

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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FIDELITY NATIONAL TITLE INS. CO. : 3: 05 CV 1152 (JBA)  
ET AL. :  
V. :  
ANDREW W. KISSEL :  
DATE: MARCH 13, 2006  
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RULING ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND MOTION FOR RECONSIDERATION

\_\_\_\_\_ On July 19, 2005, plaintiffs commenced this diversity action against defendant. (Dkt. #1). On August 25, 2005, U.S. District Judge Janet Bond Arterton referred the following related motions to this Magistrate Judge (Dkt. #19): (i) plaintiffs' Motion for Disclosure of Assets, filed July 19, 2005 (Dkt. #4); (ii) plaintiff's Motion for Prejudgment Remedy ["PJR"], filed July 26, 2005 (Dkt. #6; see also Dkt. #7); (iii) plaintiff's Amended Motion for Disclosure of Assets, filed August 12, 2005 (Dkt. #11); (iv) defendant's Motion to Modify Order Granting Ex Parte PJR, filed August 18, 2005 (Dkt. #13); and (v) defendant's Motion for Modification of PJR, filed August 18, 2005 (Dkt. #14). (See also Dkts. ##3, 5, 12, 15, 18, 20-21). On September 15, 2005, plaintiffs filed a Motion to Increase Prejudgment Remedy. (Dkt. #23). Following telephonic status conferences held on September 19, 21, and 30, 2005, on September 30, 2005, plaintiffs' motions were granted by agreement, without prejudice to defendant asserting his 5<sup>th</sup> Amendment privilege, as appropriate, and defendant's motions were denied by agreement, without prejudice to renewal at a later time. (Dkts. ##22-31, 33, 38). On October 21, 2005, defendant filed a Motion for Modification of Prejudgment Remedy of Attachment (Dkt. #36), which was granted by this Magistrate Judge three days later. (Dkt. #37).

The instant motion has its genesis in plaintiffs' Motion to Compel Compliance with

Court Order, filed October 18, 2005 (Dkt. #34), in that defendant failed to disclose his assets within seven days of September 30, 2005. On November 15, 2005, that motion was granted, defendant having failed to file a timely brief in opposition, and defendant was ordered to comply by November 30, 2005. (Dkt. #39). On December 23, 2005, plaintiffs filed a Motion for Sanctions (Dkt. #40), in that defendant failed to comply with the November 15<sup>th</sup> order. On January 23, 2006, that motion was granted, as defendant again failed to file a timely brief in opposition. (Dkt. #41). In the Order Granting Motion for Sanctions, filed January 24, 2006 (Dkt. #42)[<sup>1</sup>"January 24<sup>th</sup> Order"], defendant was ordered to disclose his assets within seven days, was not permitted to support any defenses except for his 5<sup>th</sup> Amendment privilege, a default judgment was entered against him, and he was ordered to pay reasonable attorney's fees to plaintiffs. Two days later, plaintiffs filed their affidavit, seeking \$931.50 in fees and costs. (Dkt. #43). That same day, defendant filed his objection to plaintiff's motion (Dkt. #44), his Motion for Protective Order (Dkt. #44), and his Motion for Reconsideration (Dkts. ##45-46).<sup>1</sup> On February 1, 2006, plaintiffs filed their brief in opposition to these motions. (Dkt. #47).<sup>2</sup> On March 7, 2006, these motions were referred to this Magistrate Judge. (Dkt. #50).

In his motions, defendant argues that he did not receive a copy of plaintiffs' motions, and that plaintiffs are aware of defendant's intentions to assert his 5<sup>th</sup> Amendment privilege. (Dkts. ##44-45). As plaintiffs point out in their brief (Dkt. #47, at 2), defendant's arguments are undercut by the letter of his counsel, dated December 27, 2005, in which he acknowledges receipt of the electronic notice of the Motion for Sanctions, and indicates that lead defense counsel would "be happy to discuss the matter further" with plaintiffs' counsel

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<sup>1</sup>Attached as Exh. A (Dkt. #46) is a copy of a letter, dated December 27, 2005, from defense counsel to plaintiffs' counsel, with fax cover sheet.

<sup>2</sup>A copy of case law is attached.

after his return from vacation on December 29, 2005. (Dkt. #46). Despite this, by January 23, 2006, defendant still did not respond to the pending motion. As indicated above, the deadline for defendant's compliance was extended from October 7, 2005 (seven days after the September 30<sup>th</sup> endorsement) to November 30, 2005 (Dkt. #39), and then to January 31, 2006 (seven days after the January 24<sup>th</sup> Order). (Dkt. #42). And as plaintiffs point out in their brief (Dkt. #47, at 3), the January 24<sup>th</sup> Order did not "overlook" defendant's 5<sup>th</sup> Amendment rights. In fact, the January 24<sup>th</sup> Order altered the suggested language of plaintiffs' counsel to preserve defendant's 5<sup>th</sup> Amendment privilege. (Dkt. #42, at 2).

Therefore, defendant's Motion for Protective Order (Dkt. #44) is denied as moot, and defendant's Motion for Reconsideration (Dkt. #45) is granted, but the Magistrate Judge does not alter the January 24<sup>th</sup> Order. Defendant shall disclose his assets, **on or before April 7, 2005**, and consistent with all the prior rulings on this issue, such disclosure is without prejudice to defendant asserting his 5<sup>th</sup> Amendment privilege, as appropriate. In addition, plaintiffs are awarded reasonable attorneys' fees and costs in the amount of \$931.50.

\_\_\_\_\_ This is not a Recommended Ruling but a Ruling on discovery, the standard of review of which is specified in 28 U.S.C. § 636; FED. R. CIV. P. 6(a), 6(e) & 72; and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the District Judge upon timely made objection.

\_\_\_\_\_ See 28 U.S.C. § 636(b)(**written objections to ruling must be filed within ten days after service of same**); FED. R. CIV. P. 6(a), 6(e) & 72; Rule 2 of the Local Rules for United States Magistrate Judges, United States District Court for the District of Connecticut; Small v. Secretary, H&HS, 892 F.2d. 15, 16 (2d Cir. 1989)(**failure to file timely objection to Magistrate Judge's recommended ruling may preclude further appeal to Second Circuit**).

Dated at New Haven, Connecticut, this 13th day of March, 2006.

\_\_\_\_\_/s/\_\_\_\_\_  
Joan Glazer Margolis  
United States Magistrate Judge