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Discovery Order (RICHARD W.
MCWHORTER)

Elizabeth E. Long
Superior Court of Fulton County

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

RICHARD W. MCWHORTER,

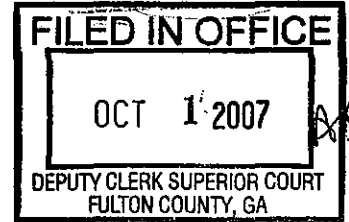
Plaintiff,

v.

J. ROBERT WARD,

Defendant.

Civil Action No.: 2006CV118867



DISCOVERY ORDER

This case is before the Court on Plaintiff's Motion to Compel Discovery Responses. After reviewing the record of the case and the briefs filed on this motion, the Court finds as follows:

This suit involves the dissolution of a business relationship between Plaintiff and Defendant in their co-owned company, Far Horizons LLC.

Plaintiff filed its Motion to Compel Discovery Responses on July 12, 2007, seeking discovery responses to its requests numbered 8, 18, 21, 36, and 37 of Plaintiff's First Notice to Produce and Request for Production of Documents. Specifically, Plaintiff seeks email communications between Mr. Devin, in-house counsel at Defendant's Land Resource Companies, LLC ("LRC"), and Mr. Vacko, CFO of LRC. Mr. Devin and Mr. Vacko were communicating at Defendant's request regarding Defendant's ability to purchase a Far Horizons loan from BB&T Bank. Defendant objects to the production of such communications on the basis of attorney-client privilege.

The attorney-client privilege bars the discovery or testimony of confidential communications between a lawyer and his client. NationsBank, N.A., v. SouthTrust Bank of Ga., N.A., 226 Ga. App. 888, 896 (1997). The party claiming the privilege bears the burden of establishing it. Zeilinski v. Clorox Co., 270 Ga. 38, 40(1998).

First, Defendant argues that an attorney-client relationship existed between him and Mr. Devin pursuant to Zeilinski v. Clorox Co., 270 Ga. at 41. Zeilinski established that a personal attorney client


relationship can exist between employee and an in-house attorney where (1) the attorney is approached to provide legal advice, (2) it is clear that the individual is seeking personal representation, not representation for the corporation, (3) the attorney communicated with the individual and not the corporation, despite the potential conflict, (4) the conversations were confidential, and (5) the conversations did not concern the general affairs of the corporation. Id.

Defendant asserts that Mr. Devin, although an in-house attorney for LRC, was acting as his personal attorney in the Far Horizons loan matter. Mr. Devin gave deposition testimony that he provided personal, legal advice to Defendant regarding his ability to purchase a Far Horizons from BB&T Bank, which was unrelated to LRC's business. Thus, under Zeilinski, Defendant has sufficiently established that Mr. Devin was acting as his personal attorney with regard to the Far Horizons loan.

Second, Defendant argues that Mr. Vacko was acting as his personal agent when he communicated with Mr. Devin, thus protecting their communications from production under the ambit of the attorney-client privilege. In support of his argument Defendant relies upon the case law that the presence of, or communication through, an attorney's confidential agent such as a secretary or paralegal does not destroy the attorney-client privilege. See, e.g., Taylor v. Taylor, 170 Ga. 691, 693 (1934). Defendant urges this Court to extend that confidentiality exception to agents of the client. Such an extension in this case would be outside of Georgia's settled case law that narrowly construes and applies the attorney-client privilege. McKesson HBOC, Inc. v. Adler, 254 Ga. App. 500, 502-503 (2002) ("[T]he scope of the attorney-client privilege is far narrower than that of the work-product doctrine, and it is far more readily waived by disclosure to a third party.").

Plaintiff's motion to compel the production of emails written between Mr. Vacko and Mr. Devin regarding Defendant's purchase of the Far Horizons loan and communications with BB&T about the purchase of such loan is hereby **GRANTED**.

SO ORDERED this 1st day of October, 2007.


ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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