

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

ROBERT E. WRIGHT, SR. : CIVIL ACTION
 :
 v. :
 :
 MONTGOMERY COUNTY, et al. : NO. 96-4597

MEMORANDUM AND ORDER

HUTTON, J.

December 3, 1998

Presently before this Court is the Motion of Plaintiff Robert E. Wright, Sr. to Quash Subpoena Issued to G.E. Capital Mortgage Services, Inc. (Docket No. 43), Defendants Montgomery County, et al.'s Motion for Sanctions and Response to Plaintiff's Motion to Quash Subpoena to G.E. Capital Mortgage Services, Inc. (Docket No. 48), Plaintiff's reply thereto (Docket No. 50), the Defendants Response to Plaintiff's Motion to Quash Subpoena to Sheilah Wright (Docket No. 54) and the Montgomery County Defendants' surreply thereto (Docket No. 58), and the Defendants' Motion to Compel Answers to Interrogatories and Production of Documents (Docket No. 51), the Plaintiff's response thereto (Docket No. 61), and the Defendants' Response thereto (Docket No. 65), Plaintiff's Motion to Quash Subpoena and Strike the Deposition of Lee Holmes, Sr. (Docket No. 44), and the Defendants' response thereto (Docket No. 53), the Plaintiff's Motion for Protective Order to Cease Discovery (Docket No. 45), the Defendants' response thereto (Docket No. 55), the Plaintiff's reply thereto (Docket No.

62), and the Defendants' supplemental response thereto (Docket No. 63), the Plaintiff's Motion in Limine (Docket No. 56), and the Defendants' response thereto (Docket No. 64).

I. BACKGROUND

On June 25, 1996, Plaintiff Robert E. Wright, Sr. ("Wright" or "Plaintiff") brought this employment discrimination action against Defendants Montgomery County, Richard S. Buckman, Commissioner of Montgomery County and Joseph M. Hoeffel, III, Commissioner of Montgomery County ("Montgomery County Defendants" or "Defendants"). In his complaint, Wright alleges, in substance, that the Defendants terminated his employment as Director at the Montgomery County Department of Housing Services ("MDHS") because he is black, and seeks damages.

Wright was employed by Montgomery County for approximately seventeen (17) years in the Department of Housing Services. He was promoted to the Director of the Department of Housing Services of Montgomery County on July 1, 1994.

On April 12, 1996, following an investigation by the Housing of Urban Development ("HUD"), Wright was suspended from his position as Director. Wright alleges that he was officially terminated from the position on June 13, 1996. Wright alleges that the reason for his termination was because he is black. He also alleges that he has suffered damages as a result of his firing.

II. DISCUSSION

A. Plaintiff's Motion to Quash Subpoena to G.E. Capital Mortgage Services, Inc.

On October 6, 1998, Plaintiff Robert E. Wright, Sr. filed the instant motion requesting that this Court quash subpoena served upon non-party G.E. Capital Mortgage Services, Inc. ("GE Capital") by the Defendants. The Defendants served the subpoena on GE Capital on September 28, 1998. The subpoena commands that GE Capital produce the following documents:

Any and all documents relating or referring to Plaintiff, Robert E. Wright, Sr. and Sheilah D. Wright to include the entire loan file which shall include but are not limited to the following: credit files, documentation files, correspondence files, collateral files, financial statements tax returns and appraisals as related to the financing of the first mortgage on 2309 Oakland Drive, Norristown, PA 19403.

(Subpoena; Schedule A.) Wright objects to the production of such information arguing that its production is unduly burdensome. Wright, however, makes no attempt to show that the subpoena issued to GE Capital subjects him to an undue burden; rather he argues that "the instant subpoena is not intended to lead to or result in discoverable evidence which would be admissible at trial."¹ (Pl.'s Mem. in Supp. of Motion to Quash Subpoena at 2.)

Rule 45(c)(3)(A) of the Federal Rules of Civil Procedure authorizes a court to quash or modify a subpoena that subjects a

¹In his Reply filed on October 23, 1998, the Plaintiff also argues that Defendants' request for documents from G.E. Capital Mortgage Services, Inc. should be "mooted" because GE Capital has already produced the "requested documents." The Defendants, however, disagree with this contention.

person to undue burden. Fed. R. Civ. P. 45(c)(3)(A)(iv), 28 U.S.C. (1994); see Composition Roofers Union Local 30 Welfare Trust Fund v. Graveley Roofing Enter., 160 F.R.D. 70, 72 (E.D. Pa. 1995)(Joyner, J.)(stating same). Accordingly, a court may quash or modify a subpoena if it finds that the movant has met the heavy burden of establishing that compliance with the subpoena would be "unreasonable and oppressive." Id. (citing Heat & Control, Inc. v. Hester Indus., 785 F.2d 1017, 1023 (Fed. Cir. 1986)).

Furthermore, Rule 26(b)(1) provides that discovery need not be confined to matters of admissible evidence but may encompass that which "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Relevancy is to be broadly construed for discovery purposes and is not limited to the precise issues set out in the pleadings or to the merits of the case. Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Rather, discovery requests may be deemed relevant if there is any possibility that the information may be relevant to the general subject matter of the action. Id.

Although courts have imposed broader restrictions on the scope of discovery when a non-party is targeted, see Thompson v. Glenmede Trust Co., No. CIV. A. 92-5233, 1995 WL 752422, at *2 n.4 (E.D. Pa. Dec. 19 1995) (Hutton, J.), discovery rules are to be accorded broad and liberal construction, see American Health Sys. v. Liberty Health Sys., No. 90-3112, 1991 WL 30726, *2 (E.D. Pa.

Mar. 5, 1991) (Naythons, M.J.). Since the precise boundaries of the Rule 26 relevance standard will depend on the context of the particular action, the determination of relevance is within the district court's discretion. See Thompson, 1995 WL 752422, at *2 n.4 (district courts are empowered with "broad discretion to manage discovery") (quoting Sempier v. Johnson & Higgins, 45 F.3d 724, 734 (3d Cir.), cert. denied, 115 S. Ct. 2611 (1995)).

The records at issue could lead to admissible evidence since Plaintiff was suspended from his position as Director at the Montgomery County Department of Housing Services following an investigation of corruption within his department. The Defendants allege that the Plaintiff "corruptly abused his public position . . . to selfishly benefit himself and his 50/50 partner in Northtowne Realty and attorney Joseph Pizonka in conflict of interest ridden real estate deals." (Defs.' Surreply and Motion for Sanctions at 1 n.1.) The Defendants also allege that the Plaintiff committed perjury in his deposition by stating that he had nothing to do with GE Capital, did not attend any settlement and did not sign any loan documents.² (Id. at 3.) In light of the broad and liberal construction which the discovery rules are to be accorded, see American Health Sys., 1991 WL 30726, at *2, and given the Court's discretion in managing discovery, see Thompson, 1995 WL

²The Defendants allege that Montgomery County Court records show the Plaintiff and his wife obtained a mortgage in both their names on their home from GE Capital.

752422, at *2 n.4 (quoting Sempier, 45 F.3d at 734), the Court finds that Defendants' request to documents in GE Capital's possession pursuant to Schedule A of the subpoena is reasonably calculated to lead to admissible evidence. Accordingly, the Court overrules the Plaintiff's objection regarding GE Capital's obligation to produce documents pursuant to the subpoena.\³

B. Defendants' Motion for Sanctions for Costs and Attorney's Fees in Responding to Plaintiff's Motion to Quash Subpoena to G.E. Capital Mortgage Services, Inc.

The Defendants filed the instant motion on November 4, 1998. In their motion, the Defendants allege that the Plaintiff "improperly advised GE Capital not to produce documents responsive to Defendants' subpoena." (Defs.' Surreply and Motion for Sanctions at 3.) As such, the Defendants move the Court to award the Defendants attorney's fees and costs associated with filing this motion. The Defendants, however, fail to provide any authority which compels this Court to grant their request. Accordingly, the Court refuses to award sanctions against the Plaintiff for GE Capital's refusal to honor the subpoena. Cf.

³On October 26, 1998, the Defendants filed their "Response to Plaintiff's Motion to Quash Subpoena to Sheilah Wright" (Docket No. 54). However, this Court is not aware of such a motion filed by the Plaintiff. Furthermore, in their response, the Defendants request that this Court "order Sheilah Wright to comply with the subpoena duly served upon her and to appear for her deposition within ten (10) days of this Order and produce the subpoenaed documents to Defendants' counsel within five (5) days of this Order." The Defendants, however, fail to attach a copy of the subpoena with their response. The Court is unwilling to order a non-party to comply with a subpoena that it has not yet seen. Accordingly, the Defendants' request is denied with leave to renew.

Gen'l Ins. Co. of America v. Eastern Consol. Utilities, Inc., 126 F.3d 215, 220 (3d Cir. 1997) ("A non-party, by definition, is not a participant in the litigation and, when a non-party refuses to provide discovery, no claim has been asserted by or against it.").

C. Defendants' Motion to Compel Answers and Interrogatories and Production of Documents

The Defendants filed the instant motion on October 23, 1998, seeking an Order to compel the Plaintiff to respond fully and completely to their Interrogatories, to respond to Document Requests and to produce all responsive documents pursuant to the discovery requests served on Plaintiff on September 16, 1998, and for sanctions. The Plaintiff argues, in substance, that the Defendants do not satisfy "Local Rule 24" governing such motions. First, the Plaintiff asserts that the Defendants failed to attach "a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." Second, the Plaintiff alleges that the Defendants failed "to attach to their motion the interrogatories and request for production of documents as required by the Local Rules."

Local Rule 24 does not exist. Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure provides that if a party fails to respond to a proper discovery request, the discovering party may move for an order compelling the requested discovery. The motion, however, must include a "certification that the movant has in good

faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action." Fed. R. Civ. P. 37(a)(2)(B). This requirement is mirrored in Local Rule 26.1(f) which provides that no motion governing discovery shall be made "unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." E.D. Pa. R. Civ. P. 26.1(f). Moreover, Local Rule 26.1(g) provides:

A routine motion to compel answers to interrogatories or to compel compliance with a request for production under Fed. R. Civ. P. 34, wherein it is averred that no response or objection has been timely served, need have no accompanying brief, and need have no copy of the interrogatories or Rule 34 attached. The Court may summarily grant or deny such motion without waiting for a response.

E.D. Pa. R. Civ. P. 26.1(g). "[T]he Rule is intended to reduce the burden on the filing party in generally routine refusals to respond to discovery." Ricci v. RCP/JAS, Inc., No. CIV. A. 97-7334, 1998 WL 372315, at *1 (E.D. Pa. Jun. 17, 1998).

In the instant case, the Defendants have included the required certification, and the Court concludes that sufficient communication has taken place between the parties in an attempt to resolve this discovery dispute. Nonetheless, without reviewing a copy of the Interrogatories and a Request for Production of Documents, this Court is reluctant to issue an order compelling the Plaintiff to respond to them. As the district court determined in Ricci, only the most routine of requests will be relieved of the

burden of attaching a copy of such requests with a motion to compel. See Ricci, 1998 WL 372315, at *1. Accordingly, the Defendants' motion is denied with leave to renew.

D. Plaintiff's Motion to Quash Subpoena and Strike the Deposition of Lee Holmes, Sr.

On October 8, 1998, the Plaintiff filed the instant motion requesting that this Court quash subpoena served upon non-party Lee Holmes, Sr. ("Holmes") and strike the deposition served by the Defendants on him. The Defendants served the subpoena on Holmes on October 2, 1998. The subpoena commands, in substance, that Holmes produce all documents pertaining to the Plaintiff, his employment with Montgomery County, his business affiliations, his real estate holdings and any documents relating to work or purchases for those real estate properties. (See Subpoena; Schedule A.) Also requested are documents pertaining to any HUD and/or MDHS properties in Montgomery County, also documents pertaining to specific real estate properties, documents referring to certain individuals and entities and documents pertaining to various investigations conducted by federal agencies. (Id.)

Wright objects to the production of such information on grounds that the Defendants request such information in "bad faith." (Pl.'s Mem. in Supp. of Motion to Quash Subpoena at 2.) Besides this conclusory statement, the Plaintiff offers little to support his contention. In light of the broad and liberal

construction which the discovery rules are to be accorded, see American Health Sys., 1991 WL 30726, at *2, and given the Court's discretion in managing discovery, see Thompson, 1995 WL 752422, at *2 n.4 (quoting Sempier, 45 F.3d at 734), the Court finds that Defendants' request to documents in Holmes's possession pursuant to Schedule A of the subpoena is reasonably calculated to lead to admissible evidence. See supra Part II.A. Accordingly, the Court overrules the Plaintiff's objection regarding Holmes's obligation to produce documents pursuant to the subpoena. Furthermore, because the Plaintiff fails to elaborate on his request to strike the deposition of Holmes, that request is denied.

E. Plaintiff's Motion for Protective Order to Cease Discovery

On October 13, 1998, the Plaintiff filed the instant motion moving this Court pursuant to Rule 26 and Rule 45 of the Federal Rules of Civil Procedure to issue a protective order to cease further discovery in this case by the Defendants. The Plaintiff argues that "most, if not all, of the depositions and document requests made by the defendants do not and can not lead to discoverable evidence which would be admissible in this matter." To support this contention, the Plaintiff refers the Court to his previously filed motions to quash subpoenas as illustrative "improper and violative" nature of the Defendants' discovery requests. Besides this, the Plaintiff neglects to explain how any

specific discovery request will not lead to discoverable evidence which would be admissible in this case.

A party seeking an order protecting certain discovery from disclosure must establish that "good cause" exists for the protective order. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994). While true that a district court may issue an order to protect a person from "annoyance, embarrassment, oppression, or undue burden or expense," Fed. R. Civ. P. 26(c), the movant has the heavy burden of proving that a protective order is "particularly needed to obviate a significant harm; broad allegations of harm will not suffice." Schofield v. Trustees of Univ. of Pennsylvania, 161 F.R.D. 302, 303 (E.D. Pa. 1995). If the Plaintiff objects to a particular discovery request of the Defendants, he should file an appropriate motion explaining with particularity how such evidence fails to fall within the scope of discoverable evidence.⁴ As such, the Court refuses the Plaintiff's invitation to issue a blanket cease of discovery order in the instant matter.

F. Defendants' Motion to Compel and Extend Discovery, to Enforce Subpoenas and for Sanctions

On October 30, 1998, the Defendants filed the instant motion in response to the Plaintiff's Motion for Protective Order

⁴Regarding specifically the Plaintiff's Motion to Quash Subpoena Issued to GE Capital, the Court has already found that it is likely to lead to discoverable evidence which would be admissible in this case. See supra Part II.A.

to Cease Discovery. In their motion, besides opposing the Plaintiff's motion, the Defendants move this Court to compel and extend discovery, to enforce subpoenas and for sanctions. The form of order form, however, accompanying their motion refers only to sanctions. The form of order form accompanying their supplemental response to Plaintiff's Motion to Quash Subpoena refers to an extension of discovery. Local Rule 7.1(a) provides that:

Every motion shall be accompanied by a form of order which, if approved by the Court, would grant the relief sought by the motion. Every response in opposition to a motion shall be accompanied by a form of order which, if approved by the Court would deny or amend the relief sought by the motion.

E.D. Pa. R. Civ. P. 7.1(c). As such, this Court only addresses the issue of sanctions and extending the discovery deadline.

1. Sanctions

In their motion, the Defendants allege that the Plaintiff has failed to respond to interrogatories, appear for a deposition or provide complete documents in response to a request for documents. As such, the Defendants move this Court for an order requiring the Plaintiff to pay the fees and costs incurred in their response to "Plaintiff's instant motion."

The Court denies Defendants' Motion for Sanctions including the cost of attorney's fees associated with filing this motion. Such fees are appropriate under Rule 37(a)(4)(A),

unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain

the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(a)(4)(A). Considering the hostility displayed by the parties to this action as illustrated by the quantity and content of the motions filed with this Court concerning discovery and the vast amounts of discovery requests by the Defendants, this Court finds that the objections raised in Plaintiff's instant motion are substantially justified.⁵ Accordingly, the Court denies Defendants' request for sanctions as well as reasonable attorney's fees associated with filing this Motion for Sanctions.

2. Motion to Extend Discovery

Under Rule 16(b) of the Federal Rules of Civil Procedure, the Court may only modify the Scheduling Order upon a showing of good cause. Fed. R. Civ. P. 16(b). The Advisory Committee Notes to Rule 16 provide that "the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension." In order to establish good cause, the Defendants should demonstrate that a more diligent pursuit of discovery was impossible. McElyea v. Navistar Int'l Trans. Corp., 788 F. Supp. 1366, 1371 (E.D. Pa. 1991), aff'd without opinion, 950 F.2d 723 (3d Cir. 1991). In light of the

⁵Regarding the Defendants' contention that the Plaintiff has not complied in good faith with their discovery requests, the Defendants should file an appropriate motion explaining with specificity how such conduct violates the Federal Rules of Civil Procedure. Moreover, such a motion should be accompanied with an appropriate form of order pursuant to Local Rule 7.1(a).

complexity of the case as well as the apparent lack of cooperation by the Plaintiff, the Defendants have sustained their burden as to the additional time needed to complete discovery. Accordingly, because the Court finds that the Defendants have shown good cause, the Defendants' motion is hereby granted.

G. Plaintiff's Motion in Limine

On November 2, 1998, the Plaintiff filed the instant motion seeking, in substance, "an Order prohibiting Defendants from either questioning Plaintiff or introducing any testimony" pertaining to the Plaintiff's alleged conflicts of interests, mismanagement, fraudulent transactions, corrupt business dealing and other misconduct, while he led the Montgomery County Department of Housing Services ("MDHS"). The Plaintiff argues that such evidence is inadmissible to the instant case because it does not tend to prove or disprove any fact relevant to determining whether the Defendants violated Plaintiff's rights. The Plaintiff argues, in the alternative, that the danger of unfair prejudice from such evidence substantially outweighs the probative value of the proffered evidence.

Under Federal Rule of Evidence 401, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." "'The standard of relevance established by [Rule 401] is not high,'

Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980), and once the threshold of logical relevancy is satisfied the matter is largely within the discretion of the trial court, see Hamling v. United States, 418 U.S. 87, 124-25, 94 S. Ct. 2887, 2911, 41 L. Ed.2d 590 (1974).” United States v. Steele, 685 F.2d 793, 808 (3d Cir.), cert. denied, Mothon v. United States, 459 U.S. 908 (1982).

Under Federal Rule of Evidence 403, relevant “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” “Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special damage which the law finds impermissible.” Charles E. Wagner, Federal Rules of Evidence Case Law Commentary, 145 (1996-97) (footnotes omitted).

In this action, the Plaintiff alleges that he was improperly terminated as Director of the MDHS for racial reasons. The Defendants contend, however, that termination was justified because an HUD Report detailed Plaintiff Wright’s conflict of interest, mismanagement and other misconduct while he led the MDHS’s federally funded housing programs. Montgomery County has also filed an additional counterclaim against the Plaintiff for negligence, fraud and misrepresentation. Any evidence supporting

a justification for the termination of the Plaintiff from his position as Director of the MDHS is highly probative and therefore outweighs any possible prejudicial value.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
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ROBERT E. WRIGHT, SR. : CIVIL ACTION
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O R D E R

AND NOW, this 3rd day of December, 1998, upon consideration of the Motion of Plaintiff Robert E. Wright, Sr. to Quash Subpoena Issued to G.E. Capital Mortgage Services, Inc. (Docket No. 43), Defendants Montgomery County, et al.'s Motion for Sanctions and Response to Plaintiff's Motion to Quash Subpoena to G.E. Capital Mortgage Services, Inc. (Docket No. 48), Plaintiff's reply thereto (Docket No. 50), the Defendants Response to Plaintiff's Motion to Quash Subpoena to Sheilah Wright (Docket No. 54) and the Montgomery County Defendants' surreply thereto (Docket No. 58), and the Defendants' Motion to Compel Answers to Interrogatories and Production of Documents (Docket No. 51), the Plaintiff's response thereto (Docket No. 61), and the Defendants' Response thereto (Docket No. 65), Plaintiff's Motion to Quash Subpoena and Strike the Deposition of Lee Holmes, Sr. (Docket No. 44), and the Defendants' response thereto (Docket No. 53), the Plaintiff's Motion for Protective Order to Cease Discovery (Docket No. 45), the Defendants' response thereto (Docket No. 55), the Plaintiff's reply thereto (Docket No. 62), and the Defendants'

supplemental response thereto (Docket No. 63), the Plaintiff's Motion in Limine (Docket No. 56), and the Defendants' response thereto (Docket No. 64), IT IS HEREBY ORDERED that:

(1) Plaintiff's Motion to Quash Subpoena Issued to G.E. Capital Mortgage Services, Inc. is **DENIED**;

(2) Defendants' Motion for Sanctions of costs and reasonable attorney's fees associated with responding to Plaintiff's Motion to Quash Subpoena to GE Capital is **DENIED**;

(3) Defendants' Motion to Compel Sheilah Wright to Comply with the Subpoena and to Appear for a Deposition is **DENIED with leave to renew**;

(4) Defendants' Motion to Compel Answers to Interrogatories and Production of Documents is **DENIED with leave to renew**;

(5) Plaintiff's Motion in Limine is **DENIED**;

(6) Plaintiff's Motion to Quash Subpoena Issued to Lee Holmes, Sr. and Strike the Deposition of Lee Holmes, Sr. is **DENIED**;

(7) Plaintiff's Motion for Protective Order to Case Discovery is **DENIED**; and

(8) Defendants' Motion to Compel and Extend Discovery, to Enforce Subpoenas and For Sanctions is **GRANTED in part and DENIED in part**.

IT IS FURTHER ORDERED that:

This Court's June 26, 1998 Amended Scheduling Order is amended as follows:

(a) All discovery shall be completed on or before March 1, 1999, and all dispositive motions filed not later than two (2) weeks prior to the close of discovery; and

(b) All other deadlines will be deferred by ninety (90) days from the date of this Order.

BY THE COURT:

HERBERT J. HUTTON, J.