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Vertical Superior Court
Orange Unit
23-CV-02848

STATE OF VERMONT

SUPERIOR COURT | CIVIL DIVISION
Orange Unit | Docket No. 23-CV-02848

JOHN DURKEE, EXECUTOR OF THE ESTATE OF KENNETH H. BLAISDELL, JR.,
Plaintiff,

v.

TRINI BRASSARD, COURTNEY BRASSARD, BRIAN FALZO, DANIEL BRASSARD, AND BRASSARD SUGARWORKS AND MAPLE SUPPLY, LLC,
Defendants.

PLAINTIFF'S REPLY TO
DEFENDANT TRINI BRASSARD'S OPPOSITION TO
PLAINTIFF'S MOTION TO DISMISS
with
PROPOSED CONFIDENTIALITY AGREEMENT

Defendant Trini Brassard ("Defendant") argues that Plaintiff John Durkee, Executor of the Estate of Kenneth H. Blaisdell, Jr., is not entitled to an order compelling Defendant's discovery responses because Plaintiff has: (1) already disclosed the *Complaint* to third-parties and will therefore fail to keep other items confidential; (2) delayed discovery; and, (3) requested records that include Defendant's husband's financial information. Defendant seeks a discovery order related to confidentiality and requests that this Court appoint a *Special Master* for the remaining portion of discovery.

Additionally, throughout her verified opposition papers, Defendant includes factual allegations that falsely assert that Plaintiff has shared documents related to this action with non-parties. Defendant asserts that this dissemination was improper, and argues that it provides support for her request for the *Special Master*. Defendant swore to the veracity of these statements in her verified opposition papers, yet they are false. As a result, Defendant has filed opposition papers that are false, and offered no legal support for her continued obstruction of discovery activities. Therefore, Plaintiff is entitled to a motion compelling her to produce all financial records, and Plaintiff is further entitled to costs and attorney's fees associated with pursuing this order.

Legal Analysis

Under both Vermont statutory and common law, a party is entitled to discovery through any means outlined in the Rules on any subject that "is relevant to any party's claim." V.R.C.P. 26(b)(1). Further, at the March 24, 2025 status conference this Court informed all three Defendants that the financial records sought are relevant and discoverable. The Court directed the parties to confer and make efforts to resolve the remaining discovery disputes, but the Defendants refused to confer. *See* Affidavit of Elizabeth A. Willhite, filed of even date herewith. In the absence of the parties' ability to resolve discovery disputes, a party may seek an order from the Court. *See* V.R.C.P. 26, 37.

1. Defendant verified the facts in her opposition paper knowing that they are untrue.

While Plaintiff does not believe that Defendant's false statements relating to the dissemination of information to non-parties is relevant to the issues before this Court, Plaintiff does believe it is vital to correct the false statements. In fact, candor with the court is a cornerstone principle of litigation. Vermont Rule of Civil Procedure 11 states, in relevant part, "by presenting to the court whether by signing, filing, … later advocating a … written motion …, an attorney … is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstance: (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; … (3) the allegations and other factual contentions therein have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery…" *See* V.R.C.P. 11(b)(1) and (3).

Defendant's opposition paper states that Plaintiff gave a non-party, Thad Blaisdell, a copy of the *Complaint* before it became a public document. *See* Defendant's Opposition at ¶ 8. Defendant further alleges Plaintiff "leaked" the information to Thad Blaisdell. *Id.* However, her own counsel's emails indicate that she knew that Thad Blaisdell had received a copy of the *Complaint* in February 2022. *See* Affidavit at ¶¶ 2-5. In fact, Plaintiff's counsel shared a copy of the *Complaint* (in draft form) with several non-parties under the protections of V.R.E. 408. *Id.* As stated at the March 24, 2025 status conference, this constant refrain from Defendant that Plaintiff has shared documents with Thad Blaisdell is false, and known by Plaintiff to be false. Regardless, Plaintiff continues to assert the veracity of this claim to this Court. This assertion was made again in Defendant's opposition papers, and again made without evidentiary support.

Any party may face sanctions if they are found to have violated Rule 11. *See* V.R.C.P. 11(c). Although Plaintiff is not going to waste time pursuing sanctions, Plaintiff does point out that these tactics are an unnecessary and unprofessional distraction from the issues before this Court that Plaintiff is compelled to correct. The discovery issues before the court can be decided without addressing the Rule 11 violations in Defendant's opposition papers. "A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." *HARR, LLC v. Town of Northfield, VT*, 2021 WL 8343425 (Sup. Crt. Wash. April 21, 2021). As such, Plaintiff states the above clarification of the facts, and proceeds to the substance of Defendant's opposition.

2. <u>Plaintiff agreed to a confidentiality agreement/order</u>.

Defendant argues for a confidentiality agreement, which Plaintiff does not object to in theory. In fact, Defendant's originally proposed confidentiality agreement was assented to by Plaintiff. See Affidavit at ¶¶ 11-12. Defendant argues that this was a "unilateral agreement" and it was "modified" by Plaintiff. The only modifications made were to add all parties to the agreement. *Id.* at ¶ 13. Plaintiff has offered no legal reason for Defendant's refusal to formalize her own agreement, and instead seeks a different extraordinary measure, a *Special Master*.

A party may seek a protective order "for good cause shown." *See* V.R.C.P. 26(c). "The moving party bears the burden of establishing 'good cause' to obtain a protective order pursuant to Rule 26." *Chaney v. Vermont Bread Company,* 2022 WL 16757624 (D.Vt.Nov. 8, 2022). Defendant has failed to seek such an order, but has requested this type of relief. However, Defendant has also failed to show good cause in her opposition papers. Plaintiff was willing to collaborate with Defendant on her request for a confidentiality agreement, and continues to assent to the originally proposed agreement. Defendant is now seeking additional measures, namely the appointment of a *Special Master*, as part of the confidentiality stipulation and order. Plaintiff rejects this suggestion, because it is unnecessary, expensive, and will cause further delay.

A superior court may appoint a master without the agreement of the parties in a limited set of circumstances. *See* V.R.C.P. 53(b)(2). "In the absence of agreement of the parties, a reference shall be the exception and not the rule." *Id.* A master is not appropriate for standard discovery disputes and there are no reported Vermont cases in which a court has appointed a special master in this context. Rather, Vermont courts have appointed a master to aid judges with specific unique litigation questions or with complex litigation questions. *See Ransom v.*

Bebernitz, 1998 WL 35419477 (Vt. Super. Nov. 23, 1998) and *Snide v. Burke-Schoff* 2014 WL 10321329 (Vt.Super. Sep. 4, 2014) (court appointed a master to aid with decision related to the partition of lands); *See also King v. Town of Craftsbury*, 2002 WL 34340298 (Vt.Super. May 10, 2022) (court appointed three masters to act as commissioners to review the town's reclassification of roadways); *Vermont Human Rights Com'n v. Benevolent and Protective Order of Elks* 2009 WL 5454429 (Vt.Super. Apr. 6, 2009) (court appointed a special master to report on fees requested).

In this case, the Court already informed Defendant that production of financial records, whether they are joint or otherwise owned by her, must be produced. A special master is not needed to aid the Court. Further, a review of Defendant's second proposed confidentiality agreement and order illustrates the delay that would inevitably occur should Defendant's request be granted. Moreover, the expense for this activity is wholly unnecessary[1]. As such, Plaintiff requests Defendant's request be denied, assents to Defendants originally proposed confidentiality agreement and order, and seeks court ratification of the same.

3. <u>Defendant refused to confer</u>.

During the March 24, 2025 status conference, this Court instructed all parties to engage in robust efforts to confer on discovery issues. Plaintiff attempted to comply with this suggestion, and Rule 26(h), but Defendant failed to confer beyond email communications. *See* Affidavit at ¶¶ 14-22.

The issue regarding the confidentiality agreement is, however, laid out well by both parties, and is ready for judicial action. Plaintiff assented to Defendant's original proposed

[1] Notably, Defendant has challenged the expenses associated with both the administration of the estate as well as the pursuit of the instant action – including the fees charged by the Executor, as well as the legal expenses. It is curious, therefore, that Defendant would ask this Court to appoint a special master which would only serve to increase costs.

confidentiality agreement. Defendant's request for a special master does not meet the requirements of Rule 53, and is unnecessary. Therefore, Plaintiff argues the original confidentiality agreement should be ratified by this Court, and Defendant should be compelled to produce all documents that are responsive to Plaintiff's discovery requests.

4. Defendant offered no credible legal analysis to deny Plaintiff joint tax returns.

Defendant argues that she should not be required to produce certain financial records, because they relate to the financial information of non-parties. However, on March 24, 2025, the Court already addressed this issue as raised by Defendant Daniel Brassard. As stated, joint accounts or joint tax returns are relevant pursuant to Rule 26. Defendant's Opposition fails to state any legal reason why these returns should not be produced. Therefore, Plaintiff requests an order compelling Defendant to produce her income tax returns with all accompanied schedules for the years 2013 – 2021.

5. Plaintiff is entitled to sanctions.

V.R.C.P. 37 provides that "if the motion is granted, the judge shall, … require the party whose conduct necessitated the motion … to pay to the moving party the reasonable expenses … including attorney's fees…". *See* V.R.C.P. 37(a)(4). The only exception to this required order for fees is if the opposition is substantially justified when the dispute about the matter was "genuine." *Id.*

Under this objective standard of reasonableness, it is not enough to demonstrate that the opposing party has acted in good faith. *See Turner v. Vermont Center for the Deaf & Hard of Hearing, Inc.*, 2003 WL 27380992 (D.Vt.2003); *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Bowne of New York City, Inc. v. AmBase Corp.*, 161 F.R.D. 258, 262 (S.D.N.Y.1995). As often held by the Vermont Supreme Court, "imposition of sanctions under this rule is necessarily a matter of judicial discretion that is not subject to appellate review unless it is clearly shown that such discretion has been abused or withheld." *SynEcology Partners, L3C v. Business RunTime, Inc.,* 201 Vt. 424, 431 (2016).

Plaintiff first propounded discovery on Defendant on September 29, 2023. *See* Plaintiff's Motion for Status Conference filed June 27, 2024. Defendant failed to respond until December 31, 2024, and as stated in Plaintiff's underlying motion her responses include Bates labeled references to documents that she refuses to produce. Defendant has responsive materials, and this Court advised her they were relevant and should be produced. Defendant was also directed to confer on issues related to a confidentiality agreement. Instead, Defendant filed an eleven page opposition motion seeking to deny Plaintiff's motion to compel her production and refused all efforts to confer. Plaintiff is entitled to sanctions under Vermont law.

Conclusion

Plaintiff hereby respectfully renews is request for the following relief:

A. An ORDER compelling Defendant Trini Brassard to respond to all outstanding discovery;

B. An ORDER compelling Defendant Trini Brassard to produce all documents identified in previously disclosed discovery responses no later than ten days from the date of the order;

C. An ORDER granting Defendant Trini Brassard's original proposed confidentiality agreement;

D. An ORDER compelling Defendant Trini Brassard to identify all banking institutions owned by her between June 2013 until December 2021 by bank name, branch, and account number;

E. An ORDER compelling Defendant Trini Brassard to sign releases authorizing these banking institutions to release all banking records identified above to Plaintiff, said releases to be signed no later than fourteen days after the order; and

F. An AWARD to Plaintiff of all costs including attorney's fees incurred since June 27, 2024 necessary to obtain this order.

DATED at Woodstock, Vermont, this 14^{TH} day of April, 2025.

PRIMMER PIPER EGGLESTON & CRAMER PC

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