

1 STATE OF ILLINOIS)
) SS:
2 COUNTY OF MCHENRY)

3 IN THE TWENTY-SECOND JUDICIAL CIRCUIT
4 MCHENRY COUNTY, ILLINOIS

5 PAUL DULBERG,)
)
6 Plaintiff,)
)
7 vs.) No. 17 LA 377
)
8 THE LAW OFFICES OF THOMAS)
)
9 J. POPOVICH, P.C., and)
)
)
10 HANS MAST,)
)
)
11 Defendants.)

12 ELECTRONICALLY RECORDED Report of
13 Proceedings had in the above-entitled cause before
14 The Honorable Thomas A. Meyer, Judge of the Circuit
15 Court of McHenry County, Illinois, on the 1st day of
16 April, 2021, in the Michel J. Sullivan Judicial Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by:
20 MR. ALPHONSE A. TALARICO,
21 Appearing via videoconference,

22 on behalf of the Plaintiff,

23 KARBAL COHEN ECONOMOU SILK & DUNNE, LLC, by:
24 MR. GEORGE K. FLYNN,
Appearing via videoconference,

on behalf of the Defendants.

1 THE COURT: All right. For the record, this is
2 Dulberg versus Mast. And, plaintiff's counsel, if you
3 could identify yourself.

4 MR. TALARICO: Your Honor, good morning. Mr. Flynn.
5 My name is Alphonse Talarico. I represent the
6 plaintiff, Paul Dulberg.

7 THE COURT: Okay. And for the defense?

8 MR. FLYNN: Attorney George Flynn, F-l-y-n-n. And,
9 Judge, and, counsel, I would like to extend my apologies
10 for the calendaring issue last week.

11 THE COURT: It happens. But let's -- where are we?
12 Because I -- yeah, bring me up to date with where you
13 are.

14 MR. FLYNN: Generally, Judge, the -- Okay. So the
15 court ordered the plaintiff to produce certain documents
16 that were withheld. That has been done. We have I
17 think a continued issue with respect to interrogatory
18 answers from the -- Hans Mast interrogatories served in
19 July of 2019, and then the improper and vague answer,
20 responses, to the production request where the plaintiff
21 has just simply identified Bate's documents 1 through
22 8,708 relative to the discovery of the alleged
23 malpractice.

24 THE COURT: Yeah, I looked at the answers, those

1 answers, and I believe those are nonresponsive. Merely
2 identifying all the records is not a direct response to
3 your request, so I'm going to direct plaintiff to
4 provide a supplemental response to those requests.

5 Mr. Talarico, you have something to say?

6 MR. TALARICO: Yes, Judge, actually, I do. Those
7 8,707 prior documents that had been submitted, according
8 to the information I have, between Mr. Flynn and the
9 Clinton Law Firm, the previous law firm, were under the
10 initial request to produce. The answers that I have
11 from the Clinton Law Firm indicate the wording that the
12 documents will be produced and then there is no
13 objection between Flynn -- Mr. Flynn and the Clinton Law
14 Firm. There's no -- and I have no way of researching
15 how the relationship between the first set of answers
16 that covered document 1 through 8707 have been done. I
17 -- that's why I said that that will be unreasonable and
18 an expense and I have to go back to each document and
19 see how it responded.

20 Mr. Flynn, as far as I've seen, had not
21 objected to those answers, so to do that would force me
22 to review close to 9,000 documents to see which were
23 responsive -- 9,000 -- 8,707 that have already been
24 turned over and, in addition to that, on February 10th,

1 Judge, the last hearing date on this matter, you focused
2 and ordered us to focus our response to the time
3 Mr. Dulberg knew or should have known, and the only
4 documents that at that time hadn't been turned over to
5 Mr. Flynn would be six hundred something odd documents,
6 communications between the second -- the Gooch law firm
7 and Mr. Dulberg. Those I reviewed and submitted the one
8 that responded to what -- to what the court indicated
9 the communications in December of --

10 THE COURT: Before we get into that -- because I
11 think that issue's resolved. Before we get into that,
12 why are you -- I guess I'm not following. You're saying
13 that it's -- giving him specific responses to his
14 discovery requests is overly burdensome on you at this
15 point?

16 MR. TALARICO: Right, to go back and review 8,700
17 documents that had been turned over in the past --

18 THE COURT: Well, who should?

19 MR. TALARICO: Excuse me?

20 THE COURT: Well, who's burden is that to provide
21 the accurate answer?

22 MR. TALARICO: Judge, those were responded to. They
23 were supplied to Mr. Flynn in the past in response to
24 requests to produce.

1 THE COURT: He may have -- I accept he has every
2 single relevant document, but you can't just say in
3 response to a discovery request find it yourself, it's
4 in these thousands of pages of documents. You got to
5 tell him where it is. So --

6 MR. TALARICO: I understand -- I'm sorry, Judge.

7 THE COURT: The bottom line, your answer has to be
8 one that you can be pinned down on for purposes of
9 impeachment, and your answers are -- don't permit that.
10 So if you're going to respond, you've got to give him a
11 direct response to a direct question, and you didn't do
12 that. You've given him -- you said here's everything we
13 have, find it yourself. And that is nonresponsive.

14 MR. TALARICO: Judge, with all due respect, again,
15 the -- this was -- what I'm reflecting on is these are
16 the documents that were submitted to Mr. Flynn by the
17 Clinton Law Firm with no objection.

18 THE COURT: But I have a motion to compel that -- I
19 mean -- so I think --

20 MR. FLYNN: And that's not accurate, Judge. There
21 have been multiple 201(k) conferences and it was a long,
22 unusual production in response to the interrogatories in
23 the case as it was.

24 THE COURT: Regardless, I am ordering compliance and

1 you must give specific responses to each of the
2 requests, and you can't just say it's somewhere in these
3 8,000 plus pages. How long is it going to take you to
4 do that?

5 MR. TALARICO: Judge, if I could have 60 days to
6 cover 9,000 -- close to 9,000 documents.

7 THE COURT: Sure, I'll give you 60 days, because,
8 yeah, that is a lot of -- those are a lot of documents,
9 so I'll put this out 60 days.

10 Mr. Flynn, is there anything else we need to
11 address at this time?

12 MR. FLYNN: Well, the supplemental production
13 response, again, is a nonresponsive production response.
14 The question is, is there a document in that 8,000
15 pages. We don't think there is, but Dulberg testified
16 both ways essentially, whether there was a December 16,
17 2016, written communication with Tom Gooch that provided
18 him with the basis for the tolling of the statute of
19 limitations. If there is none, then the response should
20 say there is none, not see 8,000 documents and maybe
21 it's in them.

22 THE COURT: I agree.

23 Mr. Talarico, --

24 MR. FLYNN: And with respect to the --

1 THE COURT: Well, hang on.

2 Mr. Talarico, I'm not going to tell you how to
3 respond, but if there is no such document, -- I did take
4 note of the fact that I saw none in the documents I
5 reviewed -- if there is no such document, then just say
6 there is no such document.

7 MR. TALARICO: With all due respect, I think I did
8 answer that question. There was one document and I
9 turned it over to Mr. Flynn. The only document between
10 Gooch and the plaintiff in December of 2016, one
11 document turned over, without objection, without a
12 privilege log.

13 THE COURT: Mr. Flynn? You're being told that all
14 documents responsive to that request have been turned
15 over. And I agree that at least in the documents I was
16 asked to review, there was nothing that corresponded
17 with the December 2016 date that we initially were
18 discussing, but --

19 MR. FLYNN: It should be a pretty simple process
20 then and it should be in writing. Then I can attach it
21 to my summary judgment motion, which I know is not a
22 surprise to anyone. The same goes with respect to the
23 interrogatory answers. Dulberg admitted in his
24 deposition that he didn't respond completely to

1 interrogatory number one, in particular, from Hans Mast.
2 So that is also part of this motion to compel.

3 Again, that one is a little different. It says
4 identify and describe each and every way that Popovich
5 or Mast breached any duty of care to you, the date of
6 the breach and when and how you became aware of the
7 breach. He didn't answer it.

8 THE COURT: Okay. Mr. Talarico? And I'm going to
9 move on to everybody else and then come back to you --
10 in fact, I'll come back to you guys. I'll let -- let me
11 get rid of everyone else and we'll resume this in a
12 moment.

13 (Whereupon, the above-entitled cause
14 was passed and subsequently recalled.)

15 THE COURT: That brings us back to Dulberg. What
16 I'm doing right now is looking up -- I want to go to the
17 interrogatory. Mr. Flynn, while I'm looking for -- it's
18 interrogatory number one; am I correct?

19 MR. FLYNN: Correct.

20 THE COURT: All right. I'm looking in your motion
21 to compel and since nothing is marked, I've got to page
22 through these one at a time, so while I'm doing that,
23 rather than just staring at me, why don't you tell me
24 what the interrogatory says.

1 MR. FLYNN: Sure. It says identify and describe
2 each and every way that Popovich or Mast breached a duty
3 of care to you, the date of the breach, and when and how
4 you became aware of the breach.

5 THE COURT: Okay. And what was the response?

6 MR. FLYNN: Between October of 2013 and
7 January 2014, Mast told Dulberg that Illinois law does
8 not permit a recovery against the McGuires in the
9 circumstances of Dulberg's case and that he would not
10 receive any recovery from the McGuires.

11 THE COURT: Okay.

12 MR. FLYNN: Mast advised Dulberg that the judge
13 would rule in favor of the McGuires on a motion for
14 summary judgment. Mast further told Dulberg that
15 Dulberg would retain his claim against Gagnon and be
16 able to seek and receive a full recovery from Gagnon.
17 So that says nothing specifically about a breach, the
18 date of the breach or when and how he became aware of
19 it.

20 THE COURT: Well, it doesn't -- no, it doesn't tell
21 you the date.

22 Mr. Talarico, do you have a response on that?

23 MR. TALARICO: No, Your Honor, it doesn't say
24 specifically the date of the breach.

1 THE COURT: All right. And --

2 MR. FLYNN: And we were forwarded the discovery.
3 Again, this goes back to the Gooch -- whether it be a
4 verbal or written communication on December 16, 2016.

5 MR. TALARICO: Mr. Flynn, verbal -- I don't know
6 where I could get verbal responses. I've gone over
7 everything and I -- Judge, I have in total 90 emails
8 between the two, between Mr. Gooch and Mister -- and the
9 plaintiff, and I would be willing to turn over every one
10 of them. That's the written -- that's what I have.

11 MR. FLYNN: I just want to know what the basis is
12 for the discovery of the malpractice, and if there isn't
13 anything other than a verbal discussion with Tom Gooch
14 in his office, that's fine; but it just needs to specify
15 that. And I think that's been the ruling with this.

16 THE COURT: And I think --

17 MR. FLYNN: And that's what the testimony seems to
18 reflect.

19 THE COURT: I -- I think the answer -- and I
20 certainly don't know, but based upon what I understand
21 already, I think the answer points to that December 2016
22 date addressed in the production response, but I don't
23 know and I -- my concern is making sure it is clear from
24 the answer to interrogatory that is in fact what we're

1 talking about. If there's another date, fine, but it
2 has to be disclosed.

3 I don't know about -- I'm not sure how he
4 responds to the date of the breaches because I -- I do
5 think that that's an incredibly broad question because
6 it --

7 MR. FLYNN: I understand that.

8 THE COURT: -- in essence, it's every day after the
9 resolution of the initial claim, and you do have a date
10 for that, at least by way of a settlement or order.

11 So, Mr. Talarico, can you supplement that
12 answer with the date of discovery?

13 MR. TALARICO: I will do my best, Judge. I will.

14 THE COURT: Okay. Mr. Flynn, the next one?

15 MR. FLYNN: You know, generally I think that's it,
16 Judge. It's the supplemental production response and
17 then these interrogatories, so what I would ask that the
18 order reflect, that the specific answers need to be made
19 and that the objections in the supplemental production
20 response be overruled. I think the objection is undue
21 burden on each of them --

22 THE COURT: Yeah, and to the extent that there are
23 objections to the burdensome nature, those are
24 overruled. I recognize that it is a burden, but you got

1 to -- somebody's got to do it, and it is your claim, it
2 is your burden. But I will give you 60 days in which to
3 complete that.

4 Mr. Talarico, anything you want to add?

5 MR. TALARICO: No, Judge.

6 THE COURT: So why don't we -- 60 days is June 1st.
7 Let's assume -- and I'm going to -- I won't assume
8 compliance prior to June 1st, but if we come back on
9 June 14th, that's a Monday, Mr. Flynn, do you think you
10 would be able to give me your comments on compliance by
11 then?

12 MR. FLYNN: If I have a response and, say, amended
13 interrogatory answers and amended supplemental responses
14 by June 1?

15 THE COURT: Yeah.

16 MR. FLYNN: Yes, sure.

17 THE COURT: Okay. So I will direct a supplemental
18 answer to interrogatory number one. I'll direct amended
19 answers to the production request, and all due by
20 June 1st.

21 Is there anything else we need to address?

22 MR. TALARICO: No, Judge, that's my birthday --

23 THE COURT: Happy birthday.

24 MR. TALARICO: (Indiscernible).

1 MR. FLYNN: I guess the only thing going forward,
2 we've got the objections in the deposition transcript.
3 Does the court typically just rule on those when ruling
4 on a summary judgment motion?

5 THE COURT: No, I -- let me -- I have not had to
6 deal with ruling on objections in a discovery deposition
7 related to a motion for summary judgment.

8 MR. FLYNN: Okay.

9 THE COURT: So I haven't done that before, but I do
10 think that we have to address that and the only way to
11 address it is to just walk through them, so perhaps if
12 we set -- and I know this is putting it out, but I'm
13 wondering -- and you know better -- whether any of the
14 objections are going to become moot once you have
15 responses to the written discovery. Is that going to
16 fix anything?

17 MR. FLYNN: I think that a lot of them are already
18 moot. I think that some of the rulings over the last
19 month or so on these objections have probably covered
20 those that are contained in the dep transcripts;
21 however, I just want to make the summary judgment
22 process as clean as possible.

23 Maybe I can talk to Mr. Talarico and we can
24 come up with an agreement on whether some of these

1 objections in the dep are withdrawn, but, again, I just
2 -- I don't want the summary judgment motion to bog down
3 on objections in a dep transcript, so --

4 THE COURT: Okay. And I don't know.

5 MR. FLYNN: So -- Okay. I wanted to raise that
6 issue in advance so the court's aware that that might be
7 an issue.

8 THE COURT: Why don't we put the hearing at 1:30 on
9 Monday, June 14th, and if you are unable to work out the
10 issues on the discovery deposition, then we'll walk
11 through the transcript. You'll need to give me a copy.
12 And -- unless there is one in the court file already.
13 You'll need -- and we'll walk through each one and I'll
14 take argument at that time and --

15 MR. FLYNN: Okay.

16 THE COURT: -- I'll rule then. And that may get you
17 where you want to go, and if there are none, great.
18 Then we don't have to deal with it.

19 Does that --

20 MR. FLYNN: Okay.

21 THE COURT: Does that resolve your concern for today
22 at least?

23 MR. FLYNN: I think so.

24 THE COURT: All right. So, Mr. Flynn, if you could

1 draft the order.

2 Mr. Talarico, is there anything you want to
3 add?

4 MR. TALARICO: Well, I've read -- I wasn't present
5 at the deposition, so I'm just trying to get my brain
6 wrapped around it. The objections were attorney-client
7 privilege, sir, was that --

8 MR. FLYNN: Many of them, yes.

9 MR. TALARICO: Okay. That's all.

10 MR. FLYNN: And, again, it goes to the discovery of
11 the malpractice. I think that it's been placed at issue
12 by virtue of the pleadings, so -- and, again, I think
13 that there's been a ruling, at least in part, on some of
14 these issues, but, --

15 THE COURT: In the alternative --

16 MR. FLYNN: -- you know, why don't we --

17 THE COURT: -- if you agree that some of the
18 questions could have been answered, can you do this by
19 way of interrogatory rather than a supplemental
20 deposition?

21 MR. FLYNN: I think that for the most part
22 Mr. Dulberg answered over the objections.

23 THE COURT: Okay.

24 MR. FLYNN: And so the record was set there. The

1 objections were made on the record. I think that it
2 could probably be dealt with fairly swiftly.

3 THE COURT: All right. Great. Then I'll wait for
4 your order. As soon as I see it, I'll sign it. And,
5 otherwise, I'll see you June 14th.

6 MR. FLYNN: Okay. Thanks, Judge. Do you have a
7 time that you needed the order by? I would like to send
8 a draft to Mr. Talarico after my secretary prepares it.

9 THE COURT: The clerks will harass you, --

10 MR. FLYNN: Okay.

11 THE COURT: -- but if you get it in by Monday,
12 that's fine.

13 MR. FLYNN: Oh, okay. I was thinking sometime
14 today.

15 THE COURT: Today's perfect. So anytime this
16 afternoon is fine, but Monday is kind of the to-die
17 date. I got to have it by then.

18 MR. FLYNN: Fair enough.

19 THE COURT: All right.

20 MR. FLYNN: Thank you very much, Your Honor.

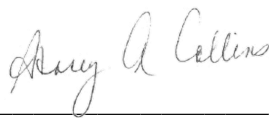
21 THE COURT: Thank you.

22 MR. TALARICO: Thank you, Judge. Thank you,
23 Mr. Flynn.

24 MR. FLYNN: Thanks, Counsel.
(Which was and is all of the evidence
offered at the hearing of said cause
this date.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF MCHENRY)
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5 I, Stacey A. Collins, an Official Court
6 Reporter of the 22nd Judicial Circuit of Illinois, do
7 hereby certify the foregoing to be a true and accurate
8 transcription to the best of my ability and based on the
9 quality of the recording of all the proceedings heard on
10 the electronic recording system in the above-entitled
11 cause.

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14 Stacey A. Collins, CSR
15 Official Court Reporter
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