IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

ASHLEY ADAMS,	)	
	)	
Plaintiff,	)	C.A. No. N19M-11-022
	)	
v.	)	
	)	
SUEZ WATER MANAGEMENT & SERVICES, INC., ET AL.,	)	
	)	
	)	
Defendant.	)	

ORDER DENYING MOTION FOR REARGUMENT

By Order dated March 4, 2020, the Court memorialized its ruling at the hearing on February 7, 2020 on Movants' Motion to Quash the Third Party Subpoena and for a Protective Order.

For the reasons stated at the hearing on February 7, 2020, and for the reasons stated in the March 4, 2020 Order, the Court denied Movants' Motion to Quash the subpoena at issue. The Court held that the subpoena served upon Eric M. Doroshow, Esquire in the underlying New Jersey state court action will be enforced.

The Court also ruled that Movants' Motion for a Protective Order was granted on the same terms as those set forth by the New Jersey court in its December 6, 2019 Order in the underlying New Jersey state court action which was attached to this Court's March 4, 2020 Order as Exhibit A and incorporated by reference therein.

Thereafter, Eric M. Doroshow, Esquire and his law firm, the Law Offices of Doroshow, Pasquale, Krawitz & Bhaya (hereinafter collectively referred to as the "Movants") filed a motion for reargument pursuant to Rule 59(e) of the Court's March 4, 2020 Order.

Movants' motion for reargument is hereby DENIED.

The subject motion stemmed from an underlying New Jersey state court action, *Adams v. SUEZ Water Management Services, Inc., et al.,* Superior Court of New Jersey, Law Division, Bergen County, Docket No. BER-L2017-17 (hereinafter the "New Jersey Underlying Action").

The plaintiff in the New Jersey Underlying Action, Plaintiff Ashley Adams, claimed she undertook certain actions in a bankruptcy action/proceeding based on the advice of her then-counsel Attorney Doroshow.

The defendants in the New Jersey Underlying Action sought discovery from Plaintiff Ashely Adams on her "advice of counsel" claims that she placed at issue in that New Jersey litigation. Plaintiff Adams, represented by counsel, sought to preclude discovery on her "advice of counsel" claims asserting that such discovery was precluded and/or limited by, among other reasons, the attorney/client privilege.

The New Jersey court in the underlying New Jersey Underlying Action considered the extent to which Plaintiff Adams placed her communications with her then-counsel Attorney Doroshow at issue in that New Jersey litigation, considered

the extent to which she was deemed to have waived the attorney/client privilege, and the extent to which discovery would be permitted from her former attorney, Attorney Doroshow, in that New Jersey Underlying Action.

The attorney/client privilege belongs to the client, not the attorney.[1] The client may waive, expressly or implicitly, the privilege when the client injects an issue into the litigation, the truthful resolution of which requires an examination of the attorney-client communications.[2] When the attorney asserts the attorney/client privilege, he does so as an agent of the client, and not for himself.[3]

After the New Jersey court ruled on the permissible scope of discovery from Attorney Doroshow in the New Jersey Underlying Action, the defendants in that action sought to enforce an out-of-state subpoena against third party Attorney Doroshow in Delaware pursuant to the Delaware Uniform Interstate Deposition and Discovery Act, 10 *Del. C.* § 4311. Defendants sought to enforce the out-of-state subpoena in accordance with the terms set forth by the New Jersey court in the New Jersey Underlying Action.

Attorney Doroshow and his law firm filed the subject motion to quash the

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[1] See, *Vaughan v. Creekside Homes, Inc., et al.,* 1994 WL 586832, *2 (Del.Ch.); *Fitzgerald v. Cantor, et al.,* 1999 WL 64480, 2 (Del.Ch.).
[2] *Fitzgerald v. Cantor, et al.,* 1999 WL 64480, 2 (Del.Ch.).
[3] *Vaughan v. Creekside Homes, Inc., et al.,* 1994 WL 586832, *2 (Del.Ch.); *Fitzgerald v. Cantor, et al.,*1999 WL 64480, 2 (Del.Ch.).

third party subpoena and for a protective order raising a number of defenses, including the attorney/client privilege. However, the attorney/client privilege and the defenses raised to the discovery sought belongs to the client, Plaintiff Ashley Adams, not to Attorney Doroshow. Plaintiff Ashely Adams already raised her objections to the discovery sought in the New Jersey Underlying Action and the New Jersey court already ruled on the scope of the permissible discovery. In fact, the New Jersey court also held that Defendant was to pay Attorney Doroshow for his attorneys' fees and costs for expenses incurred for the document production and appearance at his deposition in responding to the subpoena.

This Court held a hearing on Attorney Doroshow's motion to quash the third party subpoena and for a protective order on February 7, 2020, and entered an order memorializing its ruling at the hearing on March 4, 2020.

In essence, this Court held that Delaware's role in this matter is as a conduit. It is not for this Court to re-decide the extent to which the Plaintiff placed her communications with her counsel at issue in the New Jersey Underlying Action. The New Jersey court has already made that determination and the out-of-state subpoena will be enforced in Delaware in accordance with the terms set forth by the New Jersey court. If the New Jersey court erred, then it is for the New Jersey appellate court to correct those errors. The underlying action is not a Delaware case. Delaware's role here is limited to enforcing the out-of-state subpoena in accordance

with the terms set forth by the underlying out-of-state court.

The plaintiff does not get a second-bite at the apple. The plaintiff already raised her defenses, including the attorney/client privilege, on her own behalf in the New Jersey Underlying Action. She does not get another opportunity to re-raise her defenses yet again in Delaware through her agent, Attorney Doroshow. The attorney/client privilege belongs to Plaintiff Adams, and she, with the assistance of counsel, already raised it in the New Jersey Underlying Action.

Attorney Doroshow and his law firm filed a motion for reargument pursuant to Rule 59(e) of this Court's March 4, 2020 Order. Moving parties face a heavy burden on a motion for reargument. A motion for reargument is not a device for raising new arguments nor is it intended to rehash the arguments already decided by the Court. The only issue on a motion for reargument under Superior Court Civil Rule 59(e) is whether the Court overlooked something that would have changed its earlier decision. The motion for reargument will be denied unless the Court overlooked a controlling precedent or legal principles, or unless the Court has misapprehended the law or facts such as would affect the outcome of the decision.[4]

Movants restate in the Motion for Reargument the same arguments asserted in the earlier motion. Movants have not presented the Court with any controlling

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[4] *Ferko v. McLaughlin,* 1999 WL 167827, at *1 (Del.Super.); *Eisenmann Corp. v. General Motors Corp.,* 2000 WL 303310, at *1 (Del. Super.).

precedent or legal principles that would change the Court's decision, nor has Movants shown that the Court misapprehended facts in a material way. Movants' disagreement with the Court's decision is not grounds for granting reargument.

The scope of permissible discovery of the out-of-state subpoena issued to Attorney Doroshow has already been decided by the New Jersey Court in the New Jersey Underlying Action and will be enforced in Delaware in accordance with those terms.

The motion for reargument is DENIED.

IT IS SO ORDERED.

Dated: June 8, 2020

Commissioner Lynne M. Parker

cc: Original to Prothonotary
Keri L. Morris-Johnston, Esquire
Elaina L. Holmes, Esquire
Jennifer Barna, Esquire