mr. Veitch, which was published in Travel Weekly’s online publication. Travel Weekly is a business-to-business newspaper and online news service serving the United States retail travel community of travel advisors and also travel agents. The non-party witnesses are employees of Travel Weekly. Specifically: Mr. Sullivan is the publisher; Mr. Weissman is the editor-in-chief; and Mr. Stieghorst is the senior editor of the publication.

On December 1, 2014, Travel Weekly published an article about Mr. Veitch which portrayed him in a positive light.¹ Subsequently, Mr. Sheehan,² sent an email to Mr. Sullivan and Mr. Weissman.³ Plaintiff alleges that Mr. Sheehan’s email contained alleged defamatory statements that had an immediate impact as Travel Weekly later removed the article from its online publication, on or about December 4, 2014.

By serving subpoenas on the non-party witnesses, Plaintiff seeks to examine them on the following areas: (1) whether and to what extent Mr. Sheehan’s email diminished their opinions of Mr. Veitch; (2) whether Mr. Sheehan threatened to reduce advertisements if Travel Weekly did not take down the article it published about Mr. Veitch; (3) whether Travel Weekly has a company

¹ See Exhibit A attached to Declaration of Colin Veitch in support of Plaintiff’s Motion to Compel filed for the record on August 7, 2017.

² Mr. Sheehan is Mr. Veitch’s successor as NCL Corporation LTD’s CEO.

³ See Exhibit C attached to the Declaration of Colin Veitch filed in support of Plaintiff’s Motion to Compel filed for the record on August 7, 2017.

policy regarding editorial independence and whether it is regularly observed; and (4) why Travel Weekly took down the article. The non-parties have raised the journalist privilege asserting that the information sought is protected.

Pursuant to § 90.5015(2) a professional journalist⁴ has a qualified privilege not to be a witness concerning information that has been obtained while *actively gathering news*. (Emphasis added). The privilege applies only to information or observations obtained within the normal scope of employment. *See id.* A plain reading of the statutory language leads to the conclusion that a qualified journalist privilege applies to information that a professional journalist acquires while actively gathering news within his or her normal scope of employment. The privilege does not cover just any information that a professional journalist acquires within the normal scope of employment. Otherwise, the parameter “while actively gathering news” would serve no purpose. This Court will not read the statute in a compartmentalized manner as doing so will defeat the plain language of the statute which provides a qualified privilege and not an absolute one. *See Diamond Aircraft Indus., Inc. v. Horowitch*, 107 So. 3d 362, 366 (Fla. 2013) (clear and unambiguous statutory language must be given its plain and obvious meaning).

Mr. Sheehan’s email, which is the writing that contains the allegedly libelous statements, was sent to the non-parties subsequent to Travel Weekly’s publication of the article about Mr. Veitch. The article published in Travel Weekly is not the writing containing the alleged libelous statement. The Court finds that the information that the non-parties obtained from Mr. Sheehan’s email post publication is not information obtained while actively gathering news within the normal

⁴ Pursuant to § 90.5015(1)(a), a professional journalist means:

[A] person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain of livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine.

scope of employment. Even if this Court were to read the statute as the non-parties have suggested, that the email was obtained within the normal scope of employment, it was certainly not obtained while actively gathering news.

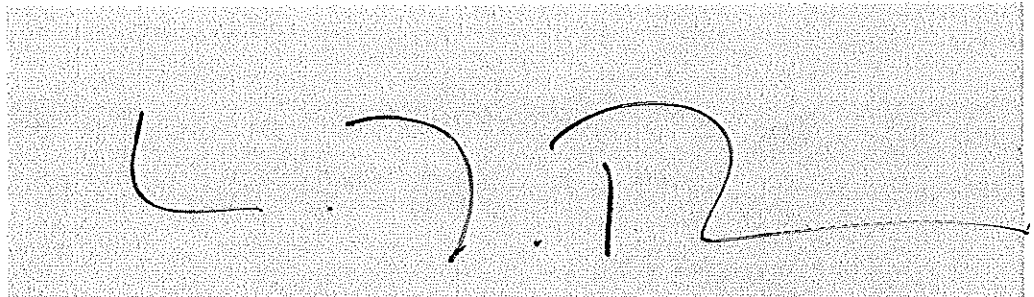
As to the four areas of inquiry on which the Plaintiff seeks to depose the non-party witnesses directed to the content of Sheehan's email, the Court finds that information is not protected by the journalist privilege. The non-parties submitted conclusory statements that any information received, considered, and communicated internally or externally in connection with the article, before and after it was published, was information obtained as part of their employment as professional journalists.⁵ None of the non-parties' declarations attested to the fact that the information was obtained while actively gathering news within the normal scope of their employment. Pursuant to the plain language of the statute, the mere fact that a person is a professional journalist without more will not automatically protect the information obtained, if the information was not obtained while actively gathering news within the normal scope of employment. In addition, none of the information that may have been obtained in connection to the Sheehan email resulted in the publication of a new article or in clarification of the one originally published. The Court concludes that the qualified journalist privilege does not apply in this instance.

Notwithstanding the information sought is not protected by the privilege invoked, Plaintiff's scope of examination is limited to inquiry as to (1) why the article published in the Travel Weekly's online publication was taken down and (2) whether Mr. Sheehan's email diminished their opinions of Mr. Veitch

⁵ See Declaration of Thomas Stieghorst; Declaration of Robert Sullivan; Declaration of Arnold Weissman, attached as Exhibits A, B, and C respectively to the Opposition to Plaintiff's Motion to Compel Non-Parties to Appear for Depositions.

Based on the foregoing, Plaintiff's motion to compel is GRANTED. Plaintiff is permitted to depose the non-parties witnesses limited to inquire as to why the article was taken down and whether Mr. Sheehan's email diminished their opinions of Mr. Veitch.

DONE AND ORDERED in chambers, at Miami-Dade County, Florida, this 10
October, 2017.



William Thomas
CIRCUIT COURT JUDGE



No Further Judicial Action Required on THIS MOTION. CLERK TO RECLOSE CASE IF POST JUDGMENT.

Electronic Service List:

Benjamin A. Taormina <Benjamin.Taormina@hkllaw.com>, <carmen.ramsey@hkllaw.com>

Brandon Rose <brandon@axslawgroup.com>

Cbl Section 44 Case Mgr <cbl44@jud11.flcourts.org>

Christopher Martin Lomax <clomax@jonesday.com>, <ramoncastillo@jonesday.com>, <hkgordon@jonesday.com>

Christina Therese Mastrucci <cmastrucci@jonesday.com>, <ramoncastillo@jonesday.com>, <lsilva@jonesday.com>

Daniel Tropin <dan@axslawgroup.com>

Thomas Julin <tjulin@gunster.com>

Jeffrey Gutchess <Jeff@axslawgroup.com>

Israel J Encinosa <israel.encinosa@hkllaw.com>, <aavalos@hkllaw.com>

Alex M Gonzalez <alex.gonzalez@hkllaw.com>, <aavalos@hkllaw.com>

Sanford L. Bohrer <sbohrer@hkllaw.com>, <estarling@hkllaw.com>

Michael E Rothenberg <michael.rothenberg@hkllaw.com>, <josie.vila@hkllaw.com>

Jane Marie Russell <JaneMarie.Russell@hkllaw.com>, <josie.vila@hkllaw.com>

Thomas R. Julin <tjulin@gunster.com>, <pholness@gunster.com>, <eservice@gunster.com>
Timothy J. McGinn <tmcginn@gunster.com>