

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff

and

THERESA CHASE,

Intervenor-Plaintiff

- v -

1:04-CV-1091
(GLS/RFT)

WHITE HOUSE HOME FOR ADULTS and
RONALD HERTZEL

Defendants.

**RANDOLPH F. TREECE
U.S. MAGISTRATE JUDGE**

ORDER

This case is a sexual harassment case. The Defendants seek court intervention to resolve a discovery issue. Dkt. No. 18, Defs.' lt. dated March 11, 2005. Defendants have sought from the Plaintiff Theresa Chase a series of financial information, records, and tax returns, which she objects to disclosing. Dkt. No. 20, Defs.' lt. dated March 14, 2005. At the behest of the Court, Chase provided reasons why such records should not be disclosed and further provided the Court with case precedents on the topic. Dkt. No. 19, Pl.'s lt. dated March 14, 2005. Upon receiving the Chase's letter-memorandum, the Court gave the Defendants an opportunity to respond and provide court precedents in support of their position. On March 17, 2005, Defendants served and filed a letter-memorandum on this contested discovery issue. Thereafter, on March 17, 2005, a telephonic hearing on the record was held in which the Court rendered a ruling. Said ruling is incorporated by

reference into this Order. This Order shall succinctly set forth the ruling of this Court.

The Defendants seek Chase's tax returns and financial information to determine whether the Intervenor Plaintiff is suffering from dire financial conditions; said questionable financial condition would support Defendants' contention that her need for money was the motivating factor for initiating this lawsuit. Chase challenges such a demand for disclosure arguing that the information is not relevant nor germane to the subject of this case. The Court found that the Defendants did not meet their burden in gaining this personal financial information. Furthermore, the Court found Defendants' cited precedents not on point. See Defs.' lt-mem., dated March 17, 2005.

The courts in grappling with whether tax returns and personal financial information should be disclosed has to balance the policy of liberal discovery set forth in the Federal Rules of Civil Procedure against the policy of maintaining the confidentiality of these documents, as indicated in the Internal Revenue Code. United States v. Bonanno Organized Crime Family, 119 F.R.D. 625, 627 (E.D.N.Y. 1988); S.E.C. v. Cymaticolor Corp., 106 F.R.D. 545 (S.D.N.Y. 1985). Routine disclosure of tax returns is not the rule but the exception. Cymaticolor Corp., 106 F.R.D. at 547 (the courts are reluctant to direct such disclosure). Courts within the Second Circuit have found this personal financial information to be presumptively confidential or cloaked with a qualified immunity. Dew v. 39th Street Realty, 2001 WL 388053, at *2 (S.D.N.Y. Apr. 16, 2001) ("There is a qualified immunity with respect to the disclosure of tax returns."); McMenamin v. Kingson, 1999 WL 47199, at *3 (S.D.N.Y. Feb. 2, 1999) (presumptively confidential). For all intents and purposes, the request for personal financial information is functionally indistinguishable from a request for tax returns thus, this Court applies the same standard to determine whether the documents in question here should be disclosed.

The Courts within the Second Circuit have fashioned a reasonable standard to be employed before directing the release of tax information. This standard has a two prong test: (1) the court must find that the requested tax information is relevant to the subject matter of the action; and (2) that there is a compelling need for this information, because the information contained therein is not otherwise readily obtainable. Hazeldine v. Beverage Media, LTD., 1997 WL 362229, at * 4 (S.D.N.Y. June 25, 1997) (finding the request for this information overly broad); Gummowitz v. First Federal Sav. & Loan Ass'n of Roanoke, 160 F.R.D. 462, 463 (S.D.N.Y. 1995) (citing Cymaticolor Corp., 106 F.R.D. at 547); Russell v. Del Vecchio, 764 F.Supp 275 (E.D.N.Y. 1991); United States v. Bonanno, 119 F.R.D. at 627.

The Court found that the Defendants did not meet either prong for the Plaintiff's tax returns or her personal financial information. Tu'shan Hamm v. Potamkin, 1999 U.S. Dist. Lexis 5948, at *3 (S.D.N.Y. Apr. 28, 1999). However, the Plaintiff also had a burden in this discussion and that was providing alternative sources for this information if the demand was found to be relevant. See Patrick Carter Ass., Inc. v. Rent Stabilization Assn'n of N.Y. C. Inc., 1992 WL 167387, at *2 (S.D.N.Y. Jun. 26, 1992) ("While the party seeking discovery of tax returns bears the burden of establishing relevance, the party resisting disclosure should bear the burden of establishing alternative sources for the information.") (citations omitted). Plaintiff advised the Court that they had already shared with the Defendants Plaintiff's W-2 forms for the relevant period and pay stubs. Furthermore, the Plaintiff will be subject to a deposition where the Defendants will be able to inquire into the Plaintiff's financial conditions. Both of these disclosure provide a reasonable alternative sources for the information. The Defendants are not without other options to gain this information nor are they limited or restrained by these alternative sources. They may conduct their

own investigation and, for example, secure a Lexis-Nexis financial report on the Plaintiff, which should reveal an accurate portrayal of the Plaintiff's financial condition.

In conclusion, the Defendants failed to meet their burden and what financial disclosure has occurred thus far is adequate. The Defendants' motion is therefore denied.

IT IS SO ORDERED

Dated: March 18, 2005
Albany, New York



RANDOLPH E. TREECE
United States Magistrate Judge