


LAUREN KANAREK,	:	SUPERIOR COURT OF NEW
	:	JERSEY LAW DIVISION – MORRIS
<i>Plaintiff,</i>	:	COUNTY
v.	:	
	:	
MICHAEL BARISONE; SWEETGRASS	:	DOCKET NO.: MRS-L-2250-19
FARMS, LLC; RUTH COX; JOHN	:	
DOES 1-30; ABC CORPORATIONS 1-	:	ORDER AND REASONS
20,	:	
	:	
<i>Defendants,</i>	:	

BEFORE THE COURT is Defendant Barisone’s Motion to Hold in Contempt, Motion to Compel, and Motion to Amend Answers. Also pending before the Court is Defendant Sweet Grass Farms’ Motion to Hold in Contempt and Motion to Compel. Also pending is Plaintiff Cross-Motion to Quash and Cross-Motion for a Protective Order. The Court, having considered the matter and any opposition; and after hearing oral arguments of counsel; and for the reasons set forth in the attached Statement of Reasons; and for good cause shown;

IT IS on this 14th day of November, 2022, **ORDERED** as follows:

1. Defendant Barisone’s Motion to Hold in Contempt is hereby **DENIED**;
2. Defendant Barisone’s Motion to Compel is hereby **DENIED**;
3. Defendant Barisone’s Motion to Amend is hereby **GRANTED**;
4. Defendant Sweet Grass Farm’s Motion to Hold in Contempt is hereby **DENIED**;
5. Defendant Sweet Grass Farm’s Motion to Compel is hereby **DENIED**;
6. Plaintiff’s Cross-Motion to Quash is hereby **GRANTED**; and
7. Plaintiff’s Cross-Motion for Protective Order is hereby **DENIED**; and

IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order



Hon. Louis S. Sceusi, J.S.C
Retired, T/A on Recall

Opposed
 Unopposed

STATEMENT OF REASONS**Lauren Kanarek, Plaintiff****v.****Michael Barisone, Sweet Grass Farms, LLC, and Ruth Cox, Defendants****MRS-L-2250-19**

Pending before the Court is Defendant Barisone's Motion to Hold in Contempt, Motion to Compel, and Motion to Amend Answers. Also pending before the Court is Defendant Sweet Grass Farms' Motion to Hold in Contempt and Motion to Compel. All of these Motions are opposed by Plaintiff. Plaintiff has also filed a Cross-Motion to Quash and a Cross-Motion for a Protective Order.

I. BACKGROUND

This present matter arises out of a criminal matter that occurred on August 7, 2019. On August 7, 2019, Michael Barisone (hereinafter "Defendant Barisone" or "Barisone") confronted Lauren Kanarek (hereinafter "Plaintiff") and shot towards her fiancé on the porch of the farmhouse at 411 W. Mill Road, Long Valley, New Jersey. Plaintiff was lawfully on the subject porch. During this confrontation, without warning or provocation, Defendant shot Plaintiff in the chest multiple times at point blank range. Defendant was arrested and charged with multiple counts of attempted murder, assault and battery, and weapons offenses. Defendant went to trial, where he was recently found guilty of attempted murder, but not criminally responsible due to insanity. Sweetgrass Farms (hereinafter "Defendant SGF" or "SGF") was the owner of the farm and facility where the subject shooting occurred.

On August 24, 2022, Defendant Barisone filed a Motion to Hold Plaintiff's Mother (Kirby Kanarek, who is a non-party witness) in Contempt. Defendant Barisone alleges Plaintiff's Mother was served a subpoena on July 13, 2021 for which Defendant Barisone sought out copies of

transcripts Defendant believes Ms. Kirby was in possession of. Specifically, Defendant alleges Ms. Kirby is in possession of written transcripts of illegal audio recordings her family made at SweetGrass Farm in 2019. Plaintiff's Mother argues that Defendant Barisone's subpoena is overly broad, much of the information Defendant seeks was already gathered and produced to Defendant by the Morris County Prosecutors, and that this motion should therefore be quashed. In the alternative, Plaintiff argues that a protective order is appropriate should this Court refuse to quash any portion of Defendant's subpoena.

Defendant SGF has similarly filed a Motion to Hold Plaintiff's Father (Jonathan Kanarek, who is a non-party witness) in Contempt. Defendant SGF alleges that Plaintiff's Father was served a subpoena on July 26, 2022, for which Defendant SGF sought out "written communications related to the incident that occurred on August 7, 2019 which forms the basis of Plaintiff's Complaint." Plaintiff argues that "none of the materials sought in the subpoenas are relevant to any matter at hand, and are extremely burdensome for the non-party elderly parents of Plaintiff, and Defendants already have the materials for which they are seeking." Plaintiff again argues that this motion should be quashed, and to the extent any portion of Defendant SGF's subpoena is not quashed, a protective order is appropriate.

Further, Both Defendants have joined together in a Motion to Compel Plaintiff's in-person deposition. Specifically, Defendants argue remote depositions can and should be used "when all parties agree to use them, but in this instance, the parties do not agree." Defendants anticipate that Plaintiff's deposition will be a lengthy and exhibit intensive affair, and that a remote deposition would be more difficult. Plaintiff argues that she resides out of state in Florida, and the time and cost savings alone from conducting a remote deposition far outweigh any alleged detriment from not conducting the deposition in person. Plaintiff alleges Defendants fail to establish any prejudice

or burden from proceeding remotely, which has undoubtedly become default standard for conducting depositions that past two and a half years.

Lastly, Defendant Barisone has filed a Motion for Leave to File an Amended Pleading. Specifically, Defendant seeks to make corrections to certain responses in the Answer he initially filed. Defendant alleges that, those changes are needed due to the passage of time and further development of this matter in which the facts have changed in material ways. For example, Defendant argues that Barisone is no longer being held in jail because the criminal trial has concluded, which does not reflect in his Answer. Further, Defendant seeks to add a new counterclaim pursuant to the New Jersey Wiretapping and Electronic Surveillance Control Act, N.J.S.A. 2A:15A-1. Plaintiff argues that Defendant's motion must be denied because the counterclaim is barred by the statute of limitations, and the counterclaim does not relate back to the original pleading.

II. ANALYSIS

Here, Defendant Barisone and Defendant SGF's Motion to Hold in Contempt is denied. The Court finds that Defendants' subpoenas served on Plaintiff's parents are overly broad and therefore unreasonable. For example, as Plaintiff persuasively points out, Defendant's mission to obtain "any and all electronic communications" between Plaintiff's mother and father, for an undefined period of time, is far too vague of a request. Plaintiff's argument that the contents of the subpoenas are overbroad, if valid, would indeed constitute justification for noncompliance, and hence, Plaintiff's parents have a right to test that issue before being ordered to comply, or before being held in contempt for failure to comply.

On the facts germane to this issue, the Court finds no reason to hold either Plaintiff's mother or father in contempt. Manifestly, the subpoena of Kirby Kanarek and Jonathan Kanarek, issued by counsel for Defendants is hereby quashed as overbroad and unduly burdensome. Defendants may, however, re-serve subpoenas more specific in scope as to the documents it seeks to have produced, limited to issues and time periods relevant to the issues raised in this litigation. Defendants shall have ten (10) days upon receipt of this Order to resubmit more specific requests, and Kirby and Jonathan Kanarek shall have ten (10) days upon receipt of such requests to comply. Given the Court's granting of Plaintiff's Motion to Quash, Plaintiff's Motion for a Protective Order is manifestly moot and therefore denied.

As for Defendants' motion seeking to compel the in-person deposition of Plaintiff, this motion is hereby denied. As Plaintiff importantly points out, the COVID-19 pandemic has forced depositions across the country to proceed virtually for the past two and a half years. Although the cause for concern relating to the uprise in remote depositions has ultimately settled down, this Court recognizes its undoubtedly appealing nature. For example, virtual depositions are unquestionably more cost efficient to all parties involved, and allow for greater availability of deposition dates as no traveling need be done. Given that Plaintiff resides in Florida and raises concerns health concerns from traveling due to her weakened physical state, it logically follows that forcing Plaintiff to appear for an in-person deposition would serve no legitimate purpose, yet to the contrary, cause much harm. Indeed, even Defendants themselves point out in its moving papers that "SGF anticipates that [Plaintiff's] deposition will be a lengthy and exhibit intensive affair." See Def. Brief p. 5. This further supports Plaintiff's position that deposition should be done remotely. Defendants have proffered no evidence of undue prejudice, or any other support for that matter for which Plaintiff must be compelled to appear in person for depositions. Having failed to

sufficiently plead their position to this Court's satisfaction, Defendants' motion to compel must manifestly be denied.

Finally, Defendant Barisone has filed a motion seeking leave of Court to amend his pleading-- this motion must be granted. Because the achievement of substantial justice is the fundamental consideration, the denial of such a motion in the "interests of justice" is appropriate only when there would be undue prejudice to another party. Franklin Medical Associates v. Newark Public Schools, 362 N.J. Super. 494, 506 (App. Div. 2003). Further, when claims asserted in an amended pleading arise "out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." R. 4:9-3.

In the instant case, Plaintiff challenges the allowance of the amendment on the grounds that it introduces a new cause of action after expiration of the New Jersey Wiretapping and Electronic Surveillance Control Act's statute of limitations, and thus, the count fails to state a claim and would immediately be subject to dismissal. The inquiry here is whether Defendant's claim as set forth in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the Original pleading. If it did, the amendment relates back to the date of the Original complaint, and the statute of limitations is inapplicable.

The Court concludes that the amendment does not state a new cause of action. Defendant's claim against Plaintiff is, among other things, for damages suffered due to alleged negligent or intentional acts that resulted in Defendant's emotional distress. Indeed, during Oral Argument on November 4, 2022, counsel for Defendant alleged Plaintiff "bugged" the premises of Sweet Grass Farms with illegal listening devices to "drive [Defendant] crazy." The Court finds that Defendant's allegations pursuant to the Wiretapping Act refer to the general pool of culpable acts with respect to

Defendant's emotional distress claims that Defendant pled in his Original Counterclaim. Thus, Defendant's Wiretapping claim relates back to the Original pleading date of March 2, 2020.

Stated more precisely, Defendant contends that Plaintiff's alleged bugging of the premises occurred on or about July 2019. Even assuming the Act's limitation date was two years from when the cause of action arose, as Plaintiff argues to this Court, the statute of limitations *still* would not have expired until July 2021. However, Defendant filed the Original pleading in March 2020. In short, because the Court finds the Wiretapping Act relates back to the Original pleading, Defendant is well within the confines of the statute to add a related claim. For these reasons, the Court grants Defendant's leave to amend his responsive pleadings, and accordingly rejects Plaintiff's opposition.

III. CONCLUSION

For the foregoing reasons Defendant Barisone's Motion to Hold in Contempt and Motion to Compel are hereby **DENIED**. Defendant Barisone's Motion to Amend is hereby **GRANTED**. Defendant Sweet Grass Farms' Motion to Hold in Contempt and Motion to Compel are hereby **DENIED**. Plaintiff's Cross-Motion to Quash is hereby **GRANTED**. Plaintiff's Cross-Motion for a Protective Order is hereby **DENIED**.