

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

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MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE  
500 NORTH KING STREET, SUITE 11400  
WILMINGTON, DE 19801-3734

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Re: *Nancy Minieri, et al. v. Diane Bennett*  
C.A. No. 4792-ML  
Motion to Compel

Dear Counsel:

Before me is petitioners' motion to compel documents and revised interrogatory responses from the respondent. Trial in this action is scheduled for November 29 and 30, 2012. For the reasons set forth below, the motion is granted in part and denied in part.

**BACKGROUND**

The petitioners, Nancy Minieri ("Ms. Minieri") and Gary Bearor ("Mr. Bearor") filed this action in August 2009 against their sister, Diane Bennett ("Ms. Bennett"). Ms. Minieri is the personal representative of the estate of the parties' mother, Bertha Parker ("the Decedent"), and Ms. Minieri, Mr. Bearor, and Ms. Bennett are the beneficiaries of the Decedent's estate. The petition alleges that Ms. Bennett exercised undue influence over the Decedent in the year and a half before her death, with the result that Ms. Bennett received a disproportionate share of the Decedent's assets, which the Petitioners contend was contrary to the Decedent's estate plan. The

petition seeks an accounting and repayment of the assets Ms. Bennett purportedly misappropriated from the Decedent.

On November 17, 2011, the Petitioners<sup>1</sup> served Ms. Bennett with their Fourth Request for Production and their Fourth Set of Interrogatories. Ms. Bennett responded to those discovery requests on January 4, 2012. On February 20, 2012, Petitioners informed Ms. Bennett that her responses to Interrogatories 8, 9, 10, 11, and 12 were nonresponsive, incomplete, and inadequate, and that Ms. Bennett's response to the Fourth Request for Production was incomplete. Ms. Bennett claims to have sent a letter on March 9, 2012, affirming that she had fully answered Petitioner's discovery requests and that she had no additional information or documents to supplement her earlier answers. On August 27, 2012, Petitioners again wrote to Ms. Bennett, reiterating the same perceived deficiencies with Ms. Bennett's discovery responses, and warning that they would file a motion to compel the responses if the information and documents requested were not provided by September 7, 2012. Ms. Bennett again claims to have told Petitioners that her discovery response was complete.

Petitioners filed their Motion to Compel on October 5, 2012. In it, they allege that Ms. Bennett's answers to five interrogatories in petitioners' Fourth Set of Interrogatories are incomplete and nonresponsive. The five interrogatories at issue seek information regarding: (1) the benefit received by the Decedent resulting from Ms. Bennett's purchase of a television, (2) the existence of financial accounts in which the Decedent held an interest other than the three already disclosed, (3) whether there is proof of an agreement establishing that Ms. Bennett could pay herself \$400 a week from any joint account between Ms. Bennett and the Decedent, (4) whether Ms. Bennett paid income taxes and provided for FICA withholding on the funds she

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<sup>1</sup> Petitioner Gary Bearor passed away on April 13, 2010. Cynthia Bearor is the representative of his estate.

paid to herself, and (5) whether Ms. Bennett paid income tax on the transfers she made between her own accounts and the Decedent's two accounts held at the Delaware National Bank ("the Delaware National Bank Accounts"). The motion also alleged that Ms. Bennett has failed to produce copies of any account statements establishing that Ms. Bennett is "a person authorized to withdraw funds from a bank account or other financial accounts," between June 1, 2007 through the present other than from the two listed Delaware National Bank Accounts.<sup>2</sup> The Petitioners now ask this Court to enter an order compelling Ms. Bennett to provide complete answers to the listed interrogatories in Petitioner's Fourth Set of Interrogatories and to fully respond to Petitioner's Fourth Request for Production.

### **ANALYSIS**

Court of Chancery Rule 26(b)(1) provides that parties may obtain discovery of any non-privileged matter 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[.]" and appears "... reasonably calculated to lead to the discovery of admissible evidence."<sup>3</sup> The burden rests on the petitioners to establish that the discovery requests at issue meet this standard, and that the respondent has not fully responded to the discovery.<sup>4</sup>

Ms. Bennett has fully responded to Interrogatory 8, which asks her to state the benefit the Decedent derived from the purchase of a flat screen television. Ms. Bennett rightly objected to

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<sup>2</sup> Mot. to Compel ¶ 5.a.

<sup>3</sup> Ct. Ch. R. 26(b)(1).

<sup>4</sup> See *Hopkins v. Chesapeake Utilities Corp.*, 300 A.2d 12, 14 (1972) (indicating that the burden imposed by Superior Court Civil Rule 26(b)(1), which is identical to Court of Chancery Rule 26(b)(1), is on the party seeking discovery). See also *Cede & Co v. Technicolor, Inc.*, 10 Del. J. Corp. L. 158, 162 (Del. Ch. 1984) (requiring the plaintiffs to show that their discovery requests appear reasonably calculated to lead to the discovery of evidence which would be admissible at trial).

Interrogatory 8 on the basis that it is vague and ambiguous, and correctly notes that this Interrogatory calls for speculation as it asks Ms. Bennett to opine on Decedent's state of mind. Interrogatory 8 does not appear "... reasonably calculated to lead to the discovery of admissible evidence[.]" and Ms. Bennett's objection to supplementing her answer to it is appropriate.

Interrogatory 9 asks Ms. Bennett to disclose the existence of any other financial accounts in which the Decedent held an interest other than those previously disclosed.<sup>5</sup> Ms. Bennett responded that "to the extent any such other relevant financial accounts existed, they have been fully disclosed."<sup>6</sup> Although Ms. Bennett's initial response to Interrogatory 9 arguably was incomplete because it limited her disclosure to "relevant financial accounts," her response to the motion to compel clarifies that she is not aware of any accounts other than those already disclosed.<sup>7</sup> For this reason, the motion to compel is mooted on this point.

Interrogatory 10 asks Ms. Bennett whether there was proof of an agreement establishing that Ms. Bennett could pay herself \$400 per week for providing care to the Decedent. This Interrogatory did not ask Ms. Bennett to describe or produce the agreement. Ms. Bennett's response of "yes," affirming that proof of such agreement exists, fairly answered the question posed.

Interrogatories 11 and 12 seek information relating to Ms. Bennett's payment of income and FICA taxes on the funds she paid to herself for the care of the Decedent as well as on the transfers she made to her own accounts from the Delaware National Bank Accounts. These two Interrogatories seek information relevant to the pending action and are reasonably calculated to lead to the discovery of admissible evidence. Among other things, this evidence could be

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<sup>5</sup> The Delaware National Bank Account numbers 09-925845-20 and 09-925845-06 and the Raymond James Account or Raymond James TOD Agreement are the disclosed financial accounts. Mot. to Compel ¶ 5.b.

<sup>6</sup> Resp't's Resp. to Pet'r's Mot. to Compel ¶ 13.

<sup>7</sup> *Id.* ¶ 14.

relevant to Ms. Bennett's credibility and the manner in which she characterized the payments and funds she received during the time she cared for the Decedent. In addition, Interrogatory 12 is not vague, as Ms. Bennett claims, because it refers to all of the funds transferred from the Delaware National Bank Accounts to Ms. Bennett's own accounts. For these reasons, Ms. Bennett should revise her responses to Interrogatories 11 and 12 by noon on November 27, 2012.

The Petitioners also made a Fourth Request for Production, specifically requesting “[c]opies of any account statements in which Diane E. Bennett is a person authorized to withdraw funds from a bank account or other financial accounts...” between June 1, 2007 to the present other than those relating to the Delaware National Bank Accounts.<sup>8</sup> Ms. Bennett's response to the Petitioner's document request arguably is ambiguous because it claims that, to the extent that she had possession of “such relevant documents,” they already had been provided.<sup>9</sup> The reference to “relevant documents” makes Ms. Bennett's response potentially incomplete. To the extent she has not already done so, Ms. Bennett should produce all non-privileged, responsive documents by noon on November 27, 2012.

Finally, Ms. Bennett makes an offhand request for mediation in the closing paragraph of her papers. This case has been pending for three years. It is scheduled for trial in eight days. No delays for mediation will be granted.

## **CONCLUSION**

For the foregoing reasons, the motion to compel is granted in part and denied in part. The parties' requests for attorneys' fees are denied. This is my final report in this matter.

*/s/ Abigail M. LeGrow*  
Master in Chancery

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<sup>8</sup> Mot. to Compel ¶ 5.a.

<sup>9</sup> *Id.*