

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3
4 IN THE TWENTY-SECOND JUDICIAL DISTRICT
McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 7th day of
16 September, 2021, in the McHenry County Government
17 Center, Woodstock, Illinois.

18 APPEARANCES:

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

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN (via Zoom)

24 On behalf of the Defendants.

1 THE COURT: Dulberg versus Mast?

2 MR. TALARICO: Alphonse Talarico for the
3 plaintiff, Mr. Dulberg.

4 MR. FLYNN: Good morning, your Honor. George
5 Flynn for the defendants, the movants.

6 THE COURT: All right. I have a defendant motion.

7 MR. FLYNN: Yes, we have a motion to deem facts
8 admitted as well as response filed --

9 THE COURT: Okay. I didn't see that. Do you
10 want to file a reply?

11 MR. FLYNN: I don't think it's necessary. I
12 have a comment or two I'd like to make, but I don't
13 think I need to file a reply.

14 THE COURT: If you want to wait until the end of
15 the call, I'll address it and we'll walk through it.
16 What would you like to do?

17 MR. FLYNN: That would work. The comment is
18 really just respect to the motion -- with respect --

19 THE COURT: You have to wait, so --

20 MR. FLYNN: Fair enough.

21 THE COURT: I got to take a look at it and I've
22 got a bunch of people waiting, so I will circle back
23 to you.

24 (Whereupon the afore-captioned

1 cause was recalled.)

2 THE COURT: Do we have a defense attorney on
3 Dulberg versus Mast? All right. Mr. Talarico,
4 we're missing a defense --

5 MR. TALARICO: Yes, your Honor.

6 THE COURT: Oh, we do?

7 MR. FLYNN: George Flynn for defendants.

8 THE COURT: All right. Oh, we were going to do
9 the -- I'm sorry. I skipped ahead.

10 MR. FLYNN: That's okay.

11 THE COURT: There's a lot of people here.

12 (Whereupon the afore-captioned
13 cause was recalled.)

14 THE COURT: All right. I'm going to deal with
15 Mr. Talarico.

16 MR. TALARICO: Yes, your Honor.

17 THE COURT: Okay. Going back to your case. All
18 right. Mr. Flynn, what is the basis of your motion?

19 MR. FLYNN: Good morning, your Honor. George
20 Flynn on behalf of defendant/movant. The basis is
21 it's a motion to deem facts admitted. We were
22 trying to authentic a document that was the subject
23 of some discussion the last couple of times we
24 appeared before your Honor. I filed the request to

1 admit. We received objections that we believe are
2 inappropriate and just moving for ruling on those
3 objections and some other relief. The -- the
4 response that they filed, essentially is a motion to
5 strike based on the failure to conduct a 201(k)
6 conference, which I don't think is required with
7 respect to objections and a request to admit, which
8 is a hybrid discovery and evidentiary tool.

9 So with respect to the motion itself, I
10 really have nothing to say more than what's in the
11 motion. I'd be happy if the Court wanted to take it
12 under advisement after it has an opportunity to
13 review the attachments and the motion.

14 THE COURT: No, I won't take it under
15 advisement. We'll go back to that in a minute.

16 Mr. Talarico, do you have any case law that
17 says a 201(k) conference is required before 216 --
18 or in a 216 situation?

19 MR. TALARICO: Yes, your Honor. Supreme Court
20 Rule 201(a) typically says the request to admit --

21 THE COURT: Do you have any case law?

22 MR. TALARICO: No, I have no case law, your Honor.

23 THE COURT: Okay. Because I don't think it
24 does. I think by its own -- by the language of the

1 rule, it's 28 days. And in fact, I believe the rule
2 requires that the request to admit facts explicitly
3 disclosed if you're not -- if you don't respond in
4 28 days, the answers are deemed admitted. So there
5 is no requirement to engage in a 201(k) conference
6 to resolve differences because by its own language,
7 it resolves itself.

8 So let's get into the answers. Okay.
9 Anything you want -- I see No. 1, they seem to be
10 asking you to admit or deny the genuineness of the
11 document that was attached?

12 MR. TALARICO: Correct, your Honor.

13 THE COURT: And do you have any -- anything to
14 say beyond what you've written in response?

15 MR. TALARICO: Your Honor, use of the words
16 defendant put into his motion, request to admit, are
17 subject to various interpretations. And he did not
18 include the definition of the specific words that he
19 was using, so I relied upon the Black's Law
20 Dictionary for definition. And within that, we
21 were -- we reviewed the fact of the document.

22 THE COURT: Okay.

23 MR. TALARICO: The document -- the document is
24 not accurate. It's not true. It's none of the

1 above. It has a wrong date of accident, the wrong
2 date of meeting. It has a lot of inaccuracies on
3 it, Judge.

4 THE COURT: Okay. I'm going to strike the
5 implicit objection regarding what is genuine. That
6 being said, I do have what appears to be an
7 admission. Mr. Flynn?

8 MR. FLYNN: Yeah, Judge. I mean, it's -- I
9 guess if it was an admission buried in these
10 objections. But the entire document is muddled up
11 with these various objections. I'm just asking if
12 this is a true copy of the letter that his client
13 received. I'm not asking if it's -- if information
14 contained is true and accurate. If you read it,
15 it's admit Exhibit A attached hereto is a true,
16 accurate, and genuine copy of a March 4, 2015,
17 letter drafted by Attorney Saul Ferris. He
18 concluded with the content of the letter. That's
19 not what I'm asking about.

20 MR. TALARICO: Your Honor, that is not in
21 true -- truth is not within that document. That's
22 what we're saying. Those are false statements.

23 THE COURT: And that's fine. But it is -- he
24 doesn't need to lay a foundation for the document;

1 am I correct?

2 MR. TALARICO: No. But the question -- I'm sorry.

3 THE COURT: Are you -- are you admitting -- I'm
4 assuming, Mr. Flynn, this is for purposes of a
5 foundation? You're not asking him to admit the
6 contents?

7 MR. FLYNN: That's correct. This is produced --
8 again, late produced in discovery after the
9 plaintiff's deposition. He should have produced
10 this document years ago when he's placed the
11 discovery of his malpractice at issue. So then he
12 produces this letter. I don't want to have to take
13 Saul Ferris's deposition, so I'm just asking, this
14 is the letter that Mr. Dulberg produced and that
15 it's a genuine copy of what he received in the mail?

16 THE COURT: Okay. Mr. Talarico, yes or no?

17 MR. TALARICO: Judge, that is a genuine copy.
18 We don't know -- when examined, Mr. Dulberg does not
19 recall. And in the deposition, he said he did not
20 recall when he received it or how he received it.
21 That is left open.

22 THE COURT: Mr. Talarico, I asked you a yes or
23 no question, not asking for an explanation, which is
24 consistent with what request to admit facts require.

1 So are you admitting to the foundation of this
2 document or denying --

3 MR. TALARICO: Yes, your Honor.

4 THE COURT: Okay. Then we will proceed. That's
5 deemed admitted for purposes of foundation.

6 Next one -- Mr. Flynn, the next one at issue?

7 MR. FLYNN: Judge, there was 2 and 3, and I
8 attempted to pin them down on when he received it.
9 So I asked No. 2, if Mr. Dulberg received a copy of
10 this letter within 7 days of the date dated. And
11 then, the next one, I asked if he received it within
12 30 days of the date it was dated. He doesn't answer
13 either of those.

14 THE COURT: Okay. Mr. Talarico?

15 MR. TALARICO: Judge, with all due respect,
16 Mr. Dulberg answered as best he could. This was
17 alleged to be sent by U.S. Mail. He has no idea.
18 It was many years ago. So he answered as
19 truthfully, as cooperatively as possible, that he
20 has no independent recollection of when this letter
21 was received. He did a search of his own records,
22 as presumed, at my request. He has no envelope.

23 THE COURT: If -- what it boils down to from my
24 perspective is I'm reading it as a denial. And

1 actually, that subjects you to 219(c) fees if they
2 have -- for those fees associated with the cost of
3 proving it up. But I'm reading it as a denial. Can
4 I -- do you have any problem with my reading it as a
5 denial? Am I incorrect?

6 MR. TALARICO: No, your Honor, you're not.

7 THE COURT: Okay. Mr. Flynn, anything you want
8 to add? My interpretation of all of that is a denial.

9 MR. FLYNN: If that's what the answer is, then
10 he's denied that he received this letter within
11 30 days of the date that the lawyer put the --
12 stamped it. So yeah, if I need to prove it up by
13 taking Mr. Dulberg's -- retaking Dulberg's
14 deposition and then taking Saul Ferris's deposition,
15 and as I've indicated in the motion, I'm seeking
16 fees and costs.

17 THE COURT: Yeah. I'm going to interpret 30 --
18 or I'm sorry -- 3 the same way. I interpret that as
19 a denial and you just have to prove it up.

20 Next one?

21 MR. FLYNN: The next one is just regarding the
22 meeting that is referenced in the letter. Admit
23 that you met with Saul Ferris upon or about
24 December 31, 2014, with regard to your personal

1 injury case.

2 THE COURT: Okay. I --

3 MR. FLYNN: And he's denying -- he denied the
4 date. He then says it's a later time period between
5 February 23rd and March 6th of 2015, which also
6 coincided with the drafting of that letter, by the
7 way. So he's changed the premise of No. 4, but sort
8 of provided an answer --

9 THE COURT: I think that's a denial because of
10 the way you phrase your question. Anything after
11 denies that he met Saul Ferris on or about
12 December 31, 2014, with regard to -- with regard to
13 the personal injury case, everything after that is
14 surplusage. So you have a denial. All right. Is
15 there anything else?

16 MR. FLYNN: No. The relief will be requested
17 now that these denials and improper objections were
18 raised. I'm going to have to retake Mr. Dulberg's
19 deposition at least on the subject matter of this
20 letter and I'll probably have to take Mr. Ferris's
21 deposition to prove-up the foundation for the letter
22 as well.

23 THE COURT: Certainly --

24 MR. FLYNN: So I would ask for fees and costs.

1 THE COURT: You have leave to depose Mr. Ferris.
2 I'm not sure you need Mr. Dulberg's deposition --
3 I'm willing to listen -- because your deposition of
4 Mr. Dulberg would merely result in him repeating --

5 MR. FLYNN: Raising the same denial, so --

6 THE COURT: I mean, he's on the record denied
7 any recollection. So I don't think you need the
8 deposition to get him to say that in the transcript
9 because you've got it in the request to admit. And
10 I'll hold him to that unless there's something else
11 you think you need from the deposition.

12 MR. FLYNN: No, Judge. I -- as you said, I
13 think he's going to make the same denials and in my
14 opinion play the same games he's been playing. So
15 I'll take Mr. Ferris's deposition. I'll seek -- I'm
16 requesting fees and costs in connection with the
17 deposition because it shouldn't be necessary.

18 THE COURT: Well, I think -- and unless there's
19 a different issue with respect to the cost
20 associated with that deposition, I think that's an
21 issue that I would have to address after trial
22 because my reference to 219(c) is when you have to
23 expend money to prove-up a fact that they deny, then
24 you are entitled to those fees, but -- so I couldn't

1 award them yet because you haven't --

2 MR. FLYNN: Fair enough.

3 THE COURT: -- you haven't done it. And I can
4 only do that after the fact because if you fail to
5 prove it up, you're not entitled to those fees,
6 obviously.

7 MR. FLYNN: Understood.

8 THE COURT: So is there anything else we need to
9 do today?

10 MR. FLYNN: I don't think so, Judge. If I could
11 just clarify the order that will read that No. 1 is
12 admitted, 2, 3, and 4 are denied.

13 THE COURT: Yes.

14 MR. FLYNN: That I have leave to depose
15 Mr. Ferris.

16 THE COURT: Yes.

17 MR. FLYNN: And then I assume come back for
18 status.

19 THE COURT: Yeah, we're back on September 17th.
20 That's awful soon in light of what you're now going
21 to do. I'm thinking more like 60 days unless you
22 guys have a better idea.

23 MR. FLYNN: I agree.

24 MR. TALARICO: Judge?

1 THE COURT: 60 days puts us into -- actually
2 November 8th is my default date. Any time earlier
3 is fine.

4 MR. FLYNN: That works for me.

5 MR. TALARICO: Fine, Judge.

6 THE COURT: All right. Mr. Flynn, since it's
7 going to be a more complicated order, can you send
8 it in?

9 MR. FLYNN: Yes.

10 THE COURT: Can you copy --

11 MR. FLYNN: I will.

12 THE COURT: Do you have our address?

13 MR. FLYNN: I do, I do. And I'll send a copy of
14 the draft to Mr. Talarico this morning. I'd like to
15 hear back from him by noon so there's no confusion.

16 THE COURT: Okay. I will --

17 MR. FLYNN: All right.

18 THE COURT: -- wait for the order. And then
19 otherwise -- and please strike September 17th.

20 MR. FLYNN: We will. Thank you, Judge.

21 THE COURT: Thank you.

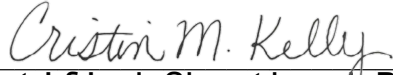
22 (End of proceedings.)

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

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4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
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16 Certified Shorthand Reporter
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18 Date: September 10, 2021
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