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SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

Law Firms Are Not Just 'Any Person'

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Although parties often argue in favor of literal readings of statutes, and courts often accept such readings, courts may decline to read a statute literally where a literal reading would conflict with other accepted legal principles or policies. In *Astraea NYC v. Rivada Networks*, 592 F. Supp. 3d 181 (S.D.N.Y. 2022), U.S. District Judge Louis L. Stanton for the Southern District of New York recently declined to read two discovery statutes literally on the ground that such a reading would have conflicted with the policy underlying the attorney-client privilege: encouraging full and frank communications between attorneys and clients.

The plaintiff, Astraea NYC had previously arbitrated a dispute with the defendant, Rivada Networks. In the arbitration, Rivada was represented by Schulte Roth & Zabel. After prevailing in the arbitration, Astraea served an information subpoena on Schulte as part of its effort to enforce its judgment against Rivada. In serving the subpoena, Astraea relied on Federal Rule of Civil Procedure 69(a)(2) and N.Y. C.P.L.R. §5223, both of which allow discovery from "any person" to enforce judgments. Notwithstanding this broad language, Judge Stanton held that Schulte was not "any person" within the meaning of these statutes, and he based his holding on the need to safeguard the policy interests underlying the attorney-client privilege.

'Astraea NYC v. Rivada Networks'

Astraea, as lender, and Rivada, as borrower, entered into two loan agreements in December 2016 and January 2017, respectively, for amounts totaling $2,500,000. Astraea thereafter claimed that Rivada breached the loan agreements by failing to repay the loans in accordance with the terms of the agreements. In February 2021, Astraea commenced an arbitration to recover the loan amounts allegedly due. In the arbitration, Rivada was represented by Schulte.

In November 2021, the arbitrator entered an award in favor of Astraea and against Rivada in the amount of $3,131,816.91 plus interest. Astraea then commenced an action in the Southern District of New York before Judge Stanton to confirm the Award. In connection with that action, Astraea moved for summary judgment in order to have the award confirmed and reduced to judgment so that it could enforce collection against Rivada. Rivada did not oppose the motion for summary judgment, and Judge Stanton (1) granted the motion,

(2) confirmed the award, and (3) issued a judgment in favor of Astraea and against Rivada for the amount of the award.

In furtherance of its efforts to collect on its judgment, Astraea served a Restraining Notice with Information Subpoena on Schulte. Pursuant to the Subpoena, Astraea sought information about Schulte's representation of Rivada and, in particular, information relevant to Rivada's finances, including payments it made to Schulte, the sources of such payments, assets held, and indebtedness. Schulte moved to quash the Subpoena, arguing that the Subpoena sought protected information.

Relevant Law and Legal Principles

In resolving Schulte's motion to quash, Judge Stanton first examined the federal and state provisions that Astraea had invoked in support of the Subpoena: Federal Rule of Civil Procedure 69(a)(2) and N.Y. C.P.L.R. §5223. Judge Stanton observed that Rule 69(a)(2) allows a judgement creditor, in aid of the execution of a judgment, to "'obtain discovery from *any person*—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.'" *Astraea*, 592 F. Supp. 3d at 182 (quoting Fed. R. Civ. P. 69(a)(2) (emphasis added)). Section 5233 similarly states that "'the judgment creditor may compel disclosure of all matter relevant to the satisfaction of the judgment, by serving upon *any person* a subpoena.'" Id. (quoting N.Y. C.P.L.R. §5223 (emphasis added)).

The question before Judge Stanton, therefore, was whether Schulte, as Rivada's counsel in the underlying arbitration, qualified as "any person" within the meaning of these discovery statutes. Id. Judge Stanton noted that "'[a]ny person' would not ordinarily be taken as including 'any law firm,'" and that the statutes did not "say 'or that person's lawyers.'" Id. Moreover, Judge Stanton observed that "[t]here are special policies which traditionally prevent [the] application[] [of statutes such as these] to relationships such as doctor and patient, husband and wife, lawyer and client, [and] priest and penitent." Id. "Those persons may not be compelled to reveal matters learned in the course of their relationship." Id. Similarly, Judge Stanton noted that "[c]ourts are also rightly solicitous of time and work demands on high executives: they are not immune from inquiry, but interrogation of them is regarded as only a last resort." Id.

On the subject of attorney-client privilege, Judge Stanton emphasized the practical importance of the attorney-client privilege and the assurance that an attorney not disclose client confidences learned during the course of the attorney's representation. Id. at 183. In particular, Judge Stanton quoted the Supreme Court's statements in *Upjohn Co. v. United States*, that "'[t]he attorney-client privilege['s] … purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice,'" and that it "'rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out.'" Id. (quoting *Upjohn*, 449 U.S. 383, 389 (1981)).

Application of Law and Legal Principles to 'Astraea'

Applying the above-referenced statutes and legal principles, Judge Stanton concluded that the broad language of the discovery statutes—in particular, the language "any person"—does not "overcome the force and value of the policy that the lawyer may not reveal the confidences of her client, even though the client himself may well be compelled to disclose them." *Astraea*, 592 F. Supp. 3d at 183. Judge Stanton therefore ruled that the "any person" language does not apply to a party's law firm, and he granted Schulte's motion to quash the Subpoena. Id.

In quashing the Subpoena, Judge Stanton did not address whether Schulte might possess information responsive to the Subpoena that fell outside the scope of the attorney-client privilege. Instead, Judge Stanton broadly ruled that the "any person" language in the statutes did not apply to a party's counsel, because such a reading could have a chilling effect on attorney-client communications. Id. Indeed, Jude Stanton reasoned that "[t]he prospect that after judgment is entered the successful party could discover from the losing attorney things that attorney had learned would inject uncertainty into the whole course of her representation and the trial." Id. Judge Stanton concluded that such a holding could result in an "uncertain privilege," and "[a]n uncertain privilege, or one which purports to be certain but results in widely varying applications by the courts, is little better than no privilege at all." Id. (quoting *Upjohn*, 449 U.S. at 393).

Judge Stanton further observed that although "it would probably be more convenient" for Astraea to obtain information from Schulte instead of from Rivada, "[t]he proper procedure is not an ill-conceived inquiry of [Rivada's] attorneys seeking information they learned in the course of the case, but to direct relevant questions to [Rivada]." Id. "That straightforward process," Judge Stanton noted, "will gain the advantage that [Rivada's] reputable counsel will not, to their knowledge, permit dishonest answers." Id.

Conclusion

Courts sometimes will not apply statutes in accordance with their literal terms when doing so would contravene other policies. That is precisely what occurred in *Astraea*, where Judge Stanton concluded that a literal application would contravene the policies underlying the attorney-client privilege.

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