

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

In the Matter of:

JOHN C. DEPP, II,

Petitioner,

v.

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION, BENJAMIN WIZNER, and  
ANTHONY ROMERO,

Respondents,

For an Order to compel response to out-of-  
state subpoenas served in the action entitled  
*John C. Depp, II v. Amber Laura Heard*, No.  
CL2019-0002911 in the Circuit Court of  
Fairfax County in the Commonwealth of  
Virginia.

Index No. 154545/2021

Part 37

Hon. Arthur F. Engoron

**NOTICE OF ENTRY**

**PLEASE TAKE NOTICE**, that attached is a true and correct copy of the Decision and Order on Motion, dated July 22, 2021, and duly entered in the office of the County Clerk, New York County on August 2, 2021, with respect to Motion Sequence 001.

Dated: New York, New York  
August 3, 2021

Respectfully submitted,

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*Attorneys for Amber Laura Heard*

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

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JOHN DEPP II,

Petitioner,

- v -

AMERICAN CIVIL LIBERTIES UNION FOUNDATION,
BENJAMIN WIZNER, ANTHONY ROMERO,

Respondents.

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INDEX NO. 154545/2021
MOTION DATE 05/10/2021
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to COMPEL

Upon the foregoing documents, it is hereby ordered that the petition is granted in part and denied in part.

Petitioner, John Depp II, commenced this special proceeding to enforce a series of out-of-state subpoenas issued by petitioner's New York counsel, pursuant to CPLR 3119, to respondents, the American Civil Liberties Union Foundation ("the ACLU") and its employees, Benjamin Wizner and Anthony Romero. Petitioner asserts that compliance with the subpoenas is material and necessary to the prosecution of a defamation action currently pending in the Circuit Court of Fairfax County in the Commonwealth of Virginia ("the Virginia Action").

In a related legal proceeding in the United Kingdom ("the UK Action"), Ms. Heard claimed that she donated her entire \$7 million divorce settlement to the ACLU and non-party Children's Hospital of Los Angeles and thus she had no financial motive to falsely claim that Mr. Depp had abused her during their marriage. Petitioner now seeks discovery from the ACLU and its employees to confirm whether Ms. Heard has in fact donated the entire \$7 million settlement to charity.

The Court of Appeals addressed the requirements for enforcement of non-party subpoenas in Kapon v Koch, holding:

We conclude that the subpoenaing party must first sufficiently state the "circumstances or reasons" underlying the subpoena (either on the

face of the subpoena itself or in a notice accompanying it), and the witness, in moving to quash, must establish either that the discovery sought is “utterly irrelevant” to the action or that the “futility of the process to uncover anything legitimate is inevitable or obvious.” Should the witness meet this burden, the subpoenaing party must then establish that the discovery sought is “material and necessary” to the prosecution or defense of an action, i.e., that it is relevant.

23 NY3d 32, 34 (2014).

Petitioner has satisfied the initial burden of stating the circumstances or reasons underlying the subpoena. With the exception of one category of demanded documents, the ACLU has failed to demonstrate that the information sought is utterly irrelevant to the action.

However, this Court finds that the documents requested “concerning Ms. Heard’s role as an ‘ambassador’ for the ACLU” are irrelevant to petitioner’s defamation case, which pertains only to the statements Ms. Heard made in her Op-Ed, and petitioner has failed to otherwise demonstrate why such documents are material and necessary to his prosecution.

ACLU’s argument that the subpoena is improper as Mr. Depp could obtain the information from another source (i.e. Heard) is unavailing, as “[CPLR] [s]ection 3101(a)(4) imposes no requirement that the subpoenaing party demonstrate that it cannot obtain the requested disclosure from any other source.” Kapon v Koch, 23 NY3d 32, 38 (2014) (holding “so long as the disclosure is relevant to the prosecution or defense of an action, it must be provided by the nonparty”).

Finally, this Court finds that the confidentiality protections proposed by Depp for any trade secrets or proprietary business information produced by the ACLU or its representatives are sufficient to protect the interests of respondents.

The Court has considered respondents’ remaining arguments and finds them to be unavailing and/or non-dispositive.

Thus, for the reasons stated herein, the petition is granted in part and denied in part, and respondents are ordered to comply with all subpoenas with the exception of those provisions of the subpoenas duces tecum that requests documents pertaining to Ms. Heard’s role as a brand ambassador for the ACLU.

7/22/2021

DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED  
 GRANTED  DENIED

NON-FINAL DISPOSITION  
 GRANTED IN PART  OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT  REFERENCE