5-11-2018

Omar Abdel-Aleem et al., Order on Defendants' Motion to Compel Discovery

Melvin K. Westmoreland
Fulton County Superior Court Judge

IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA

OMAR ABDEL-ALEEM, YUSSUF ABDEL-ALEEM, and TAREK ABDEL-ALEEM,	)	CIVIL ACTION FILE NO. 2017CV287616
Plaintiffs,	)	
v.	)	
MINALKUMAR PATEL, UDAY PATEL, SONAL PATEL A/K/A HEMANGINI JARIVALA, TUSHAR NARROTAM, TWIN LAKES LABORATORIES, LLC, PHYSICIAN'S FIRST TOXICOLOGY, LLC, LABGUIDE, LLC, and LABSOLUTIONS, LLC	)	Bus. Case Div. 3
Defendants/Third Party Plaintiffs,	)	
v.	)	
JOSEPH & ALEEM, LLC d/b/a JOSEPH, ALEEM & SLOWIK, and Jacob Slowik,	)	
Third Party Defendants.	)	

ORDER ON DEFENDANTS' MOTION TO COMPEL DISCOVERY

The above-styled matter is before this Court on Defendants' Motion to Compel Discovery from Plaintiff Yussuf Abdel-Aleem ("Yussuf") and Third-Party Defendant Joseph & Aleem, LLC d/b/a Joseph, Aleem & Slowik ("Firm") (collectively "Respondents"). Having considered the record, the Court finds as follows:

A. Background

According to Plaintiffs, in 2014 they assisted Defendants in starting a genetics and toxicology lab and ultimately became members of LabSolutions, LLC holding a 25% interest in

the company. Plaintiffs allege, *inter alia*, their disbursements have been improperly diverted by Defendants for their own use, Defendants attempted to unilaterally and improperly terminate the LabSolutions Operating Agreement, and Defendants have refused to provide Plaintiffs with access to the company's books and records despite numerous requests.

Defendants assert LabSolutions had previously engaged the Firm to serve as its "outside general counsel", advising LabSolutions and Defendants on various legal matters. Defendants allege they identified an opportunity to provide genetics testing services to customers and sought legal guidance from the Firm on how to structure the venture. However, Plaintiffs and Third Party Defendants allegedly orchestrated a method to raid LabSolutions by drafting the Operating Agreement so as to improperly favor their collective interests over that of their clients, ultimately acquiring an interest in LabSolutions on unfair and unreasonable terms.

Defendants served their First Requests for Admissions, Interrogatories and Requests for Production of Documents to Yussuf ("Yussuf Requests") on Oct. 20, 2017, and served their First Requests for Admissions, Interrogatories and Requests for Production of Documents to the Firm ("Firm Requests") on Oct. 27, 2017. Yussuf submitted his responses on Nov. 20, 2017, while the Firm served its responses on Nov. 29, 2017 ("Response" or "Responses" as appropriate when used in context). However, according to Defendants, the Responses were "devoid of any substance." Specifically, Respondents did not substantively respond to any interrogatory except to state Respondents had not yet identified an expert and provided no documents in response to Plaintiffs' Requests for Production of Documents ("RPD"), instead answering each interrogatory and RPD with objections.

Respondents assert the instant motion is improper because: (1) the motion was premature insofar as, by virtue of Third Party Defendants' Motion to Dismiss the Third Party Complaint

filed contemporaneously with Third Party Defendants' Answer, a stay of discovery was in effect pursuant to O.C.G.A. §9-11-12(j) such that their Responses were not due until Jan. 10, 2018; Defendants failed to meet and confer as required by Uniform Superior Court Rule 6.4; and the motion is moot insofar as Respondents have since supplemented their Responses.

In reply, Defendants assert their motion is not moot because Yussef has not supplemented his Response at all because he has still not provided substantives answer (other than to say no expert has yet been identified) and has not verified his Response. Similarly, the Firm has not verified its Response. Also, although the Firm provided a supplemental response ("Supplemental Response") and produced documents ("Firm Production") after the filing of this motion, Defendants contend the Firm Production is entirely unorganized and inadequate.

B. Applicable standards

With respect to the general scope of discovery, O.C.G.A. §9-11-26(b)(1) provides:

> **Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action**, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial **if the information sought appears reasonably calculated to lead to the discovery of admissible evidence...**

(Emphasis added).

"[I]n the discovery context, courts should and ordinarily do interpret 'relevant' very broadly to mean any matter that is relevant to anything that is or may become an issue in litigation." Bowden v. Medical Center, Inc., 297 Ga. 285, 291 (2015) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)) (internal quotations omitted). The powers of the

trial court to control the time, place, scope and financing of discovery are construed broadly. *See* Orkin Exterminating Co. v. McIntosh, 215 Ga. App. 587, 589, 452 S.E.2d 159, 162 (1994), *disapproved of on other grounds by* Chrysler Grp. LLC v. Walden, No. S17G0832, 2018 WL 1323992 (Ga. Mar. 15, 2018); Bicknell v. CBT Factors Corp., 171 Ga. App. 897, 899, 321 S.E.2d 383, 385 (1984). Further, "an evasive or incomplete answer is to be treated as a failure to answer." O.C.G.A. § 9-11-37(a)(3). *See* Stephens v. Howle, 132 Ga. App. 92, 93 207 S.E.2d 632, 633-34 (1974) (holding that trial court did not abuse its discretion in finding that plaintiff's responses to interrogatories were invasive or incomplete where the plaintiff failed to respond fully in "some of the answers").

C. Analysis

The Court finds Defendants sufficiently complied with their obligations under Uniform Superior Court Rule 6.4(B), which provides:

> Prior to filing a motion seeking resolution of a discovery dispute, counsel for the moving party shall confer with counsel for the opposing party and any objecting person or entity in a good faith effort to resolve the matters involved. At the time of filing the motion, counsel shall also file a statement certifying that such conference has occurred and that the effort to resolve by agreement the issues raised failed…

Uniform Superior Court Rule 6.4 does not require that parties participate in an actual conference before the moving party files its motion to compel. Instead, the rule requires a good faith effort by the moving party to resolve the discovery dispute prior to the filing of a motion to compel. *See* Mansell 400 Assoc. v. Entex Information Svcs., 239 Ga. App. 477, 481 (1999) (good faith shown where "[movant's] counsel sent a letter one day after receiving the insufficient discovery responses explaining why the responses were inadequate, offering to speak by phone to resolve the issues, and asking for a response in nine days" and opposing counsel did not respond). Here, Defendants' counsel emailed Plaintiff and Third-Party Defendant's counsel to schedule a Rule

6.4 conference twice, and both times, expressed the need to discuss the lack of substantive responses. The Court finds Defendants made a good faith effort to resolve the discovery dispute prior to filing the instant motion.

As to Respondents' arguments, even assuming a stay of discovery was in effect under O.C.G.A. §9-11-12(j) as to both Respondents until Dec. 9, 2017, such that responses were not due until Jan. 10, 2018, as asserted, nothing in the record indicates Respondents complied with this deadline. Instead, Respondents pursued their own discovery requests during the stay and did not adhere to the deadlines instituted by the stay of discovery.

Turning to the substance of the motion, the Court finds Defendants' Requests are reasonably calculated to lead to the discovery of admissible evidence relevant to the claims, counterclaims, and third party claims asserted in this action. Further, Respondents' November 2017 Responses and the Firm's January 2018 Supplemental Response and Firm Production are inadequate such that the issues raised in Defendants' motion are not entirely mooted. *See* Schoen v. Cherokee Cty., 242 Ga. App. 501, 502 (2000) (*citing* Carlock v. Kmart Corp., 227 Ga. App. 356, 361 (1997)) ("An issue is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy").

Respondents have not verified their interrogatories as required by O.C.G.A. § 9-11-33(a)(2) which provides:

> Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them.

See Williamson v. Lunsford, 119 Ga. App. 240 (1969) ("Interrogatories served on a party must be answered by the party separately and fully in writing under oath . . . The judge below properly

held that an unsworn writing by the party's counsel did not constitute an answer."), *distinguished on other grounds by* Rivers v. Goodson, 184 Ga. App. 70 (1987).

Further, Yussef's Response contains virtually no substantive answer to any interrogatory, and includes only boilerplate objections.[1] For example, in response to Interrogatory No. 1, asking Yussef to "[i]dentify each and every person who prepared or participated in the preparation of your responses to these interrogatories", Yussef provides the following response:

> In addition to the general objections stated above, which are incorporated herein, Plaintiff objects to this interrogatory to the extent it seeks information covered by the attorney-client privilege or work product doctrine. Plaintiff also objects to any attempt to limit the evidence he may bring before the Court on summary judgment or at trial of this action or any other subsequent point based on his attempt to respond to this interrogatory prior to the completion of discovery in this case. Plaintiff further objects to this interrogatory on the ground that it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

The foregoing answer to a relatively straightforward and customary interrogatory is non-responsive and inadequate.

By way of another example, in this action, Plaintiffs allege they "have verbally made numerous demands to Defendant Minalkumar Patel, the Manager of Lab[S]olutions, to allow Plaintiffs to inspect the books and records of Lab[S]olutions pursuant to O.C.G.A. §14-11-313, but Defendant has refused to comply with Plaintiffs' demands." *See* Verified Complaint and Demand for Jury Trial, ¶36. In Interrogatory No. 5, Defendants ask Yussef to "[i]dentify, with specificity, each and every date in which you made a demand to any of the Defendants to inspect the books and records of LabSolutions, who was present during each demand and how you made your demand to inspect the books and records." Yussef responded:

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[1] To any extent Respondents assert that the Firm's Supplemental Response in any way incorporates or constitutes a supplement by Yussef, the Court is compelled to note Yussef and the Firm were served with separate discovery requests and the Supplemental Response is clearly on behalf of the Firm. Further, the Firm is a Third-Party Defendant in this action defending against claims asserted it, unlike Yussef who stands as a Plaintiff.

> In addition to the general objections stated above, which are incorporated herein, Plaintiff objects to this interrogatory to the extent it seeks information covered by the attorney-client privilege or work product doctrine. Plaintiff also objects to any attempt to limit the evidence he may bring before the Court on summary judgment or at trial of this action or any other subsequent point based on his attempt to respond to this interrogatory prior to the completion of discovery in this case. Plaintiff objects to this interrogatory on the ground that it is over broad and unduly vague. Plaintiff also objects to this interrogatory on the ground that it seeks information that is equally available to the Defendants.

Again, the Court finds Yussef's answer to a narrowly tailored interrogatory directly related to an allegation made by Plaintiffs is nonresponsive. In short, the Court finds Yussef's Response is inadequate and, in responding to the instant motion, Yussef has not supported any asserted objection with any argument. Thus, Yussef is hereby ordered to supplement his Response with complete, substantive responses within thirty days of the entry of this order.

As to the Firm, although it provided a Supplemental Response, the Court finds the Firm Production is inadequate insofar as the Firm has not correlated the documents produced with Defendants' RPDs, it appears that emails have been produced without the corresponding attachment(s) included therewith, and it appears the Firm has failed to produce all responsive documents (*e.g.*, RPD No.10 seeking "[a]ny and all documents containing billing records, invoices, or financial statements sent to any of the Defendants"). The Firm Production is inconsistent with the Firm's discovery obligations to provide Defendants with a complete and sufficiently organized production of responsive documents. *See* Hull v. WTI, Inc., 322 Ga. App. 304 (2013) (where the trial court held that "the production of over 156,000 pages of documents with insufficient organization, coupled with the failure . . . to identify which documents are responsive to which . . . requests . . . is inconsistent with [the defendant's] obligations under the Civil Practice Act.").

Thus, the Firm is hereby ordered to amend and supplement its production accordingly within thirty days of the entry of this order, including: providing all responsive, non-privileged documents within its possession, custody, or control; and organizing its production to specifically identify through Bates numbering or otherwise which documents produced are responsive to which requests. As to any responsive documents the Firm contends may be privileged, it must produce a privilege log.

CONCLUSION

Defendants' Motion to Compel is **GRANTED**. The Court will reserve ruling on the Defendants' request for attorney's fees.

SO ORDERED, this 11th day of May, 2018.

HON. MELVIN K. WESTMORELAND, JUDGE
Fulton County Superior Court
Business Case Division
Atlanta Judicial Circuit