

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

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|-------------------------------|---|--------------------------|
| FIX WILSON YARD, INC., et al. |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | Docket No. 2008-CH-45023 |
| CITY OF CHICAGO, et al. |) | |
| |) | |
| Defendants. |) | |

**RENEWED MOTION TO QUASH WILSON YARD
DEFENDANTS' SUBPOENAS OF JANUARY 12, 2009**

NOW COME the owners/operators of UptownUpdate.com and WhattheHelen.com, and the Buena Park Neighbors, (collectively, "Anonymous Speakers") and move this Court to quash the subpoenas issued by Defendants on January 12, 2009, seeking the identities of anonymous online speakers and other related information and for a protective order preventing any such future discovery. Anonymous Speakers bring this motion pursuant to Illinois Supreme Court Rule 201(c), the First Amendment to the United States Constitution, and Article I, section 4, of the Illinois Constitution. In support of their motion, the Anonymous Speakers incorporate the accompanying memorandum and state as follows:

**The Information and Materials Sought Pursuant to the Subpoenas
Do Not Satisfy the Requirements of Rule 201**

The Defendants' subpoenas should be quashed as they fail to comply with the discovery limitations provided by Illinois Court Rule 201 which only authorizes discovery of material relevant to a claim or defense and further restricts discovery "as justice requires, denying, limiting, conditioning, or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression." See Rules 201(a), (c)(1). First, Defendants have effectively launched a prohibited "fishing expedition" aimed at outing critics of their project, making no attempt whatsoever to tailor the subpoenas to avoid the inherent First Amendment

harm, instead targeting the Anonymous Speakers solely on the basis of their political speech. See, e.g., People v. White, 116 Ill. 2d 171, 177 (Ill. 1987) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.”). Second, much of the material sought in the subpoenas is readily available to Defendants, either by reviewing Buena Park Neighbors’ website or by asking Plaintiffs directly for the information. See, e.g., Leeson, 190 Ill. App. 3d at 368 (discovery quashed where relevancy was minimal and compliance would have required defendant to spend significant time and effort searching computer records); King v. Burlington Northern & Santa Fe Ry. Co., 538 F.3d 814, 819 (7th Cir. 2008) (denial of discovery deadline not an abuse of discretion where information was publicly available). Third, the material sought by Defendants’ subpoenas are not relevant to any valid defense, both because Defendants have conceded that much of it is not relevant to those theories and because the theories themselves are not valid. Leeson v. State Farm Mut. Auto. Ins. Co., 190 Ill. App. 3d 359, 366 (Ill. App. 1989) (in order to protect against such undue and unreasonable outcomes, litigants’ “right to discovery is limited to disclosure of matters that will be relevant to the case at hand[.]”). Finally, the subpoenas are massively overbroad, seeking material unrelated to the defenses raised by the Defendants. See, e.g., People ex rel. General Motors Corp. v. Bua, 37 Ill.2d 180, 193-94 (Ill. 1967) (discovery in automobile accident case seeking manufacturer records for subsequent year models – amounting to a “catch-all demand for production of documents without the slightest degree of specificity” – “ought not have been ordered without some preliminary showing of materiality and relevancy.”).

Defendants Cannot Overcome the First Amendment Qualified Privilege Protecting Speakers’ Right to Remain Anonymous.

Defendants’ subpoenas must also be quashed on the separate grounds that Defendants cannot overcome the First Amendment qualified privilege that protects anonymous speakers. Litigants seeking the identities of non-party speakers must, among other things, consider the following factors:

- (1) whether the subpoena seeking the information was issued in good faith and not for any improper purpose,
- (2) whether the information sought relates to a core claim or defense,
- (3) whether the identifying information is directly and materially relevant to that claim or defense, and
- (4) whether information sufficient to establish or to disprove that claim or defense is unavailable from any other source.

Doe v. 2theMart.com, 140 F. Supp. 2d 1088, 1095 (W.D. Wash. 2001). The information sought in Defendants' subpoenas do not in fact relate to any core defense and is either publicly available or available directly from the Plaintiffs. Moreover, the subpoenas are oppressive as they target political opponents and others exercising opinions about the Defendants' development project, a matter of public concern. See, e.g., Doe v. 2theMart.com, 140 F. Supp. 2d 1088, 1093 (W.D. Wash. 2001) ("If Internet users could be stripped of that anonymity by a civil subpoena enforced under the liberal rules of civil discovery, this would have a significant chilling effect on Internet communications and thus on basic First Amendment rights. Therefore, discovery requests seeking to identify anonymous Internet users must be subjected to careful scrutiny by the courts.").

CONCLUSION

For the foregoing reasons and those in the accompanying memorandum, the Anonymous Speakers respectfully move this Court to quash Defendants' subpoenas of January 12, 2009, and enter a protective order barring Defendants from seeking any material regarding the identities of, or any materials from, Anonymous Speakers.

Date 8/21/09

Respectfully submitted,

By



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