

IN THE CIRCUIT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 15-08342-CA-01

DR. JAMES MCDONOUGH,

Plaintiff,

vs.

ALEJANDRO MURGUIDO and LUIS
GOMEZ, individually,

Defendants.

MOTION FOR PROTECTIVE ORDER

Defendant, ALEJANDRO MURGUIDO, (“Ofc. Murguido”) by the undersigned counsel, and pursuant to Fla.R.Civ.P. 1.280 (c), files this Motion for Protective Order to prevent and/or limit the taking of Ofc. Murguido’s deposition on July 19, 2017, and states as follows:

I. Introduction

1. The complaint against Ofc. Murguido in the instant action attempts to assert claims for slander and intentional infliction of emotional distress stemming from his alleged reporting Plaintiff’s criminal conduct to the Miami Dade Police Department and subsequent prosecution.
2. Relevant to this motion for protective order, as will be explained more fully below, is the pendency of a parallel federal court action filed by the Plaintiff bearing Case No.: 16-cv-24524-KMW, in the United States District Court, Southern District of Florida. Significantly, the federal court action brings claims against Ofc. Murguido, the City of Homestead, Homestead Mayor, Homestead City Manager, Homestead Chief of

Police, various Homestead police officers, Miami-Dade County and Monroe County Sheriff's Office and their respective agency heads and various other county police officers. The federal court action includes a multitude of claims including similar claims stemming from the October 29, 2012 incident that forms the basis of the instant action, a First Amendment claim stemming from his conduct at public meetings of the City of Homestead, and an alleged unconstitutional seizure relating an alleged Baker Act. Also relevant to this motion for protective order are the various public records requests sent by the Plaintiff to the City of Homestead, the relevance will be explained below.

3. At all times relevant hereto, Ofc. Murguido is and has been a police Officer employed by the Plaintiff of Homestead Police Department. The genesis of the dispute stems from an incident that occurred on or about October 29, 2012, which later led to Plaintiff's arrest and prosecution. During the prosecution, Plaintiff entered a pretrial intervention program in order to secure the dismissal of the criminal charges, which Defendant contends prevents the Plaintiff from making any good faith argument regarding the legality of his arrest.
4. Plaintiff scheduled the deposition of Ofc. Murguido on July 19, 2017, at 1:00 pm, at the office of Plaintiff's attorney, which is located at 9200 S. Dadeland Blvd., Suite 308, Miami, FL 33156.
5. This motion for protective order seeks to prevent and/or limit the Plaintiff's attempt to take discovery including the deposition of Ofc. Murguido based on the following three grounds:

- a. First, Ofc. Murguido objects to the deposition taking place in the Plaintiff's counsel's office in favor of a neutral, safe and secure location such as the Miami-Dade County Law Library, or similar venue.
- b. Second, Ofc. Murguido seeks to limit discovery including his deposition to the narrow facts of this case and not to use the discovery process in the instant case to surreptitiously obtain discovery to support his parallel federal court proceeding in which Ofc. Murguido, the City Manager of Homestead, the Homestead Mayor, Chief of Police and other Homestead police officers are party Defendants and represented by different counsel of record.
- c. Third, Ofc. Murguido seeks to limit discovery including his deposition to prevent the Plaintiff from using the discovery process in the instant case to surreptitiously obtain discovery to support his various public records requests directed to the City of Homestead and the pending public records litigation between the Plaintiff and the City of Homestead.

II. Relevant Facts

6. Plaintiff's claims of slander and intentional infliction of emotional distress stem from incident that occurred on or about October 29, 2012 between the Plaintiff and Ofc. Murguido. Although the complaint attempts to plead the conduct of Ofc. Murguido outside the course and scope of employment and unrelated to his employment with the City of Homestead Police Department, see paragraph 20 of the latest amended complaint ...[his actions] "was not done in his official capacity as a Homestead Police Officer" but contrast with paragraph 15 that "Plaintiff called HPD and Internal Affairs (IA) trying to file a complaint against Murguido for the retaliatory detainment, and paragraph 10 that "Murguido chased down the Plaintiff and detained him without suspicion or probable cause."

7. Plaintiff filed a parallel federal court lawsuit¹ against Ofc. Murguido, Plaintiff of Homestead, Miami-Dade County, Monroe County and a multitude of other high-ranking officers of each of these entities. The federal court action includes similar allegations against Ofc. Murguido stemming from the same incident described above on October 29, 2012.
8. The federal court action describes the same incident as a neighborhood dispute in which Ofc. Murguido chased him down in his **Homestead police cruiser** and ordered him to stop in which he was detained for over ninety minutes by twelve officers including members of the **HPD**, MDPD and MCSO without probable cause and outside of the Plaintiff limits of Homestead. See paragraphs 8-13 of the federal court action.
9. Count 11 of the federal court action includes an alleged unconstitutional seizure stemming from Plaintiff being the subject of a Baker Act.

¹ USDC Case No.: 16-cv-24524-KMW, styled James Eric McDonough vs. Plaintiff of Homestead; Jeff Porter, Individually, and in his capacity as Mayor of the Plaintiff of Homestead; Homestead, Florida; George Gretsas, Individually, and in his capacity as City Manager of the City of Homestead; Homestead, Florida; Alexander Rolle, individually, and in his capacity as the Chief of Police for the Homestead Police Department of the Plaintiff of Homestead, Homestead, Florida; Antonio Aquino, Individually, and in his capacity as Internal Affairs Detective for the Homestead Police Department of the Plaintiff of Homestead, Homestead, Florida; Alejandro Murguido, J. Cruz, D. Snyder John Buchanan, M. Pasquarella, L. Zavaletta, Thomas Mead, Mario Arzuaga, Veronica Blanco, A. Pearce and Thomas Surman, Individually, and in their capacity Plaintiff as Police Officers for the Homestead Police Department of the Plaintiff of Homestead, Homestead, Florida; Campbell Urgent Care, a corporation in the State of Florida; Ernesto Rodriguez, Individually; Monroe County, a Florida municipal corporation; Rick Ramsey, Individually, and In his capacity as Sheriff of the Monroe County Sheriff's Office Monroe County, Florida; Chad Scibilia, Individually, and In his capacity as Sheriff's Detective for the Monroe County Sheriff's Office, Monroe County, Florida; Luis Gomez, Individually, and in his capacity as Deputy for the Monroe County Sheriff's Office Monroe County, Florida; Miami-Dade County, a Florida municipal corporation; J.D. Patterson, Individually, and in his capacity as Miami-Dade Police Department Director; Ariel Artime and Adrienne Byrd, Individually, and in their capacity as a Major for the Miami-Dade Police Department, Miami-Dade, Florida; Alex Diaz Devillegas, and Elton Lee, Individually, and in their capacity as Lieutenants for the Miami-Dade Police Department, Miami-Dade, Florida; John Ryan, Jorge Cameron, Carlos Alvarez, E. Webster D. Rodriguez, R. Zapatas, John Doe 1, Darrel Cooper, and R. Suarez, Individually, and in their capacity as Police Officers for the Miami-Dade Police Department, Miami-Dade, Florida..

10. There is also presently litigation between the Plaintiff and the City of Homestead bearing Case No.16-12412 CA-13, in the Miami Dade Circuit Court and Third DCA Case No. NO. 3D16-2462 pertaining to a public records dispute.

Arguments

III. Depositions should be taken at Neutral, Safe Location

11. Undersigned contacted Plaintiff's counsel and requested Ofc. Murguido's deposition be set at a neutral, secure and safe location, specifically one of the conference rooms in the Miami-Dade County Courthouse Law Library. Plaintiff's counsel opposed this request prompting the filing of this motion for protective order.
12. The deposition of Ofc. Murguido should not be taken at the Plaintiff's counsel's office without the consent of undersigned counsel. Rather a neutral location must be selected. See Trawick's Practice and Procedure §16 -5, note 18 citing Havel vs. Time, Inc., 1 F.R.D. 439 (N.Y. 1940); Norton vs. Cooper Jarrett, Inc., 1F.R.D. 92 (N.Y. 1938); Pezza vs Williams Bauer Corporation, 3 F.R.D. 355 (N.Y. 1942); Ginsberg vs. Railway Express Agency, Inc., 6 F.R.D. 371 (N.Y. 1945).
13. Undersigned is also concerned with safety issues in light of the contentious relationship between the plaintiff, the law firm that undersigned is employed, Weiss Serota Helfman Cole & Bierman. By way of example, we attach copies of numerous purported public records requests directed to the City of Homestead from the Plaintiff herein requesting information concerning the lawyers involved in his various cases including undersigned counsel. This also illustrates his using the public records laws in an attempt to embarrass the attorneys involved, i.e., by requesting copies of their correspondence, legal bills, and any Florida Bar complaints. The contentiousness is

further evidenced by simply reviewing the allegations in the federal court action with respect to the allegations of being the subject of improper police conduct on numerous occasions and an alleged unconstitutional seizure of the Plaintiff stemming from an alleged Baker Act.

14. Based on the foregoing, Defendant, Ofc. Murguido, requests the entry of a protective order requiring his deposition be taken at a neutral location at the Miami-Dade County Courthouse Law Library with security, or other similar venue.

IV. Discovery must be limited to prevent Plaintiff from taking discovery in the instant action related to the parallel federal court action and otherwise related to his multiple public records request.

Ofc. Murguido seeks to limit discovery including his deposition to the narrow facts of this case and not to use the discovery process in the instant case to surreptitiously obtain discovery to support his parallel federal court proceeding in which Ofc. Murguido, the City of Homestead, the Homestead Mayor, City Manager, Chief of Police and other Homestead police officers are party Defendants and represented by different counsel of record. Plaintiff should further be prevented from taking discovery to support any issues relating to his various public records request along with the public record litigation referenced above.

15. Rule 1.280(c), Fla. R. Civ. P., provides in relevant part:

Upon motion by a party, and for good cause shown, the court in which the action is pending may protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including 1) that the discovery not be had; 2) that the discovery may be had only on specified terms and conditions; 3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; 4) that certain matters not be inquired into, or that the scope of the discovery may be limited to certain matters.

16. Florida Rule of Civil Procedure 1.280 allows for the discovery of matters that are relevant and admissible, or reasonably calculated to lead to admissible evidence. See

Fla. R. Civ. P. 1.280(b)(1), (b)(3). See also Plaintiff of Gainesville v. Scotty's Inc., 489 So. 2d 1196 (Fla. 1st DCA 1986) (“Rule 1.280(b), provides that the scope of discovery is restricted to that which “is relevant to the subject matter of the pending action....”). “Yet, trial courts have broad discretion in overseeing discovery and in protecting persons from whom discovery is sought.” Citigroup Inc. v. Holtsberg, 915 So. 2d 1265, 1270 (Fla. 4th DCA 2005) (citing Fla. R. Civ. P. 1.280(c); Rojas v. Ryder Truck Rental, Inc., 641 So. 2d 855, 857 (Fla. 1994)). In fact, upon a showing of good cause, “the court can prohibit or limit discovery in order to protect a person or party from annoyance, embarrassment, oppression, or undue burden or expense.” Holtsberg, 915 So. 2d at 1270 (citing Fla. R. Civ. P. 1.280(c)).

17. Ofc. Murguido submits the foregoing presents sufficient good cause to enter a protective order to specifically preclude and/or limit Plaintiff from using discovery in this case without giving notice to all of the defendants in the parallel federal court action as well as relating to his multitude of public records request directed to the City of Homestead.
18. Additionally, Ofc. Murguido submits the foregoing presents sufficient good cause to limit discovery unrelated to the issues in the present case.
19. Pursuant to rule 1.280 (c), Defendant is entitled to a protective order.
20. Undersigned certifies a good faith effort is made with opposing counsel to resolve the contents of motion without the necessity of a hearing, and that further attempts will be made to resolve this matter before the scheduled hearing.

WHEREFORE, Defendant, ALEJANDRO MURGUIDO, respectfully request that this Court enter an Order granting this motion for protective order, award all reasonable costs and

attorney's fees relating to this motion for protective order and for such other and further relief that this court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served using the Florida Courts e-Filing Portal on June 30, 2017, to Alan J. Greenstein, Esq., Attorney for Plaintiff, agreenstein004@hotmail.com, Dade Towers, 9200 S. Dadeland Blvd., Suite 308, Miami, FL 33156, and to John A. Jabro, Esq., Attorney for Defendant, Luis Gomez, 90311 Overseas Hwy Ste B, Tavernier, FL 33070-2301 jjabro@aol.com.

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BY: /s/ Eric Stettin
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