

164 Misc.2d 302, 624 N.Y.S.2d 752, 23 Media L. Rep. 1767
(Cite as: 164 Misc.2d 302, 624 N.Y.S.2d 752)

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Civil Court, City of New York,
New York County, Special Term, Part I.
LIEBMAN & CHARME, Plaintiff,
v.
Fabio LANZONI, Defendant.

March 7, 1995.

Defendant, a model and spokesperson, sought protective order to prevent plaintiffs from taking videotaped deposition or barring dissemination of videotape. The Civil Court, City of New York, Gische, J., held that: (1) defendant's likeness was not a trade secret or otherwise confidential, so as to entitle him to order of protection with regard to his videotaped deposition, and (2) defendant's celebrity status did not entitle him to protective order prohibiting public dissemination of his videotaped deposition.

Motion denied.

West Headnotes

[1] Pretrial Procedure 307A  **139**

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(C) Discovery Depositions
307AII(C)2 Proceedings
307Ak139 k. Record of Testimony;
Furnishing Copies. Most Cited Cases


Rules permitting party to record depositions on videotape does not require showing of special need and videotaping may be employed over objections of bashful or reluctant witness. McKinney's CPLR 3113(b); N.Y. Comp. Codes R. & Regs. title 22, § 202.12.

[2] Pretrial Procedure 307A  **139**

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(C) Discovery Depositions


307AII(C)2 Proceedings
307Ak139 k. Record of Testimony;
Furnishing Copies. Most Cited Cases

Like all discovery devices, use of videotaped deposition is still subject to limitations of order of protection to prevent abuse. McKinney's CPLR 3103(a).

[3] Pretrial Procedure 307A  **41**

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak41 k. Objections and Protective Orders. Most Cited Cases

Burden of proving entitlement to order of protection rests with party seeking it. McKinney's CPLR 3103(a).

[4] Pretrial Procedure 307A  **41**

307A Pretrial Procedure
307AII Depositions and Discovery
307AII(A) Discovery in General
307Ak41 k. Objections and Protective Orders. Most Cited Cases

Discovery which is confidential in nature or subject to abuse if widely disseminated may be subject to judicial safeguards; those safeguards may include barring dissemination of information to anyone other than counsel working on case and court officers. McKinney's CPLR 3103(a).

[5] Antitrust and Trade Regulation 29T  **413**

29T Antitrust and Trade Regulation
29TIV Trade Secrets and Proprietary Information
29TIV(A) In General
29Tk413 k. What Are "Trade Secrets" or Other Protected Proprietary Information, in General. Most Cited Cases
(Formerly 382k984 Trade Regulation, 379k10(5))

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“Trade secret” is formula, pattern, or device or compilation of information which is used in one's business and which gives user opportunity to obtain advantage over competitors who do not know or use it; trade secrets generally pertain to customer lists or information related to manufacturing or business operation.

[6] Antitrust and Trade Regulation 29T ↪417

29T Antitrust and Trade Regulation

29TIV Trade Secrets and Proprietary Information

29TIV(A) In General

29Tk417 k. Necessity That Information Be Secret. Most Cited Cases
(Formerly 382k987 Trade Regulation, 379k10(5))

It is paramount that trade secret actually be a secret.

[7] Privileged Communications and Confidentiality 311H ↪402

311H Privileged Communications and Confidentiality

311HVII Other Privileges

311Hk402 k. Trade Secrets; Commercial Information. Most Cited Cases
(Formerly 307Ak201.1)

Likeness of defendant, a model and spokesperson, was not a trade secret or otherwise confidential, so as to entitle him to order of protection with regard to his videotaped deposition, where defendant made his living from placing his likeness into public arena. McKinney's CPLR 3103(a).

[8] Pretrial Procedure 307A ↪201.1

307A Pretrial Procedure

307AII Depositions and Discovery

307AII(C) Discovery Depositions

307AII(C)5 Use and Effect

307Ak201 Use

307Ak201.1 k. In General. Most Cited Cases

Defendant, a model and spokesperson who claimed he was an international celebrity, was not entitled to order of protection prohibiting public dis-

semination of his videotaped deposition, absent evidence that plaintiffs intended to sell tape to media. McKinney's CPLR 3103(a).

****753 *302** Steinberg & Wolff, New York City, for plaintiff.

Friedman & Harfenist, New York City, for defendant.

JUDITH J. GISCHE, Judge.

Defendant moves for a protective order pursuant to *303CPLR Sec. 3103(a) to prevent plaintiff from taking a videotaped deposition or, alternatively, barring the dissemination of any videotape to anyone other than “court officers” and counsel working on this case.

The motion arises out of an action for attorney's fees. Defendant is a model and spokesperson. Customarily referred to as “Fabio”, defendant styles himself a celebrity of international proportion. He has appeared on numerous magazine covers and has been featured on “Hard Copy”, “Life Styles of the Rich and Famous” and “A Current Affair”.

Defendant claims that his likeness on videotape is a trade secret because it is his stock in trade and a valuable commodity worth more than the underlying action. He claims that plaintiffs intend to sell the videotape of his deposition for airing on “Hard Copy” or “A Current Affair”. Mr. Lanzoni argues that a sale of the videotaped deposition would prejudice him by damaging his celebrity status and result in an improper financial windfall to plaintiffs.

Discussion

[1] Civil Practice Law and Rules (CPLR) sec. 3113(b) and 22 New York City Code of Rules and Regulations (NYCRR) sec. 202.12 and 15 freely permit a party taking a deposition to record it on videotape. There is no requirement to show special need and videotaping may be employed over the objections of a bashful or reluctant witness. Roche v. Udell, 155 Misc.2d 329, 588 N.Y.S.2d 76 (Sup.Ct.Nass.Co.1992). These relatively recent discovery provisions reflect a recognition by the legislature of the beneficial effect new technologies can have on traditional litigation practices and procedures.

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[2] Like all discovery devices, however, the use of a videotaped deposition is still subject to the limitations of an order of protection to prevent abuse. CPLR sec. 3103(a) provides in pertinent part:

“The court may at any time on its own initiative, or on the motion of any party or [witness] * * * make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.”

[3][4] The burden of proving entitlement to an order of protection rests with the party seeking it. Viruet v. City of New York, 97 A.D.2d 435, 467 N.Y.S.2d 285 (2d Dept. 1983). Discovery which is confidential in nature or subject to abuse if widely disseminated may **754 be subject to judicial safeguards. Those safeguards may include *304 barring the dissemination of the information to anyone other than counsel working on the case and court officers. Tymko v. K-Mart Discount Stores, Inc., 75 A.D.2d 987, 429 N.Y.S.2d 119 (4th Dept. 1980); Snyder v. Parke, Davis & Company, 56 A.D.2d 536, 391 N.Y.S.2d 579 (1st Dept. 1977); McLaughlin v. G.D. Searle, Inc. 38 A.D.2d 810, 328 N.Y.S.2d 899 (1st Dept. 1972). Such safeguards traditionally have been applied to trade secrets or other confidential information.

[5][6] Mr. Lanzoni principally argues that he is entitled to an order of protection because his likeness is a trade secret. In the seminal case of Ashland Management v. Janien, 82 N.Y.2d 395, 604 N.Y.S.2d 912, 624 N.E.2d 1007 [1993] the Court of Appeals extensively discussed what constitutes a trade secret. A trade secret is a formula, pattern, device or compilation of information which is used in one's business and which gives the user an opportunity to obtain an advantage over competitors who do not know or use it. Trade secrets generally pertain to customer lists or information related to manufacturing or business operation. It is paramount that the trade secret actually be a secret. Ashland Management v. Janien, *supra*; Freeman v. Li Zhu, 209 A.D.2d 213, 618 N.Y.S.2d 316 (1st Dept. 1994).

[7] Mr. Lanzoni makes his living from placing

his likeness into the public arena. He cannot legitimately argue that his likeness is a trade secret or otherwise confidential.

[8] In Snyder v. Parke, Davis & Company, *supra*, the appellate division, first department left open the possibility that judicial safeguards could be employed to protect material other than trade secrets if wide dissemination of the discovery was subject to abuse. This court recognizes that depositions are not a public component of a civil trial. They are conducted in private, with no right of the public to be present without permission of the parties. Scollo v. Good Samaritan Hospital, 175 A.D.2d 278, 572 N.Y.S.2d 730 (2nd Dept. 1991). Adequate reason exists to exclude the public from depositions because our broad discovery rules permit inquiry into matters that may be irrelevant and/or inadmissible at trial. Westchester Rockland Newspapers, Inc. v. Marbach, 66 A.D.2d 335, 413 N.Y.S.2d 411 (2nd Dept. 1979). The private nature of a deposition has been used as a basis to exclude the press from the deposition room. The press has no first amendment right to be present at a deposition. For the same reasons, the court may prohibit the parties from distributing a deposition transcript to the press or news media. Scollo v. Good Samaritan Hospital, *supra*; Westchester Rockland Newspapers, Inc. v. Marbach, *supra*.

*305 While the court clearly has the authority to prohibit plaintiffs from distributing any videotape or transcript of a deposition to the media press, the remaining question is whether defendant has made an adequate showing on this motion to warrant such relief. In the reported decisions concerning orders of protection prohibiting dissemination of discovery materials to the press there was clear evidence that the press had an actual interest in obtaining the materials. Scollo v. Good Samaritan Hospital, *supra*; Westchester Rockland Newspapers, Inc., *supra*. Defendant's motion is supported only by an attorney's affirmation. It relies solely upon the defendant's celebrity status as the basis for such an order. There is not a scintilla of evidence in this record that the plaintiffs actually intend to sell the tape to the media. The fact that defendant is a celebrity does not, in itself, automatically entitle him to an order of protection. At a minimum defendant should show the court that there is an actual risk that the discovery materials will be widely disseminated to the public. This he has failed to do.

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Accordingly the motion is denied. This is without prejudice to renewal if defendant can demonstrate that the deposition transcript and videotape will actually be disseminated to the media.

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