Patterson Belknap Webb & Tyler LLP v HoganWillig, PLLC
2025 NY Slip Op 34913(U)
December 16, 2025
Supreme Court, New York County
Docket Number: Index No. 655006/2022
Judge: Arlene P. Bluth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

----------X

PATTERSON BELKNAP WEBB & TYLER LLP

Plaintiff,

- v -

HOGANWILLIG, PLLC,

Defendant.

----------X

INDEX NO. 655006/2022

MOTION DATE N/A

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 006) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for MISCELLANEOUS.

Defendant's motion for a protective order and plaintiff's cross-motion for *inter alia* to compel are decided as described below.

Background

Plaintiff brings this case as part of an effort to collect on a judgment it secured against non-party Barbara Stewart. Plaintiff represented Ms. Stewart and, when she failed to pay legal fees, commenced a separate action to recover these fees. It obtained a judgment in 2013 against Ms. Stewart and alleges that no part of it was ever paid. Plaintiff contends it is now due over $3.5 million. Plaintiff insists that it then issued various restraining notices to Ms. Stewart and her financial institutions.

Critically, plaintiff does not claim it served a restraining notice on defendant. It claims that it took a deposition of Ms. Stewart in 2016 in which she claimed that her only asset that could be used to satisfy plaintiff's judgment was a property in Bermuda. Ms. Stewart asserted

that although she was awarded certain jewelry in connection with her divorce proceeding, her former daughter-in-law had misappropriated these items, including a diamond ring.

Plaintiff explains that a few months after giving the above testimony (in August 2016), Ms. Stewart sold the diamond ring (with the assistance of her then lawyer, non-party David Marcus) for $2.375 million (it was a 24.79 carat diamond ring). Plaintiff alleges that the proceeds of the sale were deposited into a bank account controlled by Mr. Marcus' firm. Plaintiff contends that Mr. Marcus's firm ("M&C") transferred about $630,000 out of the account to pay off debts that Ms. Stewart allegedly owed to M&C and another attorney, and then transferred the remaining portion of the proceeds to three escrow accounts for Ms. Stewart's benefit.

In following the money, with respect to this defendant, plaintiff alleges that in December 2017, Ms. Stewart entered into a retainer agreement with defendant which included a retainer fee of $625,000 (this money was transferred by M&C to defendant). Another retainer agreement was entered into between M&C and Ms. Stewart for over $750,000. Taken together, these actions exhausted the bulk of remaining proceeds from the sale of the ring.

In this motion, defendant seeks a protective order for various discovery items sought by plaintiff. Specifically, defendant complains about document requests seeking information about clients not involved in this case. It also maintains that plaintiff improperly demanded all documents concerning the settlement of the jewelry case, a federal matter about the aforementioned ring in which defendant claims as an affirmative defense that plaintiff should have intervened. Defendant argues that plaintiff's demands for billing documents is without merit because it has already submitted records to the Court that account for all of the $625,000 retainer—the amount defendant received from Ms. Stewart.

In opposition, plaintiff observes that aside from documents uploaded by defendant related to motions, defendant only turned over billing invoices to Ms. Stewart in discovery. Plaintiff observes that defendant never provided a verified interrogatory response or adequately responded to its document requests. It contends that it merely seeks information about defendant's knowledge concerning the diamond ring and the disposition of the sale proceeds. Plaintiff also wants to know about how the retainer was received for Ms. Stewart and how those proceeds were distributed. It emphasizes that defendant only raised generalized objections and did not meaningfully participate in meet and confer sessions. Plaintiff requests that defendant enter into a stipulation regarding the exchange of confidential information, such as financial records of Ms. Stewart.

Discussion

The record on this motion does not evince two parties working together that required Court intervention only for specific, narrowly tailored disputes. In many instances, it seems that the parties were working towards reasonable resolutions (such as the confidentiality agreement discussed below) and then simply stopped and asked the Court to rule on nearly every single disagreement. Although the Court is happy to do so, it slows down the pace at which a case moves—as is evidenced by the fact that the subject discovery demands are from August 2023. This case will not proceed to a timely resolution if it takes years to get through two discovery demands.

Client Information

With respect to the client issue (Document request 20 and interrogatories 5 and 6), plaintiff maintains that it wants information about other clients to test whether it is defendant's

typical practice to accept such a large retainer—here, $625,000. Plaintiff explains that it offered to accept a response to interrogatory 5 in lieu of responses to all three. This interrogatory (number 5) demands: "Identify any instance in which HoganWillig has received a retainer payment from a single client in an amount greater than $100,000, including for each such instance the amount and date of the retainer payment" (NYSCEF Doc. No. 105 at 8 of 9). It requests that it only wants to know if defendant has ever received, from a single client, a retainer payment of more than $100,000 as security for future legal services. Plaintiff argues that this can be satisfied by identifying only the amount and the date of such payment and defendant does not have to reveal the name of the client.

The Court finds that plaintiff's offer is entirely reasonable and defendant is directed to disclose instances in which it has accepted a retainer payment of more than $100,000 as security for future legal services for a single client. Clearly, a central part of this case is whether there was adequate consideration for the retainer and defendant argued in prior motion papers that it is a normal course of its business to accept such retainers. As a general proposition, it is quite difficult to prove Debtor Creditor causes of action—there usually isn't a "smoking gun" email or document—and so it would be helpful to know if this type of retainer was typical (as defendant appears to claim) or out of the ordinary.

The Jewelry Case- Document Request 16

The Court finds that because defendant raised an affirmative defense that plaintiff should have sought to intervene and claimed that it procured a favorable settlement for Ms. Stewart (*see* NYSCEF Doc. No. 9 at 4), the records plaintiff demands are clearly relevant. In other words, because a key issue here is the legal representation defendant purportedly provided to Ms.

Stewart, the jewelry case (a matter raised by defendant) is a legitimate area of inquiry. Defendant must provide, as plaintiff now demands, the final, executed settlement agreement from that case along with any exhibits or appendices.

Billing Invoices- Document Requests 6 and 7 (Billing Requests)

Plaintiff emphasizes that it makes no request for unredacted billing records; apparently, defendant redacted every narrative on the ground that it constituted work product doctrine. However, plaintiff questions whether these were original copies as the bills contain the heading of defendant's new firm name. It demands that defendant provide the originals, along with any communication to Ms. Stewart about the bills, or a *Jackson* affidavit describing the absence of this discovery.

Defendant claims it recently found photocopies of the Stewart invoices and offers to send over these photocopies—defendant is directed to do so and it may include whatever redactions it deems appropriate. Defendant is also directed to send over any transmittal letters for the invoices in its possession. Defendant claims that plaintiff never directly asked for it—clearly, these are relevant and the Court declines to delay discovery of these records.

Document Requests 3, 22, 23 and Interrogatory 3

Plaintiff withdraws its claim regarding number 22 but insists that the rest of these discovery demands, which relate to Ms. Stewarts finances are relevant. It contends that it needs to show, to prove its Debtor Creditor Law § 276 claim, that Ms. Stewart's transfer to defendant was not in the usual course of business and might help plaintiff demonstrate "badges of fraud." Request number 3 seeks the disposition of Ms. Stewart's assets while Request number 23 seeks

documents concerning any statements made by Ms. Stewart about her assets and liabilities and interrogatory 3 asks for the identification of people with whom defendant spoke to concerning the ring sale and the use of the proceeds.

In the Court's view, all of these remaining demands are relevant. Plaintiff's theory is that the ring sale and the distribution of the proceeds was used to shield Ms. Stewart from plaintiff's judgment. These discovery demands get to the heart of the matter.

Document Request 14

This demand seeks "All Documents concerning any consideration HoganWillig provided to Stewart in exchange for the Retainer or any portion thereof" (NYSCEF Doc. No. 104 at 10 of 12).

The Court finds that this is clearly relevant and defendant must respond. The First Department held that plaintiff made sufficient allegations about the lack of fair consideration for the retainer and emphasized that "a promise of future services is not fair consideration for a present conveyance" (*Patterson Belknap Webb & Tyler LLP v HoganWillig, PLLC*, 231 AD3d 629, 630, 219 NYS3d 68 [1st Dept 2024]).

Defendant's insistence that this requires a legal conclusion is without merit. It is absolutely capable of responding. The bills it later sent to Stewart are not necessarily sufficient. Plaintiff is apparently interested in anything of value that defendant gave to Stewart in exchange for the $625,000 retainer payment. Documents reflecting such an exchange are relevant.

Other Requests

Plaintiff points out that defendant did not mention document requests 2, 21, 25 and interrogatories 7 and 8 in its moving papers and so should be required to respond. Defendant only responded to request number 25 and interrogatory 7 in its reply and so defendant must respond to 2 and 21.

Document Request number 25 demands "All Communications between HoganWillig and Marcus & Cinelli, David P. Marcus, and/or Brian L. Cinelli on or after August 2, 2016, concerning Patterson Belknap, its Judgment, and its efforts to collect on the Judgment" (NYSCEF Doc. No. 104 at 11 of 12). This request is relevant as it probes whether or not there was coordination between defendant and the defendants in a related action who were, as noted above, heavily involved in the sale of the ring and the distribution of the proceeds. To the extent that defendant contends a privilege applies, it may produce a privilege log and redact as appropriate.

Interrogatory 7 asks defendant to "Identify the financial institutions, and numbers of accounts at such financial institution, to which the Retainer, any portion thereof, or any other funds relating to Stewart was deposited or transferred, including the accounts referred to in Exhibit A to Yankelunas's Reply Affidavit (NYSCEF Doc. No. 23): "HW Citizens BK38," "IOLA Trust," "Operating," "IOLA BK34," and "IOLA BK31" (NYSCEF Doc. No. 105).

As a key issue here is the transfer of the funds to an IOLA account and to other accounts belonging to defendant, this is clearly relevant and defendant must respond.

"General" Jackson Affidavit

Plaintiff demands a *Jackson* affidavit because there are supposedly contradictory explanations for why defendant does not possess certain documents. Plaintiff contends that defendant represented that a billing ledger is the only document it has with respect to the transfer of the retainer to defendant's operating account. Other examples are also provided relating to additional document requests.

The Court denies this request for a *Jackson* affidavit and holds that the better course is to pursue a deposition. Given the numerous issues plaintiff identifies with respect to the retention of documents (and the apparent absence of records disclosed), the Court is not inclined to require defendant to come up with a *Jackson* affidavit to encompass all of these issues. Plaintiff can ask about these issues at a deposition and, if necessary, can seek an additional deposition depending on the responses. Moreover, the Court may order a *Jackson* affidavit in the future once the specific concerns raised by plaintiff are narrowed. Simply put, the Court declines to require such an affidavit for every single category of documents for which defendant claims it does not possess any more information. Defendant must first produce a witness with knowledge who will be appropriately questioned. Depending on the answers, documents may be produced, more witnesses may be called and/or eventually a *Jackson* affidavit may be appropriate; the Court cannot now decide what follow up will be appropriate, if any.

Confidentiality Order

Plaintiff demands that this Court enter the proposed confidentiality order. It observes that it incorporated as many of defendant's edits as possible and this order is necessary in order for

plaintiff to complete its document production. Defendant raises issues with certain language and blames plaintiff for the delay.

The Court declines to get involved in this portion of the dispute. The parties are sophisticated law firms who are more than capable of hashing out a standard confidentiality order. Moreover, it is not typically this Court's practice to so-order such stipulations. In this Court's view, rules already in place (such as those requiring the redaction of certain personal information) provide more than enough protection. Because cases, such as this one, are publicly filed, it is anathema to then approve an order blocking large swaths of information from public view. And the one attached to this motion contains language that could permit a party to designate nearly every document as confidential. It affords broad latitude to the parties to make such a marking if the information "is detrimental to the conduct of that Party's or non-party's business or the business of any of that Party's or non-party's customers or clients" (NYSCEF Doc. No. 153 at 2). The Court recognizes that this is the standard language in the Commercial Division, but this is not a Commercial Division case and this action does not involve the complex and highly sensitive matters typically found in that forum. There is no reason to sign off on a confidentiality order that grants such broad discretion to the parties to make everything inaccessible.

Summary

To the extent that defendant complains that plaintiff used the phrase "All Documents," that is not a valid basis to object to document requests. To be sure, utilizing that phrase can raise the possibility that a request is overbroad but its use is not, in of itself, a valid basis for an objection. The specific scope of each request must be evaluated, not a generalized objection

based on language. Otherwise, as plaintiff points out, it would frustrate discovery in nearly every case.

To summarize, the Court finds as follows. Defendant must respond to document requests 1 through 21, 23, 25 through 28 and respond to interrogatories 1 through 8 (these should be verified). Moreover, defendant may respond to request number 16 by sending over the final agreement in the "jewelry case." Document request number 20 as well as interrogatories 5 and 6 can be addressed by responding to interrogatory 5—identifying instances in which a single client made a retainer payment of more than $100,000 as security for future legal services. Defendant need only disclose the amount and date—the client need not be named at this time. The only *Jackson* affidavit defendant needs to provide is in connection with document requests 6 and 7 should it not possess any more documents. The Court denies plaintiff's request for a broad *Jackson* affidavit and to so-order the confidentiality order.

On balance, the Court is unimpressed with defendant's failure to meaningfully work with plaintiff to figure out how to move forward with discovery. That is not to say that defendant was not entitled to raise objections; rather, it seems that defendant rejected reasonable offers from plaintiff with respect to certain items. And if defendant believed that plaintiff was being unreasonable (as it was entitled to conclude), then it waited far, far too long to make the instant motion as the parties have been actively discussing the issues for the better part of 2025 (*see* NYSCEF Doc. No. 108 [email correspondence from February 14, 2025]).

Accordingly, it is hereby

ORDERED that defendant's motion for a protective order is denied and plaintiff's cross-motion to compel is granted as described above.

Defendant must respond to the above discovery on or before January 15, 2026.

See NYSCEF Doc. No. 162 regarding the next conference.

12/16/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED		GRANTED IN PART	X OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE