
UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R.J. Zayed, in his Capacity as Court-Appointed
Receiver for Trevor G. Cook et al.,

Petitioner,

v.

Case No: 11-cv-01042 SRN/FLN

David Buysse, Steven and Pamela Cheney,
Walter Defiel, John Dzik, Terry Frahm,
Steven and Jenene Fredell, William Harris,
Michael and Jennifer Heise,
Michael and Cynthia Hillesheim, Larry Hopfenspirger,
Steven Kautzman, James McIntosh,
George and Karen Morrisset, Reynold Sundstrom, and
Dot Anderson,

Respondents.

**RECEIVER'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION
TO COMPEL DISCOVERY RELATED TO HIS CLAIMS AGAINST
RESPONDENT ANDERSON**

Although fact discovery closed over a month ago, significant deficiencies remain in Respondent Anderson's interrogatory responses. Specifically, Respondent Anderson has failed to identify *any* facts supporting defenses she asserted over seven months ago and failed to identify *any* documents supporting those defenses or her other contentions. Under the Scheduling Order in this action, the Receiver cannot wait any longer for Respondent Anderson to cure the deficiencies in her responses. Accordingly, the Receiver respectfully moves the Court for an order compelling Respondent Anderson to provide complete

responses to Interrogatory Nos. 10-14. The Receiver is filing this motion to compel to preserve his right to seek the Court's assistance and will withdraw this motion if Respondent Anderson timely supplements her responses as requested below.

I. BACKGROUND

On October 7, 2011 the Receiver's counsel sent a letter to Respondent Anderson's counsel identifying outstanding discovery deficiencies and requesting a meet and confer. (Declaration of Peter Kohlhepp, October 17, 2011 [hereinafter "Kohlhepp Decl. 2"], ¶ 3, Ex. A.) Anderson's counsel did not respond. Then in the late afternoon on October 12, 2011 (a mere two business days before the deadline for non-dispositive motions), Anderson's counsel sent a letter raising, for the first time in this action, a lengthy laundry list of his own discovery issues. (Kohlhepp Decl. 2, ¶ 4.) The parties met and conferred regarding discovery issues on Friday, October 14, 2011. (Kohlhepp Decl. 2, ¶ 5, Ex. B.) Anderson's counsel agreed to supplement his response to Interrogatory No. 10, but stated that he would not be able to do so until October 21, 2011 at the earliest. (Id.) The Receiver's counsel responded that unless Respondent Anderson supplemented her response by the deadline for non-dispositive motions, the Receiver would have to file a motion to compel. (Id.)

The Receiver's counsel then worked through the weekend in an attempt to amicably resolve the discovery issues that Respondent Anderson waited until the last minute to raise. At a second meet and confer on Monday morning, October

17, 2011, the Receiver confirmed that he would supplement his responses to Respondent Anderson's First Interrogatory No. 10 and Second Interrogatory No. 2 to identify categories of documents upon which he might rely. (Kohlhepp Decl. 2, ¶ 6.) The Receiver's counsel sought to confirm that Respondent Anderson would likewise supplement her responses to Interrogatories Nos. 10-14 to identify the documents upon which she relies for the facts supporting her contentions and defenses. (Id.) Anderson's counsel stated that he would get back to the Receiver, but as of the filing of this motion, he has not yet done so. (Id.)

To protect his right to seek redress from this Court in the event that Respondent Anderson fails to supplement her interrogatory responses or provides only insufficient supplementation, the Receiver now moves to compel Respondent Anderson to respond to Interrogatories Nos. 10-14 as requested below.

II. ARGUMENT

A. The Court Should Compel Respondent Anderson to Answer Interrogatory No. 10 and Specifically Identify the Facts that She Relies On for the Defenses She Has Asserted.

The Receiver's Interrogatory No. 10 requests the following:

Identify each defense that Respondent intends to assert, and for each defense identify all facts on which Respondent relies for such assertions, all persons with knowledge of such facts, and all documents on which the Respondents rely for such assertions.

(Kohlhepp Decl. 2, ¶ 7, Ex. C, at p.7.) At the October 14, 2011 meet and confer, Anderson's counsel agreed to supplement this interrogatory to provide all of the information requested for each defense Respondent Anderson has identified,

including for each defense identified in Respondent Anderson's Answer. (Kohlhepp Decl. 2, ¶ 5, Ex. B.) But Respondent Anderson failed to do so by today, the deadline for non-dispositive motions. Accordingly, the Receiver is moving to compel a complete response to Interrogatory No. 10 to ensure that he has recourse should Respondent Anderson fail to adequately supplement. The Receiver is at a loss as to why the Respondent was unable to supplement her response to provide the facts that support defenses she asserted in her answer that was filed over seven months ago, particularly given that fact discovery has been *closed* for a month. Nonetheless, if the Receiver receives adequate supplementation, he will withdraw this portion of the motion.

Interrogatory No. 10 is proper under Rule 33(a), and Respondent Anderson is obligated to answer it in full:

[Interrogatories requesting a party to 'set forth in detail all of the facts upon which [the party] intends to rely in support of its allegation'] seek disclosure of facts upon which the defenses were pled, and any additional corroborative or supporting facts marshaled since the pleading was interposed. That is what defendants are expected to disclose, and this Court looks askance at total resistance to discovery predicated upon semantic games.

Mead Corp. v. Riverwood Natural Res. Corp., 145 F.R.D. 512, 516 (D. Minn.

1992). Respondent asserted at least the following defenses over seven months ago:

- Failure to mitigate (Answer ¶ 29)
- Unclean hands (Answer ¶ 32)
- Waiver, laches, estoppel (Answer ¶ 33)
- Ratification and past performance (Answer ¶ 37)

- Damages were caused by acts/omissions of third parties over which Anderson has no control (Answer ¶ 38)
- In pari delicto (Answer ¶ 39)
- Accord and satisfaction (Answer ¶ 41)

(Docket No. 71, Answer.) But to date she has not identified a single fact that she relies on in asserting these defenses. Fact discovery is now closed; there is no conceivable basis for Respondent Anderson to refuse to identify the facts that support her defenses. If Respondent Anderson intends to maintain the defenses she has identified in discovery responses and in her Answer, she is obligated to specifically identify the facts that she relies on for each. The Receiver is entitled to know the bases for her defenses now so that he can adequately prepare for trial. *Medtronic, Inc. v. Guidant Corp.*, 2003 U.S. Dist. LEXIS 26039, at *9–10 (D. Minn. Jan. 8, 2003).

For each defense Respondent Anderson intends to assert, the Court should compel her to specifically identify the defense and identify all facts that she relies on in asserting it.

B. The Court Should Compel Respondent Anderson to Identify Documents in Response to Interrogatories Nos. 10-14.

- Interrogatory No. 10 seeks the identity of all facts on which the Respondent relies for **each defense she intends to assert**, as well as all persons with knowledge of such facts and “*all documents on which the Respondent relies for such assertions.*” (Kohlhepp Decl. 2, ¶ 8, Ex. D, at p.13.)
- Interrogatory No. 11 seeks the identity of all facts on which the Respondent relies for the **contention that no fraudulent transfer occurred**, as well as all persons with knowledge of such facts and “*all documents on which the Respondent relies for such contentions.*” (Id. at p.16.)

- Interrogatory No. 12 seeks the identity of all facts on which the Respondent relies for the **contention that she took the funds in good faith**, as well as all persons with knowledge of such facts and “*all documents on which the Respondent relies* for such contentions.” (Id.)
- Interrogatory No. 13 seeks the identity of all facts on which the Respondent relies for the **contention that she provided reasonably equivalent value**, as well as all persons with knowledge of such facts and “*all documents on which the Respondent relies* for such contentions.” (Id. at 17.)
- Interrogatory No. 14 seeks the identity of all facts on which the Respondent relies for the **contention that she was not unjustly enriched**, as well as all persons with knowledge of such facts and “*all documents on which the Respondent relies* for such contentions.” (Id. at 17.)

In her responses to Interrogatory Nos. 10-14, Respondent Anderson does not identify *a single document* that she relies on for the contentions provided. (Id. at 13-19.) Likewise, Respondent Anderson again fails to identify a single document in her supplemental responses to Interrogatory Nos. 10-12. (Kohlhepp Decl. 2, ¶ 7, Ex. C, at pp.7-12.) This is not sufficient. The Receiver has identified numerous specific documents and provided many deposition transcript cites in his responses to Respondent Anderson’s contention interrogatories; Respondent Anderson must do the same. The Court should compel her to do so.

III. CONCLUSION

For the foregoing reasons, the Receiver respectfully asks the Court to compel Respondent Anderson to answer Interrogatory Nos. 10-14 as requested in the foregoing memorandum.

Dated: October 17, 2011

Respectfully submitted,

s/ Peter M. Kohlhepp
R.J. Zayed (MN Bar No. 309,849)
Tara C. Norgard (MN Bar No. 307,683)
Russell J. Rigby (MN Bar No. 323,652)
Marlee A. Jansen (MN Bar. No. 389,428)
Peter M. Kohlhepp (MN Bar No. 390,454)
Carlson, Caspers, Vandenburg & Lindquist
225 S. 6th Street, Suite 3200
Minneapolis, MN 55402
Telephone: (612) 436-9600
Facsimile: (612) 436-9605
Email: pkohlhepp@ccvl.com