STATE OF ILLINOIS )
) SS.
COUNTY OF McHENRY )

IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )
)
Plaintiff, )
)
vs. ) No. 17 LA 377
)
THE LAW OFFICES OF THOMAS J. POPOVICH, P.C. and HANS MAST, )
)
Defendants. )

ELECTRONICALLY RECORDED Report of Proceedings in the above-entitled cause before the Honorable THOMAS A. MEYER, Judge of said Court of McHenry County, Illinois, on the 19th day of July, 2021, in the McHenry County Government Center, Woodstock, Illinois.

APPEARANCES:

LAW OFFICE OF ALPHONSE A. TALARICO, by MR. ALPHONSE A. TALARICO (via Zoom)

On behalf of the Plaintiff;

KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by MR. GEORGE K. FLYNN

On behalf of the Defendants.

THE COURT: Counsel?
MR. FLYNN: No. 10, your Honor. I see Mr. Talarico. George Flynn on behalf of defendant/movant.
THE COURT: Dulberg versus Mast?
MR. FLYNN: Yes.
THE COURT: Okay. I saw Mr. Talarico. All right. Mr. Talarico?
MR. TALARICO: Yes, Judge. Good morning.
THE COURT: All right. Counselor here in court, what's going on?
MR. FLYNN: Good morning, your Honor. We brought a motion to supplement our motion to compel. The Court ruled on April 6th and granted defendant's motion to compel and set a June 14 compliance date.
THE COURT: Okay.
MR. FLYNN: I'm sorry. June 1st compliance date with a June 14 hearing. Somehow I don't believe we got a copy of the file stamped order and it didn't get diaried, so I believe the case was called on June 14 --
THE COURT: Okay.
MR. FLYNN: -- and a continue date August 19th.
THE COURT: You got inadequate compliance, is

that ultimately --

MR. FLYNN: That's our position, yes.

THE COURT: All right. I'm going to pass this. We'll come back to it. And let me see if I can take a look at the compliance at issue.

Mr. Talarico, just hang in there. I'll be back at the end of the call.

MR. FLYNN: Thank you, your Honor.

(Whereupon the afore-captioned cause was recalled.)

THE COURT: Let's go to Dulberg. All right. Plaintiff's counsel for the record, if you could identify yourself.

MR. TALARICO: Good morning, your Honor. My name is Alphonse Talarico. I represent Paul Dulberg.

MR. FLYNN: And good morning again, your Honor. George Flynn on behalf of Popovich and Mast.

THE COURT: All right. So tell me what the issue is.

MR. FLYNN: Again, your Honor, the Court ruled on April 6th that the plaintiff was directed to provide the specific answers and responses to each interrogatory and production request. So we did

receive supplemental production responses and a supplemental interrogatory answer. With respect to the supplemental production, there is one document that I consider to be responsive and that is new.

THE COURT: I'm sorry?

MR. FLYNN: There is one document that was produced and I consider it to be responsive and a new production. The rest of the documents that were produced, it's unusual. There are actual pleadings from this case that were attached as responsive documents to my discovery requests. I don't see how those -- which basically just set forth the plaintiff's position in this case in response to the various arguments we've made in motions.

THE COURT: Well, what is it you're looking for? What didn't you get?

MR. FLYNN: I'm looking to strike any of those documents --

THE COURT: Okay.

MR. FLYNN: -- that are not responsive.

THE COURT: Is it -- I mean, really is it necessary to go to the trouble of striking them if they're -- I mean, ultimately they're not going to be relevant as a discovery response.

MR. FLYNN: Only -- I just want to make sure there aren't any additional documents that were --

THE COURT: Are there any additional documents, Mr. Talarico?

MR. TALARICO: Judge, I have no idea if -- it's our position we complied completely. We filed our answers on June 1st. If the Court had -- I don't know if the Court remembers, you had ordered us, plaintiff and defendant, to talk up through June 14th to see if there were any issues. The only response I got from the defendants was an e-mail with one word. As I told you on June 14th, the only word was, Thank you. Now I am totally surprised, 73 days later, Judge, and I don't know what else -- I want time to respond in writing, Judge. This is --

THE COURT: I don't -- I don't want to do that.

MR. TALARICO: This has been difficult.

THE COURT: This is --

MR. FLYNN: Yes, it has, Judge.

THE COURT: So what is it you -- what is it you are looking for? Because I have a representation on the record -- and I'm assuming there's an affidavit of compliance.

MR. TALARICO: There is.

THE COURT: Okay. Then -- and he says, I've given you everything.

MR. FLYNN: That's fine with respect to the production response. Now there's the interrogatory answer.

THE COURT: All right. Tell me -- we're moving on to the interrogatory.

MR. FLYNN: And again, this goes to the statute of limitations on a legal malpractice case. The plaintiff is claiming that he didn't discover it until after the 2 years --

THE COURT: Could you keep your voice up a little?

MR. FLYNN: Sure. Plaintiff is arguing for a tolling of the statute of limitations on a legal malpractice case. He was asked in Interrogatory No. 1, Identify and describe each and every way that Popovich or Mast breached any duty of care to you, the date of the breach, and when and how you became aware of the breach.

His response -- his amended additional response discusses his pecuniary injury, that only addresses damages. With respect to the breach of

the standard of care and how he discovered it, he simply says he knew that the defendants breached the standard of care due him based upon a verbal discussion with Attorney Tom Gooch on December 16, 2016.

THE COURT: Okay.

MR. FLYNN: That describes the date. It doesn't describe how he became aware of it, what Gooch told him. Now, again, I know your Honor is aware of the deposition testimony in this case regarding that December 16 time period. If the answer is that Dulberg doesn't remember what Mr. Gooch told him, if Gooch said simply, You have a case, that's fine. That's what they should say. But I've already taken his deposition. There are no specifics that explain to me why Mr. Gooch crystallized this breach of the standard of care on December 16. But if this is all they have, then that's what he should say, is that I don't remember what Mr. Gooch told me.

THE COURT: I mean, he's -- I think he's complied. I'm not sure --

MR. FLYNN: What is the breach of the standard of care?

THE COURT: I'm sorry?

MR. FLYNN: And what is the breach of the standard of care? That's what I've asked in the interrogatory. They don't say.

THE COURT: Well, I think that -- all right. I guess that is -- my reading on it, it's implied it's a statute of limitations. But --

MR. FLYNN: No, the statute of limitations is the issue in this case.

THE COURT: All right. What is the --

MR. FLYNN: The underlying personal injury case --

THE COURT: What is the breach? Did Mr. Gooch advise him what the breach was?

MR. TALARICO: Judge, all that Mr. Dulberg recalls was relayed in the responses. There were no recordings that were going on. Nothing was done in writing. I'm not sure how I can possibly respond anymore, to give anymore.

THE COURT: I have a representation that this is all there is.

MR. FLYNN: That's satisfactory to me. As long as when I file my summary judgment motion there's not some new discovery discussion as to --

MR. TALARICO: Judge --

MR. FLYNN: -- what the breach was and what --
MR. TALARICO: I'm sorry. I hate to interrupt. Judge?
THE COURT: Yeah.
MR. TALARICO: We -- again, we were -- our response, I believe is in total compliance with the Court order of June 6th and your instructions on that day from the court record. And I'd like to respond in writing to establish that we did that.
THE COURT: No. No. I mean, you're -- you only need to respond in writing if we're going to have a hearing. If you want to file a brief that -- just in the file, that's fine, but I think we have a resolution today and I don't want to spend more time reading briefs resolving an issue that's moot. So I think this is resolved. What else is outstanding?
MR. FLYNN: I think that does resolve -- the representation resolves both issues, so --
THE COURT: I have -- you have advised -- well, you've advised that's all there is, so I'm finding you in compliance.
MR. TALARICO: Thank you, your Honor.
THE COURT: Okay. Is there anything else we need to do?

MR. FLYNN: I suppose with respect to the summary judgment motion that I anticipate, Judge, there was one document that was produced in order to avoid a second deposition of Mr. Dulberg to authenticate this document, which is a letter from Attorney Thompson -- I'm sorry -- Attorney Ferris -- that goes to the issue of the statute of limitations. If Mr. Talarico would stipulate to the authenticity of this March 4, 2015 letter on the record, I don't need to send a request to admit for --

THE COURT: Can you hear all that?

MR. TALARICO: I heard it, Judge, but I'm not familiar with that document. A request to admit would be welcome.

MR. FLYNN: Fair enough.

MR. TALARICO: Just so I can see what it is.

THE COURT: That's fine. We're back again on August 19th. Do you want to delay that date in light of the fact you may be issuing a request to admit?

MR. FLYNN: I think that would make sense.

THE COURT: All right. So let's strike August 19th and tell me when it makes sense to come

back.

MR. FLYNN: I'll need at least 30 days, so --

THE COURT: 60 days?

MR. FLYNN: A 60-day date would be great.

THE COURT: How's September 17th? That's a Friday.

MR. TALARICO: Fine with me, Judge.

MR. FLYNN: That works for me.

THE COURT: All right. So that will be at 8:45 and then we'll see what you guys want to do when you come back. And are you withdrawing your motion or ...

MR. FLYNN: I think that --

THE COURT: Or do you want me expressly to find compliance based on representations in open court?

MR. FLYNN: I'm not requesting a hearing any longer. I think we resolved the matter. So yeah, I'll withdraw it.

THE COURT: All right. Motion's withdrawn. The record still stands. I did find that you were in compliance and we'll deal with the next step whenever it comes up. But I will see you September 17th and if you could draft the order.

MR. FLYNN: I will. Thank you, your Honor.

THE COURT: All right. Thank you.

Mr. Talarico, anything else?

MR. TALARICO: No, Judge, thank you for your time.

THE COURT: All right. Thank you.

(Which were all the proceedings had in the above-entitled cause this date.)

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I, CRISTIN M. KELLY, an official Court Reporter for the Circuit Court of McHenry County, Twenty-Second Judicial Circuit of Illinois, transcribed the electronic recording of the proceeding in the above-entitled cause to the best of my ability and based on the quality of the recording, and I hereby certify the foregoing to be a true and accurate transcript of said electronic recording.

Cristin M. Kelly
Certified Shorthand Reporter
License No. 084-004529
Date: August 24, 2021