

J.M.K

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.

Justice.

TRIAL/IAS PART 14
NASSAU COUNTY

MICHAEL J. GROSSBARDT,

Plaintiff(s),

-against-

ALLSTATE INSURANCE COMPANY,

Defendant(s).

MOTION #001
INDEX#17466/2002
MOTION DATE:
March 31, 2004

The following papers read on this motion:

Notice of Motion.....	1
Answering Affidavits.....	1
Reply Affidavits.....	1

Upon the foregoing papers, it is ordered that the defendant's motion for an order compelling the plaintiff to give testimony with respect to certain communications with plaintiff's wife, and/or precluding plaintiff from offering testimony at trial regarding same, is determined as hereinafter set forth.

The instant application arises out of the plaintiff's refusal to answer certain questions at an examination before trial citing spousal immunity. The defendant now moves to compel the plaintiff to answer certain questions relating to conversations with his wife.

The plaintiff commenced this action, alleging breach of an insurance contract for failing to indemnify the plaintiff for certain losses sustained by a fire. The defendant alleges that the fire in question was intentionally set by the plaintiff's spouse.

In the instant matter, the Court finds that the spousal privilege does not permit a plaintiff to claim affirmative relief and at the same time refuse to disclose information bearing upon his right to maintain his action. (See, *Prink v Rockefeller Ctr., Inc.*, 48 NY2d 309, 422 NYS2d 911, 398 NE2d 517). The plaintiff cannot withhold information bearing on the cause of the very fire which forms the basis of his claim.

As such, the defendant's motion is granted. The plaintiff shall sit for a further examination before trial to answer the previously objected questions premised upon spousal privilege.

Dated: JUL 7 2004



J.S.C.