

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LUCILLE RUBIN,	:
Plaintiff,	:
	:
-vs-	: Civ. No. 3:00cv1657 (PCD)
	:
T. DONALD HIRSCHFELD,	:
HIRSCHFELD MANAGEMENT, INC.,	:
and GINETTE S. OWINGS,	:
Defendants.	:

RULING ON MOTION TO COMPEL DISCOVERY

Defendants move pursuant to FED. R. CIV. P. 37 to compel discovery. The motion to compel is granted in part.

I. BACKGROUND

Between 1974 and 1996, plaintiff and defendant T. Donald Hirschfeld, among others, owned a shopping center. In 1996, the parties formed RH Taylorville, LLC (“RH Taylorville”), a limited liability company. On August 1, 1996, the parties entered into an Operating Agreement through which defendant Hirschfeld Management, Inc. was appointed manager of RH Taylorville. The complaint filed in the present case alleges that Hirschfeld Management, Inc. breached the Operating Agreement by charging fees for its services as manager.

On August 29, 2000, plaintiff filed a five-count complaint alleging that defendants breached the Operating Agreement by charging a fee for the management of RH Taylorville, breached a fiduciary duty owed to her by charging a fee, defrauded her by representing that no compensation would be sought for services rendered, and violated the Connecticut Unfair Trade Practices Act (“CUTPA”),

CONN. GEN. STAT. § 42-110a *et seq.*, through the charging of fees in connection with the management and operation of RH Taylorville. Plaintiff also sought judicial dissolution of RH Taylorville.

Defendants, in their answer, claimed lack of subject matter jurisdiction, failure to state a claim for which relief can be granted, failure to include a necessary party, and that the claims were barred by provisions of the Operating Agreement. Defendants counterclaimed for fees authorized under the Operating Agreement and unjust enrichment for services rendered in management of the property. Plaintiff denied both claims.

On September 18, 2001, defendants served plaintiff with interrogatories and requests for document production. On November 1, 2001, plaintiff responded to the discovery requests. On December 21, 2001, plaintiff supplemented her response to the request in response to deficiencies identified by defendants. On January 15, 2002, plaintiff sought and was granted a protective order precluding inquiry into the third-party business relationships of plaintiff or of her husband. Defendants now move for an order compelling plaintiff's responses to five interrogatories and three requests for document production objected to as either irrelevant or privileged information.

II. DISCUSSION

Defendants argue that plaintiff should be ordered to respond to the five interrogatories and three requests for production to which plaintiff either failed to respond or provided an inadequate response. Plaintiff responds that the discovery materials sought are irrelevant to the claims involved in this case, thus her objections should be sustained.

The scope of permissible discovery is broad. "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party 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, “[s]ome threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case.” *Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992). Furthermore, discovery may not be had where the discovery sought is “unreasonably cumulative or duplicative,” overly “burdensome . . . [or] expensive” or “the burden or expense of the proposed discovery outweighs its likely benefit.” FED. R. CIV. P. 26(b)(2). An order compelling discovery issues after consideration of the arguments of the parties, and such order may be tailored to the circumstances of the case. *Gile v. United Airlines, Inc.*, 95 F.3d 492, 496 (7th Cir. 1996).

The First Interrogatory inquired as to “any entity . . . where [plaintiff] and/or [her husband] received income from or distributions in connection with real estate.” Plaintiff responded with information limited to RH Taylorville. The allegations within the five-count complaint center on (1) the terms of the Operating Agreement and (2) RH Taylorville. Defendants’ argument that the portion of the interrogatory to which plaintiff objected is necessary to test “her contentions about the propriety of the fees at issue in the case” does not establish the relevancy of the discovery sought. Plaintiff’s objection to the First Interrogatory is sustained.

The Second Interrogatory inquired as to documents governing “manager’s or managing agent’s compensation” of managers identified in response to the First Interrogatory. Plaintiff again objected and limited her response to RH Taylorville. As with the First Interrogatory, defendants do not establish how the information sought is relevant to the claims involved. Plaintiff’s objection to the Second

Interrogatory is also sustained.

The Third Interrogatory inquired as to construction of real property owned by entities identified in the First Interrogatory, persons performing the construction and compensation therefor. Plaintiff objected and provided no information. Defendants have not established how other real estate transactions or development are relevant to the RH Taylorville property, thus plaintiff will not be ordered to respond as to other real property. However, an interrogatory limited to RH Taylorville and transactions in connection with the Operating Agreement would “appear[] reasonably calculated to lead to the discovery of admissible evidence,” thus plaintiff must respond to the interrogatory limited to construction and development involved in the RH Taylorville property.

The Fourth Interrogatory inquired as to “any and all activities performed by [plaintiff] with respect to” the RH Taylorville property by year from 1974 to the present. Defendants argue that plaintiff’s general response inadequately addresses the interrogatory. Plaintiff responds that the interrogatory is vague and overbroad. Considering the longstanding relationship between the parties and the property, this interrogatory would “appear[] reasonably calculated to lead to the discovery of admissible evidence,” thus plaintiff’s objection is overruled and she will provide a summary of her duties and responsibilities as to the subject property, by year, from 1974.

The Fifth Interrogatory inquired as to “any and all activities performed by [plaintiff’s husband] with respect to” the RH Taylorville property. Plaintiff responded that her husband shared responsibility for the management of RH Taylorville. Defendants have not made plaintiff’s husband a party, nor have they established how the information sought is relevant to the present claims. The objection to the Fifth Interrogatory is sustained.

The First Document Request seeks all correspondence between plaintiff or her husband and any defendant from January 1, 1974 related to the RH Taylorville property. Plaintiff limited production to documents dated 1996 and later, which included over 1900 documents. Plaintiff, in her complaint, alleges that defendant Hirschfeld represented to her that “as in the past, there would be no fees or commissions charged in connection with the operation of the Property.” The request could lead to discovery of admissible evidence, however, as plaintiff contends, compliance with this request would appear to require an inordinate amount of documents for management concerns related to the charging of fees or commissions. Plaintiff will therefore produce only those documents generated from 1974 to the present that relate to fees or commissions charged in connection with the management of the RH Taylorville property.

The Thirteenth Document Request seeks production of all documents identified in the Second Interrogatory. Having concluded that the Second Interrogatory was improper, the production request associated with the interrogatory is similarly improper.

The Fourteenth Document Request seeks production of all documents relied on or referenced in the answers to Interrogatories Three through Seven. Defendants argue that plaintiff’s failure to respond until December 21, 2001 constitutes waiver of their right to object. Plaintiff responds that her failure to respond was inadvertent, and that she sought and obtained consent for a *nunc pro tunc* extension from defendants. This extension is appropriate pursuant to FED. R. CIV. P. 6(b)(2), and a claim of waiver of right to object after granting consent to an extension of time in which to respond is meritless.

The Fourteenth Document Request builds on responses to Interrogatories Three through

Seven. Plaintiff will produce documents responsive to the ruling on Interrogatories Three and Four. Interrogatory Five was improper, thus defendants are not entitled to document production associated with that interrogatory.

Interrogatory Six inquired as to plaintiff's claims against defendant Ginette Owings. Interrogatory Six would appear reasonably calculated to produce admissible evidence, thus plaintiff will produce documents responsive to this request.

Interrogatory Seven requests details of plaintiff's and her husband's relationship with Ronald Cima, an attorney. Defendants provide no details as to why plaintiff should produce documents responsive to this request, and plaintiff argues only that Mr. Cima is an attorney, thus the information is privileged. The burden is on defendants to establish the relevance of the discovery sought. *See, e.g., Sprout-Bauer, Inc. v. Beazer East, Inc.*, 174 F.R.D. 609, 631 (M.D. Pa. 1997). It is not apparent how Mr. Cima's relationship with plaintiff is relevant to the present claims, thus no order will issue compelling production of documents detailing that relationship.

III. CONCLUSION

Defendants' motion for an order compelling discovery (Doc. 84) is **granted in part**.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2002.

Peter C. Dorsey

United States District Judge