

**FRANOCK ENTERPRISES, INC.
dba SERVICEMASTER ADVANTAGE
v SMITH**

22CF13797

DEFENDANT'S DEMURRER

This is a breach of contract dispute between Franock Enterprises, Inc. dba ServiceMaster Advantage ("Plaintiff") filed and Holly Smith ("Defendant.")

Now before the Court is Defendant's demurrer. The demurrer is unopposed.

The procedural history of this matter is convoluted. Plaintiff originally filed its Complaint on May 2, 2022. Plaintiff filed proof of service of the Complaint on August 4, 2022, showing that personal service had been effected on Defendant on August 3, 2022. Defendant did not file an Answer.

On March 20, 2023, Plaintiff filed its First Amended Complaint ("FAC") again alleging breach of contract but reducing the amount sought. A summons was issued at that time.

On May 3, 2023, a hearing was held for an Order to Show Cause as to why Plaintiff had not obtained a default judgment within one year of the first Complaint. According to the minute order, no appearances were made at that hearing.

On October 17, 2023, Plaintiff filed an ex parte application to allow for service by publication which the Court denied.

On October 18, 2023, the Court held a Case Management Conference ("CMC.") The CMC minute order stated:

Plaintiff has not filed a Proof of Service of the Summons and First Amended Complaint with the Court. The Court cannot proceed with any orders until the Proof of Service is filed.

On February 14, 2024 the Court held another CMC. The minute order stated:

Plaintiff has not filed a Proof of Service of the Summons and First Amended Complaint with the Court. The Court cannot proceed with any orders until the Proof of Service is filed. The plaintiff was served an OSC [CRC 3.740] on May 2, 2022, mandating service within 180 days and obtaining judgment within 360 days. These timeframes have not been met. An OSC re: Dismissal and the next

Case Management Conference (CMC) is set for June 5, 2024, at 1:30 p.m. in Dept. 4.

At the June 5, 2024, and November 6, 2024 CMCs, the Court's minute orders again reflect that no proof of service of the FAC had been filed and that the Court could not proceed with any orders until proof of service was filed.

After the March 5, 2025 CMC, the Court's minute order stated:

Plaintiff has not filed proof of service of the Amended Summons and Complaint with the Court. The matter is scheduled for an OSC re Dismissal pursuant to Code of Civil Procedure 583.210 on June 11, 2025, at 1:30pm in Dept. 4.

On May 29, 2025 Defendant filed a demurrer. At the request of Plaintiff's counsel, the OSC re Dismissal was postponed until October 22, 2025. The continuance was requested because Defendant had filed her demurrer.

As the Court has stated numerous times previously, Plaintiff has failed to file a proof of service of summons of the FAC. As such, the Court has no jurisdiction over Defendant. (*Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 805.) The Court cannot consider the Defendant's demurrer where the Court has no jurisdiction over the Defendant. This shortcoming is underscored by defendant's pleading labelled as "Demurrer to Complaint", a pleading that was rendered moot by the filing of the FAC.

Accordingly, the demurrer is **OVERRULED**, without prejudice, to refile at such time as defendant is properly served with the FAC..

The clerk shall provide notice of this ruling to the parties forthwith. No further Formal Order is required.

HUGHES VS. FCA US, LLC, ET AL

24CV47640

**DEFENDANT'S MOTION FOR JUDGMENT ON THE
PLEADINGS AS TO PLAINTIFF HUGHES**

On the Court's Motion this matter is continued to August 1, 2025, at 9:00 a.m. in Dept.
2.

7/18/25 10:00 a.m. Department 2

MATTER OF SILVEIRA

21PR8357 (lead case)

**AUDREY PETRICEVICH AND MANUEL SILVEIRA'S MOTION
TO COMPEL DEPOSITION ANSWERS AND PRODUCTION OF
DOCUMENTS FROM ATTORNEY STEVEN COTTRELL**

This matter includes four consolidated probate petitions and one related civil complaint. There have been ongoing discovery disputes throughout this case's history, up to and including the instant Motion to Compel Deposition Answers and Production of Documents from attorney Steven Cottrell ("Motion.")

I. Background

Carolyn Silveira ("Carolyn")¹ and David J. Silveira, Sr. ("David, Sr.") were a married couple with five children: Audrey Petricevich ("Audrey"), Manuel Silveira ("Manuel"), Francille Elaine Peters ("Francille"), David Silveira Jr. ("David Jr. ") and "Dominick Silveira ("Dominick")².

In or around 2016, Carolyn created the Carolyn L. Silveira Separate Property Revocable Trust dated August 2, 2016, ("Carolyn Trust"), naming daughter Francille as the trustee. (Ruling, 4/18/2025.) In or about February of 2020, Carolyn filed for divorce from David Sr. Attorney Steven Cottrell ("Cottrell") represented Carolyn in filing a divorce against David Sr. (Declaration of Michael Tener ("Tener Decl."), ¶ 3.) Carolyn passed away before the divorce proceedings were concluded. (*Ibid.*)

On or about September 8, 2023, Mr. Cottrell was initially deposed in the instant matter. During the deposition, Cottrell made it clear that he would not answer any questions regarding the purpose of his meetings and communications with Carolyn or Francille

¹ Due to the common surnames, first names will be used for all parties. No disrespect is intended.

² Dominick is not a party to the matter or the instant motion/opposition.

(whom Cottrell expressed was authorized to speak for Carolyn) unless a court ordered him to do so. (Ruling Dec. 2, 2023.)

On December 22, 2023, this Court ruled on a motion to compel brought by Audrey seeking to compel Cottrell to answer five specific deposition questions and five appropriate follow up questions. The five specific questions Cottrell was ordered to answer were:

1. Did she tell you why she wanted a divorce?
2. So there was a meeting with Carolyn Silveira and Francille Peters that you testified about where all three were present. What was the purpose of that meeting?
3. And was Carolyn Silveira able to provide you that information [to identify the marital assets]?
4. What about those discussions do you remember [concerning the availability of \$500,000 to settle the claim]?
5. This was a big deal, wasn't it? Okay. You had discussions. Okay. You remember those discussions. Okay. Let me ask you what you remember about those discussions [again concerning the source of the \$500,000 to settle the claims].

As part of that Ruling, the Court also stated:

The Court is not precluding assertions of attorney-client privilege with regard to any such follow up questions but urges the parties to consider the scope of this ruling and the Court's comments at oral argument in asserting the asserted privilege is appropriate or within the spirit of this ruling.

On January 12, 2024, the Court filed an Order directing Cottrell to “amend his privilege log as he sees fit in keeping with the spirit of this decision to identify the persons involved in the withheld communications.”

On March 13, 2025, Cottrell was deposed by attorneys Michael Tener on behalf of Audrey in her representative capacity and Shaun Culbreath on behalf of Audrey and Manuel in their individual capacity. (Tener Decl. ¶ 7.) At that deposition, Cottrell was represented by attorney Kurt Siebert. (Tener Decl. ¶ 7.) At this deposition, Cottrell produced the same privilege log he had previously produced. (*Id.* ¶ 8, Ex. 4.) Apparently Cottrell testified that he was not involved in preparing the privilege log and that that was what he paid his attorney to do. (*Id.* ¶ 9.) According to Mr. Tener, Cottrell's attorney claimed he had never seen the Court's order directing him to amend his

privilege log. (*Ibid.*) As of the filing of the Motion, Cottrell has still not amended his privilege log or produced any additional documents. (*Ibid.*)

II. Legal Standard

“California law provides parties with expansive discovery rights.” (*Lopez v. Watchtower Bible & Tract Society of N.Y., Inc.* (2016) 246 Cal.App.4th 566, 590-591.) Specifically, the Code provides that “any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.” (CCP § 2017.010) The scope of discovery is one of reason, logic and common sense. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1612.)

That said, discovery is not without its limitations. “The attorney-client privilege is an absolute privilege that prevents disclosure, no matter how necessary or relevant to the lawsuit.” (*DP Pham LLC v. Cheadle* (2016) 246 Cal.App.4th 653, 659.) This privilege “attaches to all confidential communication between an attorney and a client regardless of whether the information communicated is in fact privileged.” (*Ibid.*) “Once the proponent of the privilege makes a prima facie showing of a confidential attorney-client communication, it is presumed the communication is privileged and the burden shifts to the opponent to establish waiver, an exception, or that the privilege does not for some other reason apply.” (*Id.* 659-660.)

III. Discussion

As set forth in the Court’s previous order granting the motion to compel Cottrell’s deposition testimony, there are established exceptions to the attorney-client privilege. Specifically:

Evidence Code section 957: “There is no privilege under this article as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession, nonprobate transfer, or inter vivos transaction.”

Evidence Code section 960: “There is no privilege under this article as to a communication relevant to an issue concerning the intention of a client, now

deceased, with respect to a deed of conveyance, will, or other writing, executed by the client, purporting to affect an interest in property.

Evidence Code section 961: There is no privilege under this article as to a communication relevant to an issue concerning the validity of a deed of conveyance, will, or other writing, executed by a client, now deceased, purporting to affect an interest in property.

Cognizant of these exceptions, the Court ordered Cottrell to answer five specific deposition questions and “any appropriate follow up questions” as well as to amend the privilege log. The movants complain that the privilege log was never amended and does not comport with the requirements for such a log. They further complaint that Cottrell refused to answer “appropriate follow up questions” at the deposition.

In opposition, Cottrell argues first that he was not properly served with the motion to compel because as a non-party he needed to be served in compliance with Cal. Rule 3.1346. While normally a non-party needs to be personally served, in this instance, Cottrell's attorney has long been voluntarily receiving copies of all motions and pleadings on behalf of Cottrell. There is no argument that Cottrell's attorney did not receive the notice and motion, and it appears he did as evidenced by the filed opposition to the motion. Accordingly, the Court does not find this argument persuasive and will consider the merits of the motion.

As regards the privilege log, where the log fails “to provide sufficient information to allow the trial court to rule on the merits, the court may order the responding party to provide...a supplemental privilege log that adequately identifies each document the responding party claims is privileged and the factual basis for the privilege claim.” (*Catalina Island Yacht Club. v. Superior Court* (2015) 242 Cal.App.4th 1116, 1127.) Here, the unedited privilege log fails to identify who the “Client” is on each email, and whether there were any non-clients also copied on said emails. Movants have identified that at least some of the emails which may be at issue have not clearly been identified as between Carolyn and Cottrell alone. (Declaration of Shaun D. Culbreath, ¶¶ 2-4, Exs. A-D.) Rather, they may be between Mr. Cottrell and Carolyn, as well as third parties which would render the emails non-privileged. Of particular concern to the Court is that this issue has already been addressed and the Court ordered that an amended supplemental privilege log be provided; now it appears this Order was ignored.

The Court again Orders that a supplemental privilege log be provided to counsel for Francille and Manuel within ten (10) court days of this Ruling; failure to do so will be viewed by the Court as a waiver of any claims of privilege regarding any requested documents.

As regards the follow up questions to which Cottrell's attorney routinely objected the Court, the issue appears to be a conflict about which questions fall within the "scope" of the approved five questions. (In ruling the Court notes that its directive to proceed "in keeping with the spirit [of the prior] decision" appears to have been ignored.) The Court rules as follows:

1. "Do you routinely share confidential information with them without establishing the power of attorney or attorney in fact relationship?"

The deponent **is ordered** to answer this question. It goes specifically to Questions 1 and 2 because movants are trying to ascertain whether there were other individuals being given confidential information, or being included in attorney-client emails, besides Carolyn.

2. Would you have verified Francille's capacity as Carolyn's attorney in fact before sharing information with her?

The deponent **is ordered** to answer this question. It goes specifically to Questions 1 and 2 because movants are trying to ascertain whether there were other individuals being given confidential information, or being included in attorney-client emails, besides Carolyn.

3. In dealing with Miss Silveira's divorce and working with her family members who were assisting you, did you take any steps to protect attorney-client communications that were exchanged between you and Carolyn?

The deponent **is ordered** to answer this question. It goes specifically to Questions 1 and 2 because movants are trying to ascertain whether there were other individuals being given confidential information, or being included in attorney-client emails, besides Carolyn.

4. I want to understand what was Carolyn's understanding of the marital assets?

The deponent **is ordered** to answer this question. It goes specifically to Question 3 with regards to Carolyn's independent knowledge of her marital assets.

5. Do you have any information with respect to why that separate property trust was done?... Was any information communicated to you about why that was done?

The deponent **is ordered** to answer the question. It goes specifically to Question 3 with regards to Carolyn's independent knowledge of her marital assets.

6. Would assets have been relevant to her income and expenses in this case?

Deponent **sufficiently** answered the question.

7. Why don't we do this: Mr. Siebert, would you permit me to ask a question to your client with respect to the necessity of communicating with the parties that were included on this communication so that we can evaluate whether or not that privilege applies?

The deponent **is ordered** to answer the question. It goes specifically to Questions 2 and 3 with regards to Carolyn's independent knowledge of her marital assets and whether third parties were involved in those attorney-client conversations.

8. Why was it necessary to include Rodd Peters on a correspondence with Francille concerning the -- in the settlement proposal with respect to Carolyn's divorce?

The deponent **is ordered** to answer the question. It goes specifically to Questions 2 and 3 with regards to Carolyn's independent knowledge of her marital assets and whether third parties were involved in those attorney-client conversations.

- 9, 10, 12. These lines of questioning went to an email (Ex. 16, 17, 18 to deposition) that have apparently been previously produced regarding Carolyn's assets. Carolyn does not appear to be included

in the email and the question went to why Carolyn was not being included in emails to some of her children about her divorce and assets.

The deponent **is ordered** to answer the questions. They go specifically to Questions 1 and 3 with regards to Carolyn's independent knowledge of her marital assets and whether third parties were involved in those attorney-client conversations.

11. Can I ask you more broadly, why would you be consulting Francille, Rodd, or David, Jr. concerning the terms of Carolyn's dissolution settlement?

The deponent **is ordered** to answer the question. It goes specifically to Questions 1, 2 and 3 with regards to Carolyn's independent knowledge of her marital assets and whether third parties were involved in those attorney-client conversations.

It also goes to the heart of the movants' claims – that Carolyn was not in control of her own divorce proceedings.

13. I want to ask you, during your representation of Carolyn, did you ever have any concerns about her mental capacity?

The deponent **is ordered** to answer the question. It goes directly to Question 1 and 2 regarding why Carolyn wanted a divorce and her understanding of her assets.

14. This question went to why Carolyn transferred her ½ interest in property to her personal trust.

The deponent **is ordered** to answer the question. It goes directly to Question 1 and 2 regarding why Carolyn wanted a divorce and her understanding of her assets.

15 and 23, 24.

These lines of questioning went to whether Mr. Cottrell ever received specific communication from Carolyn as to why she wanted a divorce.

The deponent **sufficiently answered** Question **15**. The deponent **is ordered** to answer Question **23** with regards to: 1) whether Carolyn ever stated the reasons she wanted a divorce and 2) whether it is common practice to file for divorce for clients if they don't actually want a divorce. The deponent **is ordered** to answer Question **24** regarding whether intake notes usually include information as to why the new client is seeking a divorce.

16. Did Carolyn ever discuss with you Manuel's claim that she had promised him he would receive any property from her after she died?

The deponent **is ordered** to answer the question. This question goes to the issue of Manuel's interest in Carolyn's estate as a beneficiary. It is not privileged under Evid. Code 952, 960, 961.

17. Do you recall if you had a written representation agreement with Carolyn Silveira?

The deponent **is ordered** to answer the question. This goes specifically to the issue of whether Carolyn was in fact Mr. Cottrell's client.

18. This line of questioning went to the privilege log and who the "Client" referenced refers to.

This has already been addressed above in Court's order to have the log amended to reflect who the "client" is in each line.

19. This question went to the name of the commissioner who deposed Cottrell previously.

The purpose of this question is unclear from the record. Deponent's **objection is sustained**.

20. What's the average age of your divorcing clients, Mr. Cottrell?

The deponent **is ordered** to answer. There is no legitimate objection to this basic, unprivileged question. It further goes to Question 1 and 2 regarding Carolyn's ability to understand the divorce and assets.

21. This line of questioning went to whether Mr. Cottrell had met with his attorney or reviewed anything before the deposition.

The deponent **is ordered** to answer. There is no legitimate objection to this basic, unprivileged question. The deponent is not being asked to discuss what was discussed with his attorney, only whether or not they met.

22. This line of questioning went to whether Mr. Cottrell witnessed whether Carolyn actually signed the petition for divorce.

The deponent **is ordered** to answer. There is no legitimate objection to this basic, unprivileged question. It further goes to Question 1 and 2 regarding Carolyn's ability to understand the divorce and assets.

25. In this case, if you felt there was undue pressure on Carolyn to get a divorce, would you report it to Adult Protective Services?

The deponent **is ordered** to answer. This question goes to Questions 1 and 2 regarding Carolyn's desire for a divorce and understanding of her assets.

27. What about the others that accompanied her to the extent you recall, the impression you got [about their honesty] about them?

The deponent **is ordered** to answer. This question goes to Questions 1 and 2 regarding Carolyn's desire for a divorce and understanding of her assets and whether there were third parties making decisions for her.

28. This line of questioning was about Mr. Cottrell's statement that Carolyn was following her fiduciary duties.

Deponents objection **is sustained**. The question is outside the scope of the allowed questions and asks for an ultimate conclusion of law.

29. Did you ever feel compelled to inform your clients that their interest [in real property] could not be carried out through the divorce in any way?

Deponents **objection is sustained**. The question is outside the scope of the allowed questions.

IV. Conclusion

The **motion to compel is Granted in part** (mostly) and **Denied in part**. Cottrell is ordered to provide an amended privilege log as set forth in this ruling. Cottrell is ordered to provide supplemental answers to the deposition questions as set forth in this ruling.

As this Ruling involves partially granting and partially denying, the Court declines to award sanctions of any kind to any party.

The clerk shall provide notice of this ruling to the parties forthwith. Counsel for Francille and Manuel to submit a formal Order in compliance with Rule of Court 3.1312 in conformity with this Ruling.