

Renee S. Beach, et al. v. Gregory M. Parker, et al.
Case No. 2021-CP-25-00392
THE PARKER'S DEFENDANTS' MOTION TO DISQUALIFY ATTORNEY MARK TINSLEY

EXHIBIT A

MARCH 16, 2022
HEARING TRANSCRIPT

COURTESY OF
LUNA SHARK MEDIA

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF HAMPTON

4 Renee S. Beach, Phillip Beach,
5 Robin Beach, Savannah Tuten,
6 and Seth Tuten,

7 Plaintiffs,

8 vs.

9 Transcript of Record
10 2021-CP-25-00392

11 Gregory M. Parker, Gregory
12 M. Parker, Inc. d/b/a Parker's
13 Corporation, Blake Greco,
14 Jason D'Cruz, Vicky Ward,
15 Max Fratoddi, Henry Rosado,
16 and Private Investigation
17 Services Group, LLC.,

18 Defendants.

19 March 16, 2022
20 Hampton, South Carolina

21 B E F O R E:

22 The HONORABLE BENTLEY PRICE

23 A P P E A R A N C E S:

24 Mark Tinsley, Representing the Plaintiffs
25 Deborah B. Barbier, Representing the Defendants
Ralph E. Tupper, Representing the Defendants

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, III

1 THE COURT: All right. Whose motion is it?

2 MR. TINSLEY: Judge, I had a motion, a
3 Rule to Show Cause.

4 THE COURT: All right.

5 MR. TINSLEY: It relates to subpoenas
6 that were issued on some third parties in this
7 case. Mr. Tupper has filed a motion to quash
8 those subpoenas.

9 THE COURT: Okay.

10 MR. TINSLEY: I don't think -- I don't
11 really have strong feelings who goes first,
12 because I think it's the same issue. If they want
13 to argue the motion to quash first, I'm okay with
14 that.

15 THE COURT: Let me hear what you want
16 first.

17 MR. TINSLEY: Sure.

18 THE COURT: Obviously, I know what they
19 want, which is to not give you what you want.

20 MR. TUPPER: Yes, sir.

21 THE COURT: Problem solved.

22 All right. What are you looking for,
23 Mr. Tinsley?

24 MR. TINSLEY: We filed a civil conspiracy
25 outrage case. The case arises out of a handling

1 of a lawsuit, a wrongful death lawsuit, and
2 specifically alleges, among other things, that
3 Greg Parker, the Parkers entity, which is doing
4 business as Parker's Corporation, Blake Greco, who
5 is Mr. Parker's general counsel, Jason D'Cruz, who
6 is also a lawyer with the firm of Baker Hostetler,
7 two PIs named Max Fratoddi and Henry Rosado and
8 their company, Private Investigation Services
9 conspired to inflict severe emotional distress and
10 waged a campaign of emotional warfare against the
11 plaintiff in the boat crash wrongful death case.

12 THE COURT: Okay.

13 MR. TINSLEY: And they did this among
14 other ways by employing -- they say that I
15 conjured this term, social media night fighter.
16 But Wes Donahue, who is a political consultant who
17 on his website says he is, in fact, a social media
18 night fighter. They employed these political
19 firms to -- that often engage, according to their
20 website, in crisis management for companies and
21 driving down the leftist pundite, which I assume
22 that's me.

23 THE COURT: That's you.

24 MR. TINSLEY: Yes, sir.

25 So in this scheme, they did a number of

1 things. One of the things is, we allege that the
2 lawyer, along with Mr. Parker, engaged in
3 fraudulent conduct to obtain among other things,
4 the mediation presentation video that was a part
5 of the boat crash case.

6 THE COURT: Okay.

7 MR. TINSLEY: It was produced pursuant to
8 Rule 8, confidentiality. We had filed in response
9 to the motion to dismiss an affidavit of
10 Professor Michael Bersie that basically says that
11 Rules 3.3 and 4.4 would be violated by conduct,
12 and that conduct would be outside the scope of any
13 representation if what we allege in the complaint
14 is true. If the lawyers conspired with Mr. Parker
15 to release the video that contained the private
16 images of the plaintiffs in this case, which is
17 the family of Mallory Beach, in addition to, we
18 also allege, that they abused process by serving a
19 subpoena on the Beaufort County Sheriff's
20 Department to obtain photographs of Mallory's dead
21 body, which they also released.

22 Now, they make some -- I don't want to
23 argue their motion, but they make some arguments
24 that these photographs have been publicly
25 released. They've never been publicly released.

1 There were different agencies involved in the
2 recovery of Mallory's body. The different
3 agencies -- photos were taken from different
4 perspectives, they have different gloves, and
5 Parker's is the only entity that received the
6 Beaufort County Sheriff's Department video and
7 photographs.

8 In November -- well, I can back up
9 because they bring this up.

10 In September, I believe, I got a call
11 from a Dateline producer, and in that call she
12 says, essentially, there's these two PIs, Max and
13 Henry, and they destroyed Sandy Smith's iPad.
14 This case has lots of attention. The Beach case
15 has lots of attention. When I call it the Beach
16 case, I mean the boat crash case. And so I often
17 get calls from different people.

18 In addition to that, she -- this producer
19 told me that a woman by the name of Vicky Ward, a
20 reporter from New York, had purchased the Beach
21 file. I didn't know what she meant. It didn't
22 make any sense to me. And so a couple of days
23 later, I picked up the phone and I called Vicky
24 Ward. I didn't get an answer. I hang on my cell
25 phone, and, coincidentally, the receptionist tells

1 me Vicky Ward is on the phone, and I said, I
2 understand you bought the file. Because I'm
3 thinking, there are lots of documents filed in the
4 Beach case, why on earth would anybody buy these
5 public documents. And she tells me that she got
6 the documents from the law firm of BakerHostetler,
7 which is the law firm that Mr. D'Cruz works for.
8 Mr. D'Cruz is --

9 THE COURT: Spell his last name.

10 MR. TINSLEY: D, apostrophe, C-r-u-z.

11 THE COURT: Thank you. And it's Greco
12 and D'Cruz?

13 MR. TINSLEY: Greco and D'Cruz. Greco is
14 here. This is Mr. Greco. Both of them attended
15 the mediation. Both of them participated in the
16 mediation. Just like today, Mr. Greco has been
17 here for most of the proceedings in the case.

18 In the documents, it relates that
19 Miss Ward told me, among other things, that
20 Parker's had an agenda. I said, I have an agenda
21 too. My agenda is to hold these people
22 accountable. She said, well, they're dirty,
23 they're slimy. I don't have anything to do with
24 them other than I bought their documents. And I'm
25 coming to South Carolina and I want you to sit for

1 my sizzle reel, which apparently is a trailer that
2 they put together to be able to sell a project
3 like a documentary to, in this case, Discovery
4 Channel. I said I would agree to meet with her.
5 I met with her in Beaufort to Taylor Vaux's office
6 shortly thereafter to find out what she had.

7 Now, what she had was, the first time I
8 learned, she had a copy of my mediation video.
9 She also had copies of the lawyer notes from the
10 depositions, which would include things like when
11 the officer was being deposed we would go off the
12 record for the officer's phone number. She has
13 those notes. I didn't take any of those notes. I
14 don't have any of those notes.

15 She had none of the information that
16 relates to Parker's actual conduct, but she had
17 lots of information that related to the Murdaughs
18 and related to things other than that would cast
19 Parker or Parker's Corporation in a bad light.

20 Ultimately, I did not sit for her sizzle
21 reel.

22 And, at that time, I raised the issue of
23 the breach of the confidentiality under the ADR
24 rules to Mitch Griffith, who then was representing
25 Parker's. But in the last few days, Parker's has

1 terminated Mr. Griffith's representation.

2 I did not believe that there was any
3 issue about the disclosure of those confidential
4 materials other than, does she have them. If she
5 has them, this is where they came from, because I
6 gave to them -- to Parker's under the auspices of
7 the mediation.

8 So I filed a Rule to Show Cause. I go to
9 California in early December, days before we're
10 going to -- two days before we're going to argue
11 the motion. For the first time, I get a memo
12 that's typical dog-bite defense. It's not my dog.
13 We didn't do it. Okay. So I withdraw the motion
14 without prejudice because I believe they did do
15 it.

16 And then shortly thereafter, the sizzle
17 reel is publicly released. So the video comes
18 out. The video contains six different scenes.
19 It's a part of the Rule to Show Cause in the
20 record in the Beach case. You can see the still
21 photographs of the mediation scene, the still
22 photograph from the sizzle reel that was played.
23 They were created by us. They were our private
24 property. They were produced under the auspices
25 of Rule 8, the confidentiality of the mediation.

1 In addition, the video depicted Mallory's
2 dead body from Beaufort County Sheriff's
3 Department photos.

4 At that point in time, I had evidence
5 that, in fact, Miss Ward had these documents. And
6 this lawsuit was fired as a result of Parker's
7 releasing that information, or causing that
8 information to Vicky Ward for purposes of harming
9 the Beaches, to effect their resolve in continuing
10 the litigation in the boat crash case.

11 I learned that Wes Donahue was the person
12 that was hired, initially, by Greg Parker, now
13 they claim D'Cruz or BakerHostetler. Mr. Parker,
14 as I understand, was highly involved in the
15 discussions with Wes Donahue. They continuously
16 texted back and forth about what they were going
17 to do, so I sent a subpoena to Wes Donahue.

18 THE COURT: Remind me who he is again.

19 MR. TINSLEY: Wes Donahue is the night
20 fighter.

21 THE COURT: Okay.

22 MR. TINSLEY: And he owns a company
23 called the Laurens Group and Push Digital.

24 THE COURT: All right.

25 MR. TINSLEY: And then I also served

1 subpoenas on two of the other employees,
2 Christine Purvis, I believe, who is also highly
3 involved because apparently Mr. Donahue and
4 Mr. Parker couldn't get along.

5 When I served the subpoenas initially --
6 now, the Rule to Show Cause and the motion to
7 quash relate to the second subpoenas, and I'll get
8 to that in a second.

9 When I initially served the subpoenas,
10 Sandy Senn calls me and says, I've been hired to
11 represent Wes Donahue, Push, and the
12 Laurens Group. We've got the documents together.
13 We don't mind producing it. I'm in the Senate.
14 It's going to take a little bit of time, and have
15 you served the other parties? I said, there are
16 no parties. Greco, for instance, wouldn't come
17 out of his office to be served. He was avoiding
18 service in Georgia. Same with Mr. D'Cruz.
19 Ultimately, we got everybody served. I did copy
20 the opposing counsel. I did also -- I reissued
21 the subpoenas, and immediately emailed them on
22 contemporaneously to Susie McWilliams, who, by
23 then, had said she's going to be representing all
24 the Parker entities from Nexsen Pruet.

25 THE COURT: How soon a time was that?

1 Because how long was Mr. Griffith on the case?
2 You said, just up until recently.

3 MR. TINSLEY: Yes, sir. He had been on
4 the case almost three years.

5 THE COURT: And he just got fired? As
6 far as you know.

7 MR. TINSLEY: He's no longer representing
8 Parker's in the Beach -- in the boat crash case.

9 THE COURT: Got it.

10 MR. TINSLEY: So we had the discussions.
11 And, at that point, Miss Senn tells me, the person
12 I really want, the PI who was doing lots of this
13 work -- because Mr. Parker wanted three things; he
14 wanted video of Paul Murdaugh drinking, partying,
15 and talking about killing that girl, and I assume
16 that's Mallory Beach, and he wanted to prove that
17 Buster Murdaugh was gay. And so they hired Sara
18 Capelli.

19 Now, Sara Capelli has her own private
20 investigation firm. It's called Inquiry. We have
21 filed the Rule to Show Cause on those subpoenas.
22 It was an error that it wasn't filed on both, but
23 they have moved to quash both subpoenas to
24 Wes Donahue and Sara Capelli. So we served Sara
25 Capelli.

1 Almost immediately, Sara Capelli sends me
2 a friend request on Facebook and calls me, and she
3 has the most extreme case of diarrhea of the mouth
4 of any person I've ever talked to. She begins to
5 explain all the details of what Parker's was hired
6 to do -- I mean, what Parker's hired her to do,
7 what they hired the two PIs, Max and Henry, to do,
8 and that their intent was to paint a picture that,
9 because Buster Murdaugh was gay, he must have been
10 involved in the murder of Steven Smith. And
11 because they had this narrative that they were
12 pushing out that the Murdaughs were terrible
13 people, and they may very well be terrible people,
14 but because they are terrible people, then a jury
15 ought not find against him in the boat crash.
16 That is what I'm told that Mr. Parker wanted the
17 information related to Buster Murdaugh for, as
18 well as the information related to Paul's
19 drinking, partying, talking about killing that
20 girl.

21 So we served subpoenas on the PI, Sara
22 Capelli, as well as Wes Donahue. They are broad.
23 Admittedly, they are broad. And specifically what
24 I have asked for, among other things, is all of
25 the video -- as I understand Sara Capelli was

1 videoing Paul Murdaugh in excess of a year. She
2 video -- she was videoing Paul Murdaugh within
3 three days of his murder, and I'm told that these
4 videos have been turned over to SLED. So we've
5 asked for all of the photographs and all of the
6 surveillance.

7 In addition to her surveillance, they had
8 also caused a camera to be placed at the driveway
9 to Moselle, so there's video there. So we've
10 asked for those.

11 We've asked for the time and the billing
12 records, because those records will indicate when
13 these activities started, parts of what they did,
14 and, significantly, one of the things that Miss
15 Capelli did was, she bought alcohol for some
16 underaged people in Columbia in order to get
17 information about Paul Murdaugh. And we believe
18 that Parker's reimbursed her for those charges.
19 There's a photograph. This happened in November
20 of '20. This is Miss Capelli at a bar and I'm --
21 I've got copies I'm willing to hand up.

22 THE COURT: Did anyone confirm that there
23 was a camera placed at the entrance of the
24 Moselle?

25 MR. TINSLEY: The AG's office has

1 confirmed that SLED has received some video that
2 was taken by Miss Capelli.

3 THE COURT: All right.

4 MR. TINSLEY: Whether it was that camera
5 or it was shot by a hand-held camera, I do not
6 know.

7 THE COURT: All right.

8 MR. TINSLEY: So this photograph, and I
9 apologize, I thought when I printed it -- this is
10 Miss Capelli in the striped jumpsuit there with
11 her mouth open. In the foreground, you see there
12 is a camera with a selfie. This underage girl
13 took this photograph because -- and this is a copy
14 of Miss Capelli's card. She bought this girl
15 alcohol. She then went and followed another girl
16 to a gas station who is also underage and bought
17 her alcohol. And so we've asked for the billing
18 and the time records and the receipts for
19 reimbursement because we think that Parker's
20 reimbursed her for buying alcohol for minors to
21 get information about Paul.

22 Now, Miss Capelli was never identified in
23 the Beach crash case, the boat crash case as a
24 witness. They've never disclosed that there was
25 any video taking of Paul. All this was in secret.

1 And, in addition, the Wes Donahue, all
2 that's in secret. Now, ultimately, Wes Donahue is
3 quoted in, I believe the Post and Courier, that he
4 had a difference of opinion of strategic decision
5 with Greg Parker and they parted ways. And so we
6 have asked for all of that information as well.
7 In her --

8 THE COURT: What does Miss Capelli allege
9 that she does? Her card says she's in South
10 Carolina, licensed and bonded for court-admissible
11 evidence. She alleges that she is a --

12 MR. TINSLEY: She says that the scope of
13 her job was very limited, that she was limited to
14 videoing Paul and following Buster to establish
15 that Buster was gay.

16 THE COURT: Got it.

17 MR. TINSLEY: Sandy Senn -- I apologize,
18 Your Honor.

19 February 15, 2022, Sandy Senn wrote a
20 letter to me. She copied Miss McWilliams on it
21 and it documents that, as she has represented to
22 me by phone, Push Digital employees quickly
23 gathered the items that were responsive to my
24 subpoena and that they have no objection to
25 producing those items, the things I've asked for.

1 Among other things I've asked for, the phone
2 information, text messages, I would offer this as
3 the next court's exhibit. It's already in the
4 record. I think they attached it in their motion
5 to quash.

6 I am told as late as yesterday afternoon
7 that Sara Capelli, likewise has collected
8 everything. She has no objection to producing it.
9 She wants to produce it. She wants an order that
10 allows her to produce it.

11 Now, one of the things that's been
12 asserted, and it was initially asserted by Miss
13 McWilliams was that there was a confidentiality
14 agreement in Mr. Parker's employment agreement
15 with Push Digital and maybe Sara Capelli. I am
16 told that Wes Donahue did not sign the agreement.
17 I've yet to see a copy of any signed agreement by
18 anybody that would claim to make these materials
19 confidential.

20 But, Judge, the subject of this action is
21 these actions. These attorneys' involvement. And
22 what you get from the affidavit of Michael Bersie
23 is, is that if the things that we allege are true,
24 then these people are acting outside the scope of
25 any legal representation in violation of the

1 rules.

2 And so there is no questions that we are
3 entitled to, base on the allegations, this
4 discovery. They've not made any particularized --
5 or a showing of particularized arm.

6 And under the case of
7 Hamm vs. South Carolina Public Service, which is
8 312 SC 238, a party objecting to -- Rule 26 allows
9 for broad pretrial discovery. The rules did not
10 differentiate between information that is private
11 or intimate and to which privacy interest attach.
12 Thus the rules often allow extensive intrusion
13 into affairs of both litigants and third parties.
14 When discovery process threatens to become abusive
15 or creates a particularized harm to a litigant or
16 a third party, the rules allow the trial judge
17 broad latitude in limiting the scope of discovery.
18 The person requesting protection -- that's them --
19 to squash the subpoena, even though the third
20 parties served with the subpoenas have no
21 objection to producing the materials. They've
22 collected the materials.

23 So to the extent they argue, well, you
24 only gave us eight days. I gave you eight days on
25 the second subpoena because you already told me

1 you had the stuff ready to go. And the only
2 reason I issued the second subpoena was because
3 Cheryl Shoun, who claimed at the time -- who is
4 also with Nexsen Pruet -- claimed to be
5 representing Sara Capelli. That never was true,
6 but she represented in an email that she was
7 representing Sara Capelli. Sara Capelli said she
8 was not. It was always Parker's and Parker's
9 lawyer and Parker's objecting to the production of
10 these documents.

11 But they have the burden of showing good
12 cause that a particularized harm will result if
13 the challenge in discovery is happening. The only
14 thing that they've alleged is this generalized
15 idea that, well, this is attorney work product, or
16 this is attorney/client privilege because
17 attorneys were involved. Attorneys wear multiple
18 hats. The Moore case -- Moore vs. Weinberg makes
19 it very clear. There's two cases in Moore.
20 There's a Court of Appeals case and the Supreme
21 Court opinion that affirmed the Court of Appeals.
22 In Moore vs. Weinberg, Mr. Moore was owed a debt
23 from Mr. Weinberg. Mr. Weinberg sent a letter of
24 protection saying once I settle, we'll pay you the
25 \$92,000 we owe you. He didn't pay. He forgot it.

1 And so Cam Lewis then sued Mr. Weinberg
2 for, among other things, negligence, conversion,
3 and civil conspiracy.

4 And in the Court of Appeals case, the
5 Court noted that civil conspiracy may be inferred
6 from the nature of the acts committed, the
7 relationship of the parties, the interested of the
8 alleged conspirators, and the other relevant
9 circumstances because civil conspiracy is by its
10 very nature covert, clandestine, and usually not
11 provable by direct evidence. There's a whole lot
12 of latitude allowed in the evidence that we are
13 able to use to establish the civil conspiracy.
14 Likewise, there has to be latitude in allowing us
15 to be able to discover the civil conspiracy.

16 This evidence is critical to the
17 discovery of that. This evidence will show that,
18 among other things. They conspired to violate the
19 rules, to violate the law, to harm the Beaches.
20 That is their only job. They have not made any
21 showing of any harm that will result as a result
22 of the production of these documents, and I would
23 ask the Court to enforce the subpoenas.

24 Now, I filed this as a Rule to Show
25 Cause. In the matter of Carl Hendricks, which is

1 319 SC 465, it's a Supreme Court opinion. In that
2 case the Court noted -- the Supreme Court issued a
3 Rule to Show Cause -- I'm sorry. The Supreme
4 Court found Mr. Hendricks in contempt for failing
5 to respond to a subpoena. I believe that the only
6 course of action, when a person fails to respond
7 to the subpoena, is to file a Rule to Show Cause.
8 I'm not necessarily asking for these people to be
9 held in contempt or put in jail. I do think the
10 Court has the power to do that. I just want the
11 materials. And I'd like the Court to enforce the
12 subpoena and allow me to get these materials so we
13 can begin to move forward.

14 Thank you, Your Honor.

15 THE COURT: All right. Thank you very
16 much.

17 MR. TUPPER: Your Honor, if I could just
18 get -- this is Ned Tupper for the defendants in
19 this case. One of the things that I find -- I was
20 going to be in a position to argue the motion to
21 dismiss. The motion to dismiss, I know we're not
22 hearing, because yesterday, I think it is, maybe
23 the day before, we received an affidavit he's
24 referred in this motion purportedly telling the
25 Court what the law is as far as this case is

1 concerned. So I'm not prepared today, nor is he,
2 to argue that.

3 However, I would suggest that, perhaps,
4 the best thing for judicial economy is to -- after
5 you hear this motion, perhaps to hold off ruling
6 on it, and then let us argue the motion to dismiss
7 and we could hear both of them -- or you could
8 decide both of them in one day, one proceeding.

9 THE COURT: All right.

10 MR. TUPPER: Miss Barbier is going to
11 make the argument with respect to this particular
12 motion.

13 THE COURT: All right. Yes, ma'am.

14 MS. BARBIER: Good morning, Your Honor. May
15 it please the Court? I appreciate the opportunity to
16 be here today to represent Mr. Greg Parker, Parker's
17 Corporation, Mr. D'Cruz, who is Mr. Parker's personal
18 counsel. He's with BakerHostetler. And Greg Greco
19 who is general counsel for Parker's Corporation. I'm
20 here to represent all three of them.

21 THE COURT: Will you spell your last name
22 for us, please.

23 MS. BARBIER: It's B-a-r-b-i-e-r.

24 THE COURT: Thank you.

25 MS. BARBIER: Thank you.

1 Your Honor, we appreciate the opportunity
2 to address the issuance by Mr. Tinsley of these
3 defective and deficient subpoenas which seek to
4 invade the attorney/client and work product
5 privileges by seeking information which is
6 completely not discoverable under our rules, and
7 which is not owned by the people from which he has
8 subpoenaed them. The owner of those materials and
9 the owner of the privilege lies with Mr. Parker
10 who was the client.

11 This is, Your Honor, essentially, a brand
12 new case that was filed back on December 3rd of
13 2021. We have -- it's an offshoot, Your Honor,
14 from the Beach vs. Murdaugh case, and we have,
15 suffice it to say, substantial concerns about the
16 method by which the plaintiff's counsel has gone
17 about bringing this case, how he's issued these
18 subpoenas, the manner in which he apparently
19 solicited privileged information that he just
20 described for this Court from individuals who
21 worked for my client, and the drastic sanction of
22 contempt that he seeks in asking this Court to
23 impose today for the witnesses who didn't respond
24 for these subpoenas.

25 And I wanted to make it clear,

1 Your Honor, that, first of all, these objections
2 go to the subpoenas. They are not meant in any
3 way, shape, or form to be directed or cast any
4 dispersions on the Beach family. We, along with
5 the rest of world, grieve their daughter's tragic
6 loss, and this is not about them. We do, however,
7 believe that our clients have no responsibility
8 for this loss. And we're here today to argue
9 these subpoenas whether they're proper and whether
10 they're appropriate. And the other issues will be
11 for a jury to decide on a different day.

12 And, as I said, Your Honor, Mr. Tinsley
13 filed this case against not just Parker's
14 Corporation and Mr. Parker, but against their
15 lawyers -- his lawyers, and the company's lawyers.
16 And he essentially alleges that they conspired to
17 give Vicky Ward, a reporter who is making a
18 documentary about the Murdaugh murders a mediation
19 video. And as I understand it, Your Honor, this
20 is a mediation video that Mr. Tinsley created and
21 it is quite defamatory against Mr. Parker. So the
22 idea that he would disseminate it to the media is
23 absurd. But that is, again, for a different day.
24 We're not here to talk about the merits, but I
25 just want to leave it at that.

1 He has made, again, a number of
2 assertions today about the facts as he believes
3 them to be. And those assertions that he made
4 only reiterate to me that he's a witness in this
5 case, if this case goes forward, and that he -- we
6 will likely move to disqualify him as counsel for
7 that reason. But, again, that's an issue for
8 another day.

9 If the case goes forward in discovery,
10 Your Honor, we will get to the bottom of how
11 mediation video landed into the hands of somebody
12 like Miss Ward. We have intended to do a great
13 deal of discovery on that issue if this goes
14 forward. We will be seeking to find out who had
15 access to the video, who was shown the video, how
16 many reporters were shown the video by the
17 plaintiffs. You know, I don't read People
18 magazine very often, Your Honor, but I picked it
19 up not long ago and Mr. Tinsley gave an exclusive
20 interview to People magazine about this case. So
21 there's been a lot of interaction with the media
22 on the part of the plaintiffs. But, again, we're
23 not here to try this case today.

24 Mr. Tinsley first made these allegations,
25 which we believe are baseless in the under case

1 and a Rule to Show Cause. He filed the Rule to
2 Show Cause alleging the same exact allegations
3 that we, somehow, leaked this video to Miss Ward.
4 And then when the hearing was scheduled and he was
5 going to be required to submit proof of that
6 allegation, he withdrew the Rule to Show Cause.

7 If I had been their counsel at that time,
8 the time he withdrew the Rule to Show Cause, I
9 would have moved for costs. That wasn't done.
10 But that's neither here nor there.

11 Now, he's decided to sue Mr. Parker and
12 Mr. Parker's lawyers who are simply doing their
13 jobs and defending the allegations made in the
14 Beach lawsuit. And, Your Honor, I believe it's a
15 transparent attempt to gain advantage in the
16 Beach vs. Murdaugh case and to push some type of
17 settlement, but I can assure you it has had the
18 exact opposite effect on my clients.

19 But, Your Honor, needless to say,
20 whenever someone sues lawyers, there are going to
21 be objections based on the privilege, because at
22 the heart of our system of justice is the
23 attorney/client work product privileges. They're
24 sacrosanct, and it is in every lawyer's best
25 interest for those to be guarded very closely.

1 I want to make it perfectly clear to
2 Your Honor that to the extent Mr. Tinsley has
3 already come into possessions of privileged
4 information, we are asking this Court today to
5 immediately order him to return it to its rightful
6 owner. Rule 1.6 of the Rules of Professional
7 Conduct prohibits lawyers from soliciting
8 privileged information. So, you know, I can't
9 call up another lawyer's paralegal and ask them to
10 provide me with privilege information that they
11 have due to their work relationship with that
12 lawyer. That's just not within our rules.

13 The subpoenas that he's issued, Your
14 Honor, seek information from people that
15 Mr. Parker hired in his personal capacity to do
16 work for him, and they were hired under the
17 attorney/client and work product privileges. They
18 were hired pursuant to agreements that solidified
19 that confidentiality of that agreement by having
20 confidentiality provisions. And the information
21 is clearly, clearly privileged.

22 Your Honor, we have submitted a brief in
23 support of our motion to quash. And I don't know
24 if Your Honor has had an opportunity to read it,
25 but, just briefly, I'll hit a few of the high

1 points. The United States Supreme Court has
2 recognized and has long since recognized that one
3 of the realities is that attorneys often rely on
4 the assistance of investigators and other agents
5 and the compilation of materials in preparation of
6 their defense. And I think that's fairly common,
7 has been common since I've been practicing law for
8 the last 30 years. We hire investigators. We
9 hire consultants. We hire non-testifying expert
10 witnesses. We hire paralegals. We hire law
11 clerks. They are all covered under the privilege.

12 And so, Your Honor, the fact is that all
13 of the information that he seeks, if not all 95
14 percent of it, is seeking -- he's seeking work
15 product information. And, as you know, work
16 product is broken down into fact work product and
17 opinion work product. Opinion work product
18 encompasses and attorney's mental thoughts, an
19 attorney's impressions. The very tasks that he
20 asks these investigators to do consist of mental
21 impressions. And, of course, that was done under
22 the guise of his attorneys. And so, Your Honor,
23 it's clearly not discoverable. The only time that
24 opinion work product is discoverable at all is
25 when it's a very rare and extraordinary

1 circumstance. There is no rare or extraordinary
2 circumstance here. He hasn't named one.

3 As far as fact work product, he would
4 have to show substantial need for it. He hasn't
5 shown a substantial need at all for it. The only
6 need that he has is that he's filed a lawsuit
7 based on conjecture that he can't prove the
8 allegations to, and that doesn't qualify, Your
9 Honor, of substantial need.

10 The privilege, Your Honor, clearly,
11 pursuant to the case law, extends to third
12 parties. Third parties include investigators.
13 The cases that we've cited in our brief, and there
14 are a number of them, but I'll just cite to
15 briefly AVX Corp vs. Horry Land Company, that's a
16 Fourth Circuit case -- it's a district of South
17 Carolina case, November of 2010. And then United
18 States vs. Cobolt and that's a Second Circuit
19 case.

20 But, Your Honor, these cases all hold and
21 stand for the principle that the privilege extends
22 to third-parties agents and the communications
23 between those agents and the attorneys and the
24 clients is privileged.

25 Mr. Tinsley makes a great deal of

1 argument regarding the fact that we can show no
2 harm. There is no greater harm than invading the
3 attorney/client work product privileges. That's a
4 substantial harm. That is irreversible harm. And
5 once, if Your Honor allows him to obtain these
6 materials, that cannot be enough. That would
7 taint the rest of this litigation and create an
8 issue that could not be fixed.

9 And so, Your Honor, we rely, not only on
10 the attorney/client work product privileges but we
11 rely upon the confidentiality provisions in the
12 agreements these investigators signed. We rely
13 upon the fact that these subpoenas are overly
14 broad and overly burdensome. If Your Honor was to
15 require these people to produce these materials,
16 we would have to have somebody go through every
17 line and look to see whether they could be
18 redacted or whatnot. It would cost tens of
19 thousands of dollars for that process to occur. I
20 don't know if Mr. Tinsley is willing to undertake
21 that cost.

22 But the bottom line is, he is on a
23 fishing expedition. He believes that he has, you
24 know, this civil conspiracy that he needs to prove
25 and he believes that it occurred but he has no

1 proof of it. And if he did have proof of it, he
2 would have gone forward in his Rule to Show Cause
3 hearing in the other case.

4 Instead he decided to file a lawsuit and
5 then just throw out discovery requests to
6 everybody that he could think of to find evidence
7 to support that. And that, of course, Your Honor,
8 is not appropriate. And we would -- we're going
9 to be asking you to dismiss this case outright.
10 It's a very, very slippery slope, and a very bad
11 precedent to allow lawyers to sue other lawyers in
12 a litigation because they don't like the fact that
13 those lawyers weren't willing to settle with them
14 and those lawyers weren't willing to write them
15 the check that they wanted. That's a very, very
16 bad precedent, and I hope that Your Honor, once we
17 are able to argue the motion to dismiss in full,
18 will throw out this case in total.

19 I'll be happy to answer any questions,
20 Your Honor, and I would rely on the case law that
21 we cited in our brief as well.

22 THE COURT: All right. Thank you very
23 much.

24 Yes, sir.

25 MR. TINSLEY: Briefly, Your Honor,

1 Miss Barbier said the first time that Vicky Ward
2 issue was raised was in the Rule to Show Cause.
3 That's not true. If you look at page 2 of their
4 motion to dismiss, they acknowledge that on
5 November the 12th, 2020, Parker's filed a motion
6 in the Beach case, the boat crash, seeking an
7 order allowing it to use the video to support its
8 pending motions on the ground that the plaintiffs
9 had waived any right to confidentiality by
10 disseminating the video to at least one third
11 party.

12 By the time we get to the hear in
13 Lexington in front of Judge Hall, they know that
14 we know about Vicky Ward, and they withdraw that
15 motion. They withdrew the motion asking the court
16 to declare this material that they had released to
17 be confidential.

18 And in Page 4 of Michael Bersie's
19 affidavit, paragraph 7 he says that if Mr. D'Cruz
20 and Mr. Greco believed that the confidentiality
21 imposed by Rule 8 of the ADR rules and the
22 mediation agreement had been entirely waived by
23 the appearance in public media, assuming that I
24 gave it to somebody -- which their argument is
25 tantamount to, every article, every post of the

1 thousands or hundreds of thousands that have
2 occurred that show a photograph of Mallory, that
3 photograph is in this mediation video, then you
4 waived it all. That's not what happened.

5 But nonetheless, Mr. Bersie gives the
6 opinion, and it's filed in this case -- I can hand
7 the Court up a copy of the affidavit well -- that
8 under Rule 3.4(c), that the lawyers had to openly
9 assert that waiver. They had to get a ruling on
10 that waiver or they act outside the scope of any
11 representation.

12 These cases -- Cory Fleming was indicted
13 18 counts yesterday. I understand he's been
14 arrested and that he will be arraigned this
15 afternoon.

16 If there's one thing this case has shown
17 us is that lawyers can do bad things. And just
18 because you're a lawyer, you're not cloaked with
19 immunity that they would like a lawyer to be
20 cloaked with when they're violating the rules of
21 professional conduct, violating the rights of
22 third parties in violation of those rules, and
23 violating the rules of the court. And under 4.4,
24 if they use the abuse of process, they are not
25 within the scope of their representation.

1 She boldly asserts that what I've asked
2 for is all owned by Mr. Parker.

3 The subpoenas have an attachment, each
4 are essentially the same. There are six parts.
5 I've asked for all the surveillance video. I've
6 asked for all of either Sara Capelli or Wes
7 Donahue's time records and the billing statements,
8 their billing statements. I've asked to produce
9 any materials that they provided Greg Parker or
10 Mr. D'Cruz or Mr. Greco, to produce all their text
11 messages because I am told that there are
12 extensive text messages with Mr. Parker that
13 Wes Donahue has including saying, I'm not going
14 down on this alone.

15 I've asked for the production of any
16 non-disclosure agreements, which they've cited a
17 portion of. I have yet to see any non-disclosure
18 agreement that they have. And I've also asked for
19 the receipts that they collected of itemized
20 charges that they submitted for reimbursement. I
21 haven't gotten any of that. I don't believe any
22 of those materials are owned by Mr. Parker.
23 Certainly the text messages are not owned by
24 Mr. Parker.

25 I agree that the attorney/client

1 privilege is important, but our U.S. Supreme Court
2 has recognized the crime fraud exception, which
3 has been recognized in civil cases applying to
4 torts. There's the Cobbs case, vs. Specialize
5 Care, which is 437 F.Sup 2d 632, it's a 2005
6 opinion, it cites the U.S. Supreme Court
7 recognizing that the purpose of the crime fraud
8 exception to the attorney/client privilege is to
9 assure that the seal of secrecy between a lawyer
10 and a client does not extend to communications
11 made for the purpose of getting advice for the
12 commission of a fraud or crime. The
13 attorney/client privilege must necessarily protect
14 the confidences of wrongdoers but the reason for
15 the protection the centrality of the open client
16 and attorney communication to proper functioning
17 of our adversary system of justice ceases to
18 operate at a certain point, namely where the
19 desired advice refers to future wrongdoing.

20 If anything in these materials addresses
21 attorney/client privilege or legal advice in any
22 way, it relates to future wrongdoing, and that
23 that would not be recovered by the attorney/client
24 privilege or attorney work product, and that the
25 Court should allow the production of those

1 documents. At a minimum, the Court would
2 entertain an in-camera review of the documents.

3 But, again, they've not shown any
4 particularized harm. They've not submitted a
5 privilege log. They've not submitted anything
6 that would indicate that any attorney/client
7 relationship was being invaded, any advice had
8 been sought, or anything else other than this
9 generalized, hey, we're lawyers, we are cloaked
10 with immunity, just take our word for it. We
11 don't steal, we don't lie, we don't cheat, and we
12 don't try to hurt other people, and that's just
13 not the rules, Your Honor.

14 THE COURT: All right.

15 MR. TUPPER: Your Honor, could I just be
16 hear one second? My thought at the beginning
17 about holding off on ruling on this because a good
18 portion of what Mr. Tinsley was arguing was coming
19 from a document that he submitted, an affidavit,
20 in regard to the motion to dismiss, which we're
21 not discussing today.

22 THE COURT: I understand that.

23 MR. TUPPER: Thank you.

24 MS. BARBIER: Judge, I just briefly would
25 like to reply to his comments regarding the crime

1 fraud exception. The crime fraud exception
2 requires a prima facie showing that a crime has
3 been committed. There is no prima facie showing
4 that a crime has been committed.

5 The complaint consists of bare bone
6 allegations that there's some conspiracy that
7 existed to release this video. He has not even
8 identified who in particular released the video on
9 behalf of -- or who was directed to by Mr. Parker
10 or Mr. Parker's attorneys. There is no -- it
11 fails under Rule 9(b), I mean, you know, outright.
12 But let alone proving or showing, a prima facie
13 showing of crime or a fraud. There's no such
14 showing, so that would be inapplicable.

15 Thank you.

16 THE COURT: All right. Thank you very
17 much.

18 MR. TINSLEY: To Mr. Tupper's point about
19 arguing the motion to dismiss, their motion to
20 dismiss, if we're going to respond to my
21 affidavit, they allege that the document had been
22 produced to Mandy MacNee. They allege facts that
23 are outside the complaint. It's not a motion to
24 dismiss. They've turned it into a summary
25 judgment motion.

1 There is no judicial economy in holding
2 any ruling to argue this motion to dismiss,
3 because, first and foremost, it's not a motion to
4 dismiss.

5 In the Cobbs case, the court noted, its
6 previous -- it's mentioned previously, plaintiff
7 claims that the defendants conspired with their
8 in-house counsel to deprive him of the full value
9 of his stock by fabricating a story about his
10 resignation. If true, the conduct in the instant
11 case would fall within the expanded definition of
12 the crime fraud exception that has been recognized
13 by courts to apply to intentional torts.

14 Because of the things that are outlined
15 in Mr. Bersie's affidavit, they are not within the
16 course and scope of any endorsed legal
17 representation when a lawyer counsels somebody or
18 participates in a fraud, a crime, or an
19 intentional tort.

20 And so I think we made it. I don't see
21 any point in arguing a motion to dismiss. I'm
22 happy to schedule it at the Court's -- I was at
23 the burn center until late last night in a
24 deposition in Augusta, otherwise I would have
25 tried to be ready to hear the motion to dismiss on

1 two day's notice, or whatever it is I've had.

2 THE COURT: All right. Anything further?

3 MS. BARBIER: Beg the Court's indulgence,
4 Your Honor.

5 Your Honor, one of the things we would
6 ask the Court to do is order these parties that
7 have been subpoenaed to produce all of the
8 information to my clients, then my clients can
9 review all of the information and make specific
10 privilege assertions.

11 The only reason, Your Honor, that we did
12 not demand the return of the information once this
13 came to light is that a subpoena had been issued
14 and we did not want it to appear as if we were
15 trying to circumvent the legal process.

16 But we would ask the Court to require the
17 individuals subpoenaed to produce that information
18 to us, return it to us immediately because we are
19 the privilege holder, and it does rightfully
20 belong to Mr. Parker.

21 THE COURT: All right. Do you have any
22 objection to that, Mr. Tinsley.

23 MR. TINSLEY: Judge, for the reasons that
24 I argued, I don't believe that they will have any
25 privilege. And so, I guess, generally, that is my

1 objection.

2 THE COURT: All right.

3 MS. BARBIER: I would also ask Your Honor
4 to order Mr. Tinsley to the extent he has -- he's
5 clearly already spoken to people who are not at
6 liberty and not allowed to speak to him pursuant
7 to the confidentiality and the work product
8 privilege and attorney/client privilege. But to
9 the extent he has materials, we would ask that
10 those be returned immediately to us and that he
11 not retain any copies.

12 THE COURT: Do you have anything?

13 MR. TINSLEY: I don't know what she's
14 talking about. I've been interviewed extensively
15 by the governing bodies of this state.

16 If you want to report me, I suggest you
17 report me.

18 I don't know what she's talking about.
19 If she wants to be specific, but, as late as
20 yesterday afternoon, even when Sara Capelli and
21 her lawyer called me on my cell phone, and he
22 knows that she's calling and talking to me about
23 the scheduling of this, so she can get an order
24 that protects her to produce so she can get back
25 to work, according to her, I don't think that that

1 violates any rules, especially given the fact that
2 her lawyer knows that the communication is being
3 had.

4 But report me.

5 THE COURT: All right. Anything further?

6 MS. BARBIER: Nothing further. Thank
7 you, Your Honor.

8 THE COURT: I'll take it under advisement
9 and I'll give you a ruling by Friday.

10 MS. BARBIER: Thank you, Your Honor.

11 MR. TINSLEY: Thank you, Your Honor.

12 (The hearing was concluded.)
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CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, III for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the ***hearing of the captioned case, relative to appeal, in the **** Family Court for *** County, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

March 28, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

