

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

No. 3:16-cv-00678 (MPS)

v.

DANIEL GREER, ET AL.

Defendants.

**PLAINTIFF'S MEMORANDUM OF LAW IN
SUPPORT OF EMERGENCY MOTION TO COMPEL DISCOVERY RESPONSES**

Pursuant to Local R. Civ. P. 37(b)(1), the plaintiff, Eliyahu Mirlis ("Plaintiff"), hereby submits the following memorandum of law in support of his Motion to Compel Discovery Responses and for Sanctions (the "Motion").

I. PRELIMINARY STATEMENT

The need for judicial intervention into the parties' discovery process is the result of the defendants', Daniel Greer ("Greer") and the Yeshiva of New Haven, Inc. (the "Yeshiva" and together with Greer, "Defendants"), failure to fulfill their discovery obligations. Defendants, despite indicating their willingness to comply with the document requests made by Plaintiff, have not provided all responsive documents requested. When Plaintiff demanded the production of further documents based on his requests, Defendants responded by failing to provide most of the requested documents. Plaintiff attempted to resolve this matter with Defendants in order to avoid court intervention into this discovery dispute. However, despite Plaintiff's efforts, Defendants have failed to produce relevant, responsive documents to Plaintiff. Plaintiff submits that this is simply a further attempt by Defendants to improperly avoid and delay collection of

the judgment entered against them, which remains unpaid in full.¹ Therefore, the Court should order that Defendants comply with their discovery obligations, and it also should order monetary sanctions against Defendants for their efforts to delay discovery, necessitating the Motion.

II. BACKGROUND

A. Summary of Litigation and Relevant Facts

On June 6, 2017, following a jury verdict in favor of Mirlis, the Court entered a judgment against the Defendants in the above-captioned case in the total amount of \$21,749,041.00 for, *inter alia*, unrelenting conduct of a predator who sexually molested a minor child and the failure of an educational institution to protect that child (this judgment and any amendment or modification thereto if any hereinafter collectively referred to as the “Judgment”). The Judgment remains unsatisfied, and Defendants have paid nothing. While Defendants have appealed, *inter alia*, the Judgment, that appeal is pending and execution in this case is not stayed.

B. Post-Judgment Discovery in This Case

On October 6, 2017, Plaintiff served a Notice of Deposition² (the “Greer Notice”) on Greer, and as part of the Greer Notice, requested the production of certain documents pursuant to Fed. R. Civ. P. 30(b)(2) and 34. On November 20, 2017, Greer served Defendant’s Responses and Objections to Plaintiff’s Requests for Production (the “Greer Responses”)³ on Plaintiff. The Greer Responses did raise an objection as to any privilege.

Also on October 6, 2017, Plaintiff served a Notice of Deposition⁴ (the “Yeshiva Notice”) on the Yeshiva, and as part of the Yeshiva Notice, requested the production of certain documents

¹ Plaintiff will not recount the various delay tactics employed by Defendants, of which the Court is aware, in this pleading. But, suffice to say, Defendant have engaged in a pattern of contumacious behavior in this case.

² The Deposition of Greer has not yet occurred and is scheduled for June 5, 2018. A copy of the Greer Notice is attached hereto as **Exhibit A**.

³ A copy of the Greer Responses is attached hereto as **Exhibit B**.

⁴ The Deposition of the Yeshiva has not yet occurred and is scheduled for June 5, 2018. A copy of the Yeshiva Notice is attached hereto as **Exhibit C**.

pursuant to Fed. R. Civ. P. 30(b)(2) and 34. On November 20, 2017, the Yeshiva served Defendant's Responses and Objections to Plaintiff's Requests for Production (the "Yeshiva Responses")⁵ on Plaintiff. The Yeshiva Responses did raise an objection as to any privilege.

In response to the Greer Notice and the Yeshiva Notice, Defendant also produced certain documents to Plaintiff. However, the production by Defendants was deficient. As a result, Plaintiff's counsel contacted Defendant's counsel requesting the production of additional documents. Specifically, on April 27, 2018, Plaintiff's counsel sent an email to Defendants' counsel demanding the following documents:

As to Greer:

1. Morgan Stanley statements from September 2017 through the present;
2. Liberty Bank statements from January 2018 through the present;
3. Start Bank statements from January 2018 through the present;
4. Bates numbered pages GREER000186-194, which appear to be missing from the production;
5. Documents regarding a Citizens Bank safe deposit box;
6. 2017 IRS Form W2 and 2018 paystubs;
7. Documents as to where rental payments regarding Greer's Rhode Island properties go;
and
8. Documents showing transfers to and from Greer.

(Hereinafter, the above listed documents shall be referred to as the "Greer Demands" and individual items in the list shall be referred to as "Greer Demand(s) [number(s)].")

As to the Yeshiva:

1. Start Bank statements from August 2017 through the present;

⁵ A copy of the Yeshiva Responses is attached hereto as **Exhibit D**.

2. Wells Fargo statements from June 2017 through the present;
3. Liberty Bank statements from August 2017 through the present;
4. Key Bank statements from Sept. 2017 through the present;
5. Profit and loss statements for 2016 Q4, 2017, and 2018 Q1; and
6. Documents showing transfers to and from Yeshiva.

(Hereinafter, the above listed documents shall be referred to as the “Greer Demands” and individual items in the list shall be referred to as “Greer Demand [number].”)

Plaintiff’s counsel, John Cesaroni and Matthew Beatman, had a detailed telephone conference with Defendants’ counsel, Jeffrey Sklarz, on May 9, 2018, regarding the demanded documents.⁶ Defendants’ counsel agreed to inform Defendants to produce such documents on or before May 16, 2018.⁷ Defendants’ counsel understood that if documents were not produced by that date, Plaintiff would file a motion to compel. Defendants produced some, but not nearly all, of the documents demanded by Plaintiff, specifically: (1) Start Bank statements for the Yeshiva and Greer from January through March 2018; and (2) Greer’s 2017 IRS Form W-2. Clearly, most of the documents requested by Plaintiff have not been produced. Thus, as detailed in the Declaration of John L. Cesaroni, Esq. filed herewith, despite discussions between counsel, the parties were unable to resolve their dispute concerning discovery and, therefore, judicial intervention is required. For the reasons set forth herein, the compliance sought by Plaintiff should be compelled.

III. LAW AND ARGUMENT

A. Motions to Compel and the Scope of Discovery

⁶ There had also been previous communications regarding document production, but this was the formal meet and confer between the parties.

⁷ Relevant email correspondence between counsel regarding the Greer Demands and the Yeshiva Demands are attached hereto as **Exhibit E**.

Fed. R. Civ. P. 69(a)(2) provides in relevant part that “[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules. . . .” Fed. R. Civ. P. 37(a) provides that a party may move for an order compelling disclosure or discovery from the other party. More specifically, Fed. R. Civ. P. 37(a)(3)(B)(iv) provides that a party “may move for an order compelling an answer, designation, production, or inspection . . . if . . . a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34.” Fed. R. Civ. P. 26(b)(1) sets forth the scope and limitations of permissible discovery.

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1).⁸

For purposes of discovery, relevance as it relates to the subject matter of an action is broadly constructed “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.” . . . Where relevance is in doubt, the district court is to be permissive. . . . Relevance under Federal Rule 26 is far broader than the standard under Federal Rule of Evidence 401, which governs the standard at trials.

⁸ Fed. R. Civ. P. 26(b)(1) was amended in 2015.

“The present amendment restores the proportionality factors to their original place in defining the scope of discovery. This change reinforces the Rule 26(g) obligation of the parties to consider these factors in making discovery requests, responses, or objections.

“Restoring the proportionality calculation to Rule 26(b)(1) does not change the existing responsibilities of the court and the parties to consider proportionality, and the change does not place on the party seeking discovery the burden of addressing all proportionality considerations.

“Nor is the change intended to permit the opposing party to refuse discovery simply by making a boilerplate objection that it is not proportional. The parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes.” Fed. R. Civ. P. 26, Advisory Committee Note (2015).

Griffith v. United States, 2007 U.S. Dist. LEXIS 36672 at *5-6 (S.D.N.Y. Apr. 24, 2007) (citations omitted).

When a party seeks relevant discovery, the party resisting discovery bears the burden of establishing the factual basis for withholding the requested discovery. . . . This burden requires an evidentiary showing by competent evidence . . . and cannot be discharged by mere conclusory or *ipse dixit* assertions. . . . When the relevancy of a discovery request has been demonstrated, the party claiming that a discovery request is overbroad or burdensome must show specifically . . . how each question [or request] is overly broad, burdensome or oppressive, by submitting affidavits or offering evidence revealing the nature of the burden. The court is not required to sift each interrogatory [or request] to determine the usefulness of the answer [or documents] sought.

Wells Fargo Bank, N.A. v. Konover, 2009 U.S. Dist. LEXIS 19112, at *16-17 (D. Conn. Mar. 4, 2009) (citations and quotation marks omitted). “The scope of discovery under Rule 69(a)(2) is constrained principally in that it must be calculated to assist in collecting on a judgment.” EM Ltd. v. Republic of Argentina, 695 F.3d 201, 207 (2d Cir. 2012). Moreover, “[parties] are under a continuing duty to supplement by providing documents that are responsive to the discovery propounded.” A&R Body Specialty & Collision Works, Inc. v. Progressive Cas. Ins. Co., 2014 U.S. Dist. LEXIS 162081, at *6-7 (D. Conn. Nov. 19, 2014).

If the Court grants a motion to compel or the requested materials are provided after the motion is filed “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.” Fed. R. Civ. P. 37(a)(5)(A); Mantell v. Chassman, 512 F. App'x 21, 24 (2d Cir. 2013) (“[A] court must order a sanction under Rule 37(a)(5) if it is forced to grant a motion to compel discovery or the requested discovery is provided after such a motion was filed.”).

An award of expenses is mandatory unless "(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response, or objection was substantially

justified; or (iii) other circumstances make an award of expenses unjust." Fed.R.Civ.P. 37(a)(5)(A).

Mirlis v. Greer, 2016 U.S. Dist. LEXIS 164915, at *3 (D. Conn. Nov. 30, 2016); see also Evarts v. Quinnipiac Univ., 2017 U.S. Dist. LEXIS 95913, at *12-13 (D. Conn. June 21, 2017). Fed. R. Civ. P. 37(a)(5)(A) applies to discovery sought pursuant to Fed. R. Civ. P. 69(a)(2). See Boaziz v. Torati, 2016 U.S. Dist. LEXIS 72906, at *10-21 (S.D.N.Y. June 1, 2016).

B. Defendants Should Be Compelled to Produce the Documents Requested by Plaintiff Because They Are Calculated to Assist in the Collection of the Judgment

The documents sought by Plaintiff are clearly calculated to assist in the collection of the Judgment. All of the Greer Demands and the Yeshiva Demands seek documents regarding the assets of Defendants as well as transfers of any such assets. Defendants' continued refusal to cooperate with post-judgment discovery, as they are required to do, has hampered Plaintiff's ability to collect the Judgment. Moreover, Defendants failed to object to the document requests contained in the Greer Notice or the Yeshiva Notice. Since Defendants failed to timely raise such objections, they are waived, and Defendants should not be permitted to raise any privilege to avoid producing any of the documents requested herein. Cohalan v. Genie Indus., 276 F.R.D. 161, 163 (S.D.N.Y. 2011) ("A failure to respond or object to a discovery request in a timely manner waives any objection which may have been available.") (quotation marks omitted). The Court should not permit Defendants' continued efforts to delay and avoid collection of the Judgment. Therefore, Plaintiff respectfully requests that the Court order Defendants to (i) produce the documents responsive to the Greer Notice and the Yeshiva Notice as set forth in the Greer Demands and the Yeshiva Demands; and (ii) comply with their continuing duty to supplement any documents provided.

1. Greer Demands 1, 2, 3, and 5 and Yeshiva Demands 1, 2, 3, and 4

Greer Demands 1, 2, 3, and 5 as well as Yeshiva Demands 1, 2, 3, and 4 are clearly relevant to the collection of the Judgment. These demands are for bank statements of the judgment debtors and a safe deposit box owned by Greer, which were originally requested in the Greer Notice and the Yeshiva Notice, and Defendants agreed to provide them.⁹ (See Greer Responses, 1, 4; Yeshiva Responses, 1, 4.) While some of the statements have been provided, Defendants have failed, despite demand, to produce updated bank statements through the present time. In fact, other than some bank statements provided regarding Start Bank, Plaintiff obtained other records from the financial institutions directly pursuant to subpoenas served upon them, which is how Plaintiff knows of their existence. In addition, Greer disclosed a safe deposit box in his 2016 federal tax return. Since the documents requested are clearly “calculated to assist in collecting on a judgment[;]” see EM Ltd., 695 F.3d at 207; the Court should compel Defendants to produce them as well as compel Defendants to comply with their continuing duty to provide updated documents, including bank statements, as additional documents become available. See A&R Body Specialty & Collision Works, Inc., 2014 U.S. Dist. LEXIS 162081, at *6-7.

2. Greer Demands 4, 6, and 7 and Yeshiva Demand 5

Greer Demands 4, 6, and 7 and Yeshiva Demand 5 concern other information regarding the finances of Defendants, and they are calculated to assist in the collection of the Judgment. Therefore, they should be provided. Specifically, Greer Demand 4 seeks Bates numbered pages GREER000186-194, which appear to be missing from the production made by Greer. Greer Demand 6 seeks Greer’s year to date pay stubs, and Greer Demand 7 seeks information about the disposition of rental payments regarding Greer’s Rhode Island properties. Yeshiva Request 5 seeks profit and loss statements for the last quarter of 2016, all of 2017, and the first quarter of

⁹ All of Defendants responses contain a caveat that production is subject to the entry of an “appropriate protective order.” That issue has been resolved as the Court granted the parties’ Consent Motion for Approval of Protective Order. (Doc. Nos. 280, 281.)

2018. These documents were subject to various requests made on Defendants in the Greer Notice and the Yeshiva Notice, and Defendants have not objected to the production of such documents. (Greer Responses, 5, 38, 39¹⁰; Yeshiva Responses, 7, 46, 47.) It is clear that financial statements and information regarding income, including rental payments and wages, are to assist in the collection of the Judgment because they identify potential sources of property on which Plaintiff may execute. In addition, it appears that certain pages are missing from the documents served by Defendants, and Plaintiff requests that this additional documentation be provided. Thus, the Court should compel Defendants to produce the requested documents as well as compel Defendants to comply with their continuing duty to provide updated documents, including pay stubs and profit and loss statements, as additional documents become available.

3. Greer Demand 8 and Yeshiva Demand 6

Greer Demand 8 and Yeshiva Demand 6 both request documents evidencing the transfer of property by or to the Defendants. Defendant objected to providing documents regarding transfers made to or from them on the ground that they were overly broad, unduly burdensome, and not narrowly tailored to post-judgment collection efforts. (See, e.g., Greer Response 26; Yeshiva Responses 31.) Defendant also and incredibly claims that no such documents exist as to the Yeshiva. (Yeshiva Response 31.) First, the claim that the Yeshiva has made no transfers at all and that it has not received transfers is facially absurd, and furthermore, from documents obtained by Plaintiff, including the Yeshiva's profit and loss statement and tax returns, it is clear that it both received and expended funds.

Defendant's boilerplate objections should be overruled by the Court because boilerplate objections violate Fed. R. Civ. P. 34(b)(2)(B). Leibovitz v. City of N.Y., 2017 U.S. Dist. LEXIS

¹⁰ It appears that the Greer Responses do not have a number for what was request 40 in the Greer Notice, and thus, Plaintiffs refers to the second request and response under Greer Response 39.

15662, at *6 (S.D.N.Y. Feb. 3, 2017).¹¹ Defendants fail to state with any specificity the grounds for their objections. See Fed. R. Civ. P. 34(b)(2)(B). Thus, for this reason alone, Defendants should be compelled to produce the demanded documents. Moreover, these requests are certainly within the scope of Fed. R. Civ. P. 69(a)(2). Plaintiff “is entitled to a broad inquiry to discover [the judgment debtors’] hidden assets, if any.” Sberbank of Russia v. Traisman, 2016 U.S. Dist. LEXIS 113351, at *5 (D. Conn. Aug. 23, 2016). Documents regarding transfers from Defendants may lead to information regarding hidden assets that may have been transferred to third parties. Defendant could then inquire of such parties as to any transferred assets and potentially seek to recover them in order to collect the Judgment. See id. at *6 (“Post-judgment discovery into the assets of a non-party requires ‘a somewhat heightened showing of necessity and relevance’ through some demonstration of concealed or fraudulent transfers or an alter ego relationship.”).¹² Documents regarding transfers to Defendants also would assist in the collection of the Judgment because they would show any property obtained by Defendants on which Plaintiff may execute. Thus, the Court should compel production of these documents.

C. The Court Must Award Sanctions in This Matter

Sanctions are mandatory under Fed. R. Civ. P. 37(a)(5)(A) if the Court grants this Motion. Mantell, 512 F. App’x at 24. “[A] court must order a sanction under Rule 37(a)(5) if it is forced to grant a motion to compel discovery or the requested discovery is provided after such a motion was filed.” Id. That is unless “(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party’s nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of

¹¹ Fed. R. Civ. P. 34(b)(2)(B) provides that objections to requests for production must “state with specificity the grounds for objecting to the request, including the reasons.”

¹² In fact, from the documents already obtained by Plaintiff, it appears that there have been unexplained transfers to Greer’s wife.

expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A). None of the exceptions to this rule apply. As set forth in the Declaration of John L. Cesaroni, Plaintiff attempted to resolve this dispute in good faith, but he was unsuccessful. Moreover, there is no indication that Defendants’ nondisclosure is substantially justified or that an award of attorneys’ fees would be unjust. In fact, Defendants’ counsel informed Plaintiff’s counsel that he instructed his clients to produce responsive documents by May 16, 2018, and they did not do so. Therefore, this Court should award Plaintiff his reasonable attorneys’ fees and costs associated with this Motion.

IV. CONCLUSION

WHEREFORE, Plaintiff respectfully requests that the Court enter an Order (1) directing Plaintiff to produce all documents responsive to the requests set forth in the Greer Demands and the Yeshiva Demands; (2) awarding Plaintiff all reasonable attorneys’ fees and costs incurred in connection with this Motion; and (3) granting such other and further relief as justice requires.

Dated at Bridgeport, Connecticut, this 21st day of May, 2018.

ELIYAHU MIRLIS

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

No. 3:16-cv-00678 (MPS)

v.

DANIEL GREER, ET AL.

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of May, 2018, the foregoing **Plaintiff's Memorandum of Law in Support of Emergency Motion to Compel Discovery Responses and for Sanctions** was electronically filed with the United States District Court, District of Connecticut. Notice of this filing was sent electronically to all registered e-filers in this case by operation of the Court's electronic filing system.

Dated at Bridgeport, Connecticut, this 21st day of May, 2018.

ELIYAHU MIRLIS

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