

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF ROCKLAND

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MORCECHAI TENDLER,

Plaintiff,

-against-

BAIS KNESSES OF NEW HEMPSTEAD, INC.,  
d/b/a THE RAV ARON JOFFEN COMMUNITY  
SYNAGOGUE,

Defendant.  
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To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**DECISION & ORDER**

Index No: 2284-2006

HON. VICTOR J. ALFIERI, JR., A.J.S.C.

In this action for breach of an employment contract, non-party bloggers move pursuant to CPLR §2304 to quash subpoenas served by plaintiff's counsel on Google, Inc. seeking the identity of the bloggers. This Court has considered the following papers on the motion:

1. Notice of Motion dated April 1, 2011;
2. Affidavit of Paul Alan Levy sworn to on April 1, 2011 and Exhibits A through O attached thereto;
3. Memorandum of Law dated April 1, 2011;
4. Supplemental Affidavit of Paul Alan Levy sworn to on May 4, 2011 and Exhibits P and Q attached thereto;
5. Supplemental Memorandum dated May 4, 2011;
6. Plaintiff's Affidavit in Opposition to Motion to Quash sworn to on May 12, 2011 and Exhibits A through T attached thereto;
7. Plaintiff's Memorandum of Law in Opposition dated May 12, 2011;
8. Third Levy Affidavit sworn to on May 18, 2011 and Exhibits R and S attached thereto;
9. Reply Affirmation dated May 18, 2011.

Upon reading the foregoing papers and due consideration having been given, it is hereby

ORDERED that defendant's motion to quash the subpoena is granted. It is well-settled that "[c]ivil subpoenas seeking information regarding anonymous individuals raise First Amendment concerns." NAACP v. Alabama ex rel Patterson, 357 U.S. 449, 78 S.Ct. 1163 (1958). As such, discovery requests seeking to identify anonymous individuals, including anonymous Internet users, must be subjected to careful scrutiny. See, Doe v. 2themar.com Inc., 140

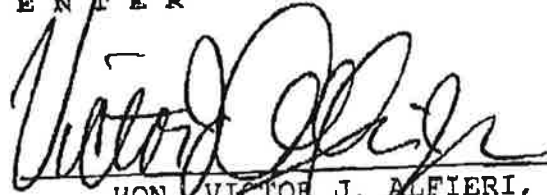
F.Supp.2d 1088, 1093 (W.D.Wa. 2001). Even more so, where the information sought pertains to the identities of non-parties to the action, the standard must be even higher. This is so because "[w]hen the anonymous Internet user is not a party to the case, the litigation can go forward without the disclosure of their identity. Therefore, non-party disclosure is only appropriate in the exceptional case where the compelling need for the discovery sought outweighs the First Amendment rights of the anonymous speaker." Id., at 1095.

In determining whether non-party disclosure is appropriate under these circumstances, the Court should consider four factors: (1) whether the subpoena was issued in good faith and not for an improper purpose; (2) whether the information sought relates to a core claim or defense; (3) whether the identifying information is directly and materially relevant to that claim or defense; and (4) whether the information relating to that claim or defense is available from any other source. See, Doe v. 2themart.com Inc., 140 F.Supp. at 1096. Applied here, an analysis of these factors requires this Court to conclude that disclosure is not warranted. Plaintiff contends that the information sought is relevant to his mitigation of damages defense. However, mere relevance is not sufficient. Rather, the information sought must "go to the heart of the matter," i.e., that the information is crucial to the party's case.

Here, the "heart" or the crux of Plaintiff's case was his claim for breach of his employment contract. Since liability has already been established in favor of the Plaintiff, the "heart of the matter" has been resolved. If this Court were to permit disclosure on the issue of damages, especially where the standard for such disclosure is so high, it would open the floodgates and set a precedent that this Court is unwilling to do.

Dated: November 16, 2011  
New City, New York

E N T E R



HON. VICTOR J. ALFIERI, JR.  
Acting Supreme Court Justice

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