

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

VAN KAMPEN HIGH YIELD	:	
MUNICIPAL FUND, et al.,	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	
	:	
O'DONNELL & NACCARATO,	:	
Defendant/Third-Party Plaintiff,	:	No. 02-1210
	:	
V.	:	
	:	
ORCHARD HILL	:	
DEVELOPMENT CORPORATION, et al.,	:	
Third-Party Defendants.	:	

MEMORANDUM/ORDER

Presently before the Court is Plaintiffs' Motion to Compel Discovery, Defendants' responses thereto and Defendants' cross-motions for protective orders staying discovery.¹ For the following reasons, the parties motions will be granted in part and denied in part.

The Federal Rules of Civil Procedure provide for liberal discovery. See Pacitti v. Macy's, 193 F.3d 766, 777 (3d Cir. 1999)(citations omitted); Fed.R.Civ.P. 26(b)(1). In general,

[p]arties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed.R.Civ.P. 26(b)(1). However, where discovery of relevant, non-privileged material will cause a party or person to suffer "annoyance, embarrassment, oppression, or undue burden or expense,"

¹The term "Defendants" as used in this Order refers to Thomas Holt, Sr., Thomas Holt, Jr., Leo Holt, Lorraine Robins, John Evans, Michael Fluehr, Orchard Hill and the Related Entities. It does not include O'Donnell & Naccarato.

Federal Rule of Civil Procedure 26(c) permits a party to apply to the Court for an order protecting them from such discovery.² Fed.R.Civ.P. 26(c).

It is well-settled that the party seeking to obtain the protective order must demonstrate “good cause” for the order of protection. See Smith v. Bic Corp., 869 F.2d 194, 199 (3d Cir. 1989); see also Fed.R.Civ.P. 26(c). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning,” do not support a showing of “good cause.” Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), *cert. denied*, 484 U.S. 976 (1987).

In determining whether the moving party has established “good cause” for the issuance of a protective order, federal courts have generally adopted a balancing process whereby “the requesting party’s need for information [is balanced] against the injury that might result if uncontrolled disclosure is compelled.” Pansy v. Borough of Stroudsburg, 23 F.3d 772, 787 (1994).

In the present matter, Plaintiffs seek to depose Thomas Holt Sr., Thomas Holt Jr., Leo Holt, Lorraine Robbins, John Evans and Michael Fluehr. In addition, Plaintiffs ask the Court to compel the production of documents responsive to the Plaintiffs’ July 2002 document requests.

Defendants Thomas Holt Sr., Thomas Holt Jr., Leo Holt, John Evans, Lorraine Robins

²Fed.R.Civ.P. 26(c) provides in relevant part that:

“Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,”

and Michael Fluehr seek a protective order staying their depositions until the resolution of their pending motions to dismiss, the Executive Risks' Declaratory Judgement complaint and Plaintiffs' review of documents already produced. The Court is unpersuaded this constitutes "good cause" and sees no need to further delay the depositions.³ Plaintiffs' motion to compel the depositions of the Defendants will be granted and Defendants' cross-motion for a protective order staying the depositions will be denied.

Plaintiffs also seek to compel Defendants to produce all documents requested by Plaintiffs in their July 2002 document requests. Specifically, the Plaintiffs seek (1) documents concerning the bank accounts of the individual Defendants, (2) documents reflecting transfers between Holt entities and the Defendants, (3) corporate structure, ownership, accounting, banking, and tax documents of the specified Defendants, (4) all documents related to bonds on other Holt related construction or renovation projects, and (6) all documents relating to the Kaighn Point project including documents concerning the termination of construction on the Kaighn Point project.

Defendant Thomas Holt, Sr. objects to the production of his personal financial records as he contends there is no evidence that demonstrates funds from the Kaighn Point project went to him. A party, however, "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Fed.R.Civ.P. 26(b)(1). Relevancy is construed broadly to "encompass any matter that bears on or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." Oppenheimer Fund, Inc.

³ An order denying Defendants' motions to dismiss was enter by this Court on February 24, 2003.

v. Sanders, 437 U.S. 340, 351 (1978). The Plaintiffs have alleged that Thomas Holt Sr. fraudulently transferred funds from the Kaighn Point project and converted those funds for his own use. As such, his personal financial records are relevant to the Plaintiffs' claims and therefore discoverable. The Court will grant Plaintiffs' motion to compel the personal financial records of Thomas Holt, Sr.

The remaining individual defendants⁴ object to providing documents concerning individual bank accounts arguing Plaintiffs' July 2002 document requests only requested those documents as they relate to Thomas Holt, Sr.⁵ As Plaintiffs only requested documents concerning the bank accounts of Thomas Holt Sr., the Court cannot compel the Defendants to produce documents the Plaintiffs have not sought. Petrucelli v. Bohringer and Ratzinger, GMBH, 46 F.3d 1298, 1310 (3rd Cir., 1995)(citing Fed.R.Civ.P. 37(a)(2)(A)). Plaintiffs' request will be denied without prejudice.

Plaintiffs also seek to compel the production of documents concerning any transfers between specified Holt entities and the Defendants.⁶ The Defendants object and argue many of the specified entities are not defendants in this action and have no connection to this case. In addition, Defendants argue, the information sought is confidential and not likely to lead to discovery of admissible evidence. Given the allegations contained in the complaint include allegations that the Defendants conspired to divert funds from the Kaighn Point project, any

⁴ Thomas Holt, Jr., Leo Holt, Lorraine Robins, John Evans and Michael Fluehr.

⁵ See Exhibit A of Plaintiffs' Motion to Compel, request no.6 of Plaintiffs' Requests for Documents of: (1) Thomas Holt Jr., Leo Holt, Lorraine Robins, John Evans and Michael Fluehr.

⁶ See Exhibit A of Plaintiffs' Motion to Compel: Plaintiffs' Requests for Documents to Thomas Holt, Sr. no. 9; Plaintiffs' Requests for Documents to the Related Entities nos. 8-9; Plaintiffs' Requests for Documents to Orchard Hill nos. 25-27; Plaintiffs' Requests for Documents to Thomas Holt Jr. and Leo Holt nos. 7 and 9.

transfer of funds between the Defendants would indeed be relevant to the subject matter of this dispute. In addition, transfers of funds between the Defendants and entities controlled by the Defendants would also be relevant and therefore discoverable. Plaintiffs motion to compel as to these requests will be granted.

Plaintiffs also seek to compel the production of corporate structure and ownership documents, as well as accounting, banking and tax documents.⁷ Defendants agreed to produce documents up to March 31, 1999. Defendants contend all project proceeds were disbursed by December 1998 and any improper conduct of the Defendants, if it occurred, occurred prior to March 31, 1999. Therefore any documents after this time are not relevant. Defendants' argument is unpersuasive. The Court will limit Plaintiffs request to March 8, 2002, the filing of the complaint.

Plaintiffs also wish to compel the production of documents relating to construction, surety, fidelity or any other bond on any construction or renovation project in which any of the Holt entities were involved.⁸ Defendants agreed to provide bond information for the Kaighn Point project but argue that documents on other projects not involved in this litigation are not relevant or discoverable. The Court agrees and will deny Plaintiffs motion to compel documents concerning the non-Kaighn Point project bonds. The denial is without prejudice to Plaintiff refiling its request on a showing of relevancy and significance.

⁷See Exhibit A of Plaintiffs' Motion to Compel: Plaintiffs' Requests for Documents to Thomas Holt, Sr. nos. 1-2; Plaintiffs' Requests for Documents to the Related Entities nos. 10-13; Plaintiffs' Requests for Documents to Orchard Hill nos. 2, 3, 28-32.

⁸See Exhibit A of Plaintiffs' Motion to Compel: Plaintiffs' Requests for Documents to the Related Entities no. 15; Plaintiffs' Requests for Documents to Orchard Hill nos. 33-34; Plaintiffs' Requests for Documents to Thomas Holt Jr. and Leo Holt no. 10.

Finally, Plaintiffs question whether Defendants have produced all other documents concerning the Kaighn Point project, including documents concerning the termination of construction. Defendants state they have produced all other documents responsive to Plaintiffs' requests. I will accept Defendants representations that all other documents have been produced and in the absence of any evidence to the contrary Plaintiffs' motion to compel on this issue will be denied without prejudice.

AND NOW, this 3rd day of March, 2003, **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Compel Discovery is:

1. **GRANTED** as to the depositions of Thomas Holt Sr., Thomas Holt, Jr., Leo Holt, John Evans, Lorraine Robins and Michael Fluehr. Defendants' cross-motion for a protective order staying discovery is **DENIED**. Defendants shall appear for depositions at a time and place agreed upon by counsel within fifteen (15) days of this Order.
2. **GRANTED** as to documents concerning the personal financial records of Thomas Holt Sr.;
3. **DENIED** as to as to documents concerning the personal financial records of Thomas Holt Jr., Leo Holt, Lorraine Robins, John Evans, and Michael Fluehr, without prejudice to Plaintiffs refiling if a proper request is made of the Defendants;
4. **GRANTED** as to documents concerning transfers between the Defendants and the specified Holt entities;
5. **GRANTED** as to documents concerning the corporate structure, ownership

accounting, banking and/or tax relationships of the Defendants up through March 8, 2002;

6. **DENIED** as to documents concerning bonds on non-Kaighn Point projects without prejudice to Plaintiffs refile on a showing of the significance and relevance of the information sought; and
7. **DENIED** as to all other documents concerning the Kaighn Point project without prejudice.

IT IS FURTHER ORDERED that Defendants shall produce all documents within fifteen (15) days of this Order.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.