

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| ESTATE OF ESTHER KLIEMAN, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | Civil Action No. 04-1173 (PLF) |
| |) | |
| PALESTINIAN AUTHORITY, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM OPINION AND ORDER

On September 19, 2013, the Court ordered the British Broadcasting Corporation (the “BBC”) to provide to plaintiffs a copy of a 2003 BBC documentary and certain related outtakes, accompanied by one or more affidavits attesting to the authenticity of those materials. Order, Dkt. No. 210 (Sept. 19, 2013); see Estate of Klieman v. Palestinian Auth., 293 F.R.D. 235 (D.D.C. 2013). In its decision, the Court rejected the BBC’s argument that the “reporter’s privilege” precluded compelled disclosure of these materials. Estate of Klieman v. Palestinian Auth., 293 F.R.D. at 243. Although the Court recognized the BBC’s interest in protecting the recordings from discovery, it found that the BBC’s interest was outweighed by the plaintiffs’ interest in disclosure, due to the relevance of the materials to plaintiffs’ case and the lack of reasonably available alternative sources of that information. Id.

The BBC has moved for reconsideration, or in the alternative, for certification for immediate appeal and for a stay of the Court’s decision. BBC Motion for Reconsideration, Dkt. No. 216 (Oct. 17, 2013). For the reasons discussed below, the Court will hold the BBC’s motion

in abeyance pending resolution of a related discovery matter and will stay its September 19, 2013 Order during that time.

Magistrate Judge John M. Facciola, who is overseeing discovery in this case, recently issued an order directing the defendants to provide “all documents in their possession, custody, or control, which discuss any payments to families of persons denominated as martyrs and include the words ‘Al Aqsa.’” Order at 6, Dkt. No. 226 (Jan. 6, 2014). As the BBC notes, the information to be discovered pursuant to Magistrate Judge Facciola’s Order could serve as an alternative source of information to the BBC video recordings. See BBC’s Supplemental Mem., Dkt. No. 228 (Jan. 9, 2014). If so, it may be appropriate for the Court to reconsider its decision that the reporter’s privilege does not apply.

Plaintiffs argue that these documents “may not *necessarily* be a reasonable alternative source for the documents sought by the Plaintiffs from the BBC.” Plaintiffs’ Response at 3, Dkt. No. 229 (Jan. 14, 2014) (emphasis added). The plaintiffs also note that Magistrate Judge Facciola’s order is not final, as defendants have filed a motion for reconsideration of that decision. Id. at 2-3; see Defendants’ Motion for Reconsideration, Dkt. No. 230 (January 17, 2014).

In light of the uncertainty as to whether alternative sources of information are reasonably available to plaintiffs, the Court finds that it is appropriate to hold the BBC’s motion for reconsideration in abeyance until it is clear what Al-Aqsa related materials – if any – will be disclosed by the defendants in discovery.

Accordingly, it is hereby

ORDERED that the BBC’s motion for reconsideration, or in the alternative, for certification for immediate appeal and for a stay [Dkt. No. 216] shall be HELD IN ABEYANCE

until such time as (a) the discovery ordered in Magistrate Judge Facciola's January 6, 2014 Order is complete, or (b) the January 6, 2014 Order has been vacated or otherwise amended; it is

FURTHER ORDERED that if and when the discovery ordered in Magistrate Judge Facciola's January 6, 2014 Order is complete, the plaintiffs shall file a status report within fourteen days of completion informing the Court of the materials disclosed; and it is

FURTHER ORDERED that [Dkt. No. 210] this Court's September 19, 2013 Order is STAYED pending resolution of [Dkt. No. 216] the BBC's motion for reconsideration, or in the alternative, for certification for immediate appeal and for a stay.

SO ORDERED.

DATE: February 21, 2014

/s/_____
PAUL L. FRIEDMAN
United States District Judge