

THE SOUND OF SILENCE

“Non-party attorney Robert Satran, Esq. also indicated he had no specific recollection of the closing and that even if he did any material contained therein is protected by the attorney client privilege.”

*Wells Fargo Bank v Confino
Supreme Court, Nassau County,
Index No. 7963/16*

We are pleased to share this victory with our clients and colleagues, and look forward to the opportunity to continue to share good news.



MILLER LAW OFFICES, PLLC is a general practice law firm with an emphasis in Corporate Law and Commercial Litigation in New York.

MILLER LAW OFFICES,
141 Washington Avenue;
Suite 101
Lawrence, NY 11559
Office (516) 569-0440
FAX: (516) 224-0249
millerlawofficespllc.com

Before our client stopped practicing law several years ago, his practice focused primarily on real estate closings. It was not uncommon for Mr. Satran to conduct dozens of closings in any given month.

Among his clients were Mr. & Mrs. Sellers whom he represented when they sold their home to Mr. & Mrs. Buyers. At the closing, Sellers’ mortgage from Wells Fargo did not get satisfied for reasons that are still unclear and in dispute. However, Sellers continued to pay the mortgage even after the closing. Sometime later, Wells Fargo learned that the house had been sold without paying off the mortgage - a breach of the loan agreement - so it commenced a law suit against both the Buyers and Sellers to foreclose on the open mortgage.

Mr. Satran received a subpoena from the Buyers’ attorney to testify. He wrote back and advised the Buyers’ lawyer that: (i) he had no recollection of the transaction, (ii) he retained no documents from the closing, and most importantly, (iii) anything he *might* remember was protected by the attorney-client privilege. Buyers’ lawyer was unsatisfied with Satran’s refusal to be deposed so he filed a motion, not merely to compel Mr. Satran’s testimony but also seeking to hold him in contempt of court. That is when Satran turned to Miller Law Offices, PLLC for help.

Most of the ‘privileges’ (spousal, clergy, physician, counselor, etc.) are evidentiary rules designed to balance the need for truthful fact finding against certain societal norms and benefits. As explained in N.Y.Prac. § 5:1, Evidence in New York State and Federal Courts, the privileges “are based on the idea that certain kinds of desirable professional and personal relationships are aided by free disclosure of sensitive information made with enforceable assurances of confidentiality.” Thus, we are willing to sacrifice a little bit of the “whole truth” at a trial so that a person can speak freely with his minister, wife, doctor, or therapist, without fear that his words will be repeated later in court.

The attorney-client privilege is the first among equals of the protected privileges. Citing another court’s holding, we pointed out to the Trial Judge that this is “the oldest among common law evidentiary privileges” and a bedrock of American jurisprudence. *Delta Financial Corp. P. Morrison*, 829 N.Y.S.2d 877, 884, 15 Misc.3d 308, 316 (N.Y.Sup., 2007).

The right to an attorney is enshrined in the US Constitution, as in: “*You have the right to remain silent... You have the right to talk with an attorney...*”. (Why so many criminals on *Law and Order* do not heed these warnings is beyond us.) It hardly requires comment that the right to remain silent means very little if your lawyer can be compelled under threat of contempt to repeat everything you have told him behind closed doors later at a deposition or trial.

As we explained to the Trial Judge, moving for sanctions or contempt should not be undertaken lightly since an adverse finding carries “enduring consequences”. *Storelli v. Storelli*, 101 A.D.3d 1787, 1788, 958 N.Y.S.2d 249, 250 (4th Dep’t., 2012). For this reason, a party is required to exhaust other, ordinary discovery tools before resorting to such draconian relief.

The Trial Court not only denied the Buyers’ motion to hold Satran in contempt but also granted our cross-motion to quash the subpoena in its entirety. In his written decision, the Trial Judge remarked:

The Court finds that defendant's assertions and proof are not factually or legally sufficient to support the mandates of CPLR 2308 and Judiciary Law 753(a)(5). The court notes non-party counsel Robert Satran promptly responded to defendant’s subpoena and sent defendants counsel correspondence dated March 28, 2017 indicating he turned his entire file over to the ... defendants because he stopped practicing law several years ago and that he was not currently in possession of any material related to the above referenced matter.

The Buyers’ right to conduct discovery cannot not come at the expense of Satran’s professional responsibility to guard his clients’ secrets. The former concerns only the instant case; the latter, however, implicates on the very nature of the attorney-client relationship for everyone.

We are pleased that Satran was fully vindicated, and we are honored to have played a part in reaffirming the sacred bond between lawyers and their clients.