

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CONCERNED CITIZENS OF BELLE :  
HAVEN, ET AL :  
PLAINTIFFS, :  
v. : CIV. NO. 3:99CV1467 (AHN)  
THE BELLE HAVEN CLUB, ET AL :  
DEFENDANTS. :

**RULING and ORDER**

I. Introduction

A telephone conference call was held on January 29, 2004, to hear argument on a motion for protective order [doc. # 151] filed in response to plaintiffs' subpoena commanding David F. Ogilvy to appear for deposition and to produce certain documents. At the conference, the parties indicated that they had resolved many of the issues addressed in the motion. After hearing from counsel, the court ruled that Mr. Ogilvy's real estate activities in Belle Haven were relevant to plaintiffs' claims. Counsel for plaintiffs thereafter reviewed Mr. Ogilvy's files containing information about the listing and sale of certain properties in Belle Haven. Plaintiffs now seek copies of documents in the files. Counsel provided the court with the files for the Belle Haven properties for in camera review. The plaintiffs also seek to

view Mr. Ogilvy's files for eleven (11) properties which are located in the Field Point Circle neighborhood, which is in the vicinity of the Belle Haven neighborhood. Defendants provided an ex parte letter with a log of the documents contained in the files for these properties. The court conducted a telephone conference on April 5, 2004, to discuss defendants' objections to plaintiffs' request to view and obtain copies of Mr. Ogilvy's files. For the reasons discussed below, Mr. Ogilvy's motion for protective order [doc. # 151] is DENIED.

## II. Factual Background

In brief, this case involves a claim that the defendant Belle Haven Club ("the Club") discriminated against plaintiffs by denying them admission to the Club on the basis of their religion and race. Plaintiffs claim that statistical evidence will show that Jewish applicants have had a difficult time gaining admission to the Belle Haven Club over the past twenty-five (25) years, while non-Jewish applicants have not. David Ogilvy is a real estate broker who sells homes in Belle Haven and in the surrounding neighborhoods in Greenwich, Connecticut. Mr. Ogilvy is also member and former Commodore (President) of the Belle Haven Club. Plaintiffs seek to

discover information relevant to the question of whether or not he steered prospective Jewish and other minority customers away from Belle Haven and other nearby neighborhoods in Greenwich. [Pls.' Mem. at 3.]

### III. Legal Standard

It is firmly established that the Federal Rules of Civil Procedure are to be construed liberally in favor of discovery. Herbert v. Lando, 441 U.S. 153, 177 (1979), Schlagenhauf v. Holder, 379 U.S. 104, 114-115 (1964) Hickman v. Taylor 329 U.S. 495, 507, 91 L.Ed. 451 (1947). Discovery is permitted regarding any matter, not privileged, that is relevant to the claim or defense of any party. Fed. R. Civ. P. 26(b)(1). Relevant information need not be admissible at trial if it appears reasonably calculated to lead to the discovery of admissible evidence. Id.

### IV. Discussion

Plaintiffs contend that the information about the real estate activities of Mr. Ogilvy is relevant to the discrimination claim based upon evidence that Ogilvy was influential in the decision to deny membership in the Club to Matthew Bernard, a Jewish applicant, and his wife. In support

of this claim, plaintiffs cite a letter written by Ogilvy to Commodore James Waugh opposing the Bernards' application for membership. [Ogilvy Reply Mem. at 8-9.] Plaintiffs' position is that Ogilvy's real estate activities both in Belle Haven and in Field Point Circle are relevant to show whether Mr. Ogilvy engaged in "steering" Jewish people away from purchasing homes in these neighborhoods. Plaintiffs assert this may demonstrate Ogilvy's animus toward Jewish people and may establish the requisite state of mind necessary to prevail on the discrimination claim.

Mr. Ogilvy opposes the document request on the grounds that any connection between his real estate practice and the Club's membership activities is too attenuated to meet the relevancy standard. Ogilvy maintains that the letter and his deposition testimony show that there were many reasons given for denying the Bernards membership not related to race or religion. Mr. Ogilvy's chief concern regarding furnishing plaintiffs with hard copies of the Belle Haven documents is that they contain private information concerning his clients. Mr. Ogilvy is concerned about the impact this would have on the reputation of his business in the community.

The court re-iterates that information pertaining to Mr. Ogilvy's real estate sales in Belle Haven is relevant to

plaintiffs' discrimination claim. Plaintiffs have shown that Mr. Ogilvy's state of mind is relevant to this case because of his involvement in the Club's admissions process during the relevant time period. Although Mr. Ogilvy's business is not a subject of this lawsuit, documents that may lead to the discovery of admissible evidence that speak to Mr. Ogilvy's state of mind toward Jewish buyers are relevant and discoverable under Rule 26's liberal standard.

After careful consideration of the documents and the arguments presented by counsel, the court denies Mr. Ogilvy's motion for protective order. The court is not indifferent to the privacy concerns of Mr. Ogilvy and his clients. However, the personal nature of the information contained in several of the files is not grounds to deny plaintiffs' request for copies of materials otherwise discoverable. In order to minimize possible negative impact of the disclosure, plaintiffs have agreed to notify individuals that Mr. Ogilvy is under court order to provide copies of the documents. Accordingly, the court orders that plaintiffs be permitted to make copies of the documents identified by plaintiffs for the following properties: 44 Mayo Ave., 40 Otter Rock Dr., 55 Byram Dr., 49 Byram Dr., 27 Meadow Wood Dr., 124 Glenwood Dr.- 1995 sale, 124 Glenwood Dr.- 2003 sale, 1 Harbor Dr. The

parties shall endeavor to come to an agreement concerning a protocol for notifying Mr. Ogilvy's clients, as discussed above.

Mr. Ogilvy also contests the relevance of information about properties located outside Belle Haven because these properties do not enjoy special privileges for Club membership. Mr. Ogilvy argues that sales activities concerning these properties is too attenuated from the Club's membership activities to be relevant, and that protecting the privacy interests of Mr. Ogilvy's clients weighs in favor of denying discovery. Plaintiffs respond that the information is relevant because they claim not only that Ogilvy was seeking to keep Jewish people out of neighborhood to keep them out of the Club, but also that Ogilvy sought to keep them out of the Club to keep them out of the neighborhood. The court agrees that information pertaining to the real estate sales of properties located outside Belle Haven, but in the immediate vicinity of Belle Haven, is relevant to plaintiffs' claims. Defendants' assertion concerning the need for some limits to discovery is well-taken, and the court orders discovery only with respect to the properties outside Belle Haven already identified and discussed in connection with this motion.

The court has reviewed the log of the files for the

following properties located outside Belle Haven: 17 Walsh Ln., 9 Pear Ln., 417 Field Pt. Rd., 355 Shore Rd., 98 Field Pt. Cir., 471 Field Pt. Cir., 361 Shore Rd., 9 Smith Rd., and orders Mr. Ogilvy to allow plaintiffs to review these documents in a location agreed upon by counsel.<sup>1</sup> The court has also reviewed the log for the file of Mr. Ogilvy's former home at 60 Otter Rock Dr., located in Belle Haven, and orders disclosure for the reasons discussed above. Plaintiffs are permitted to make copies of relevant documents in the files over the objections already raised. The defendants may raise further objections to providing copies to the extent that they differ from the objections addressed in this ruling.

Counsel shall confer immediately to set a reasonable time frame for compliance with this order. If necessary, the court will set a date for compliance at the discovery conference to be scheduled by the court.

#### V. Conclusion

For the reasons stated above, the motion for protective order [doc # 151] is **denied**.

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<sup>1</sup>Mr. Ogilvy has indicated in his ex parte letter that there are no files found for the following five (5) properties: 194 Otter Rock Dr., 201 Otter Rock Dr., 349 Shore Rd., 29 Field Point Dr., 105 Field Point Cir.

This is not a recommended ruling. This is a discovery ruling and order which is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. § 636 (b)(1)(A); Fed. R. Civ. P. 6(a), 6(e) and 72(a); 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 motion timely made.

SO ORDERED at Bridgeport this 28th day of April 2004.

\_\_\_/s/\_\_\_\_\_

JUDGE

HOLLY B. FITZSIMMONS  
UNITED STATES MAGISTRATE