

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

MARATHON RESOURCE MANAGEMENT )  
GROUP, LLC, )

Plaintiff, )

v. )

Case No.: CL 19-5973

FRESH CUTS LAWN CARE INC., )  
JOSEPH R. JONES, )  
SARAH JONES, )

Defendant. )

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**ORDER**

On February 21, 2020, the Plaintiff, represented by Counsel, and Ms. Kerri O'Brien, represented by Counsel, appeared on Ms. O'Brien's Motion to Quash Reporter Subpoena. In the Motion to Quash and at the hearing, Ms. O'Brien asserted the qualified reporter privilege as she had obtained both confidential and nonconfidential information throughout her investigation of Plaintiff's interactions with their subcontractors. The Court **FINDS** that Counsel for Ms. O'Brien has standing to assert her a claim through a Motion to Quash, as First Amendment protections for journalists are not absolute, but "in civil proceedings, the First Amendment affords journalist a qualified privilege." *Gilbertson v. Jones*, 2016 WL 6518659, \*3 (E.D. Va. 2016); *see also Zerilli v. Smith*, 656 F.2d 705, 712 (D.C. Cir. 1981) ("a qualified reporter's privilege under the First Amendment should be readily available in *civil* cases."). "This privilege requires a court to balance the reporter's interest with society's interest." *Gilbertson*, 2016 WL 6518659, at \*3. To balance these interests, this Court has adopted the three-part test articulated in *LaRouche v. Nat'l Broadcasting Co.*, 780 F.2d 1134, 1139 (4<sup>th</sup> Cir. 1986). *Morris Co., Inc. v. American Broadcasting Co., Inc.*, 36 Va. Cir. 1, \*8 (1994). Thus, the Court looks at "(1) whether the information sought is relevant, (2) whether the information can be obtained by alternative means, and (3) whether there is compelling interest in the information." *Id.*

Plaintiff did not file a Memorandum in Opposition to the Motion to Quash. However, in Court, Plaintiff provided one fact-based reason for calling Ms. O'Brien as a witness, namely that she allegedly received a voicemail from the Defendants in this case. Even assuming that this voicemail would be relevant because it goes to the publication element of the Plaintiff's defamation claim, the Court **FINDS** that Plaintiff has failed to satisfy their burden as to the other two prongs of the qualified privilege. Specifically, the information sought by the Plaintiff can be obtained by alternative means, namely the testimony of the Defendant. Further, as a compelling interest is one that "could play an important role in the outcome" of the proceedings, *Gilbertston*, 2016 WL 6518659, at \*5, the evidence sought by the subpoena of Ms. O'Brien is not compelling because publication can be established through other mechanisms. Accordingly, in weighing the interests involved, the Court **FINDS** that Ms. O'Brien is entitled to the qualified reporter privilege. Therefore, the Court **GRANTS** the Motion to Quash Subpoena Reporter.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties' endorsement of this Order.

The Clerk is directed to forward a certified copy of this Order to the parties.

It is so **ORDERED**.

ENTER: 2/21/2020



Joi J. Taylor, Judge