FIRE INSURANCE EXCHANGE v. PARKER et al

19CV44151 (c/w 19CV44376, 19CV44434, 20CV44808)

INSURANCE COMPANY PARTIES' MOTION TO COMPEL PRODUCTION OF DOCUMENTS AT PARTY DEPOSITION

In this consolidated action, various parties seek reimbursement or recovery for losses occasioned by the Quail Fire, which burned roughly 59 acres in Copperopolis in the summer of 2017. Before the Court is a motion by Fire Insurance Exchange and Mid-Century Insurance Company (plaintiffs in the subrogation action) to compel defendant Ronald Parker to produce at his deposition documents responsive to the following categories:

- No. 11: "All non-privileged writings relating to your responsibility for the subject brush fire at issue in this action on July 12, 2017."
- No. 13: "All non-privileged writings relating to your claims against MAT Holdings, Inc. in this action."
- No. 19: "All writings which support defendant's denial of liability for the incident which is the subject of this lawsuit."
- No. 20: "All writings which support the affirmative defenses alleged by defendant."
- No. 21: "All writings which disputes the damages alleged by the plaintiff."

Preservation objections to form are not "errors or irregularities" subject to waiver per CCP §2025.410(a), and can be made at the actual deposition. (See CCP §2025.460.) Nevertheless, defendant lodged the following objection:

> "Defendant objects to this Request on the grounds that it is vague, ambiguous, overbroad. Further, this Request fails to designate the documents for production by specifically describing each individual item or by reasonably particularizing each category of item as required by CCP §2031.030(c)(1). The Request is so ill defined and/or overly broad, the responding party cannot reasonably identify material falling within the scope of the Request."

Although CCP §2025.220(a)(4) provides that a party desiring to depose another party may include in the notice "the specification with reasonable particularity of any materials or category of materials" to be produced by the deponent, there is no clear mechanism for dealing with a deponent who suggests prior to the deposition that he will not comply. Were this a traditional RPD, the demanding party could secure from this Court an advance ruling on objections pursuant to CCP §2031.310(a)(3). There is no similar provision for document requests attached to depositions. In fact, the presumption is that the deposition will proceed notwithstanding the objection(s), and that the parties will

deal with it after should this prove necessary. (See CCP §2025.480.) Compounding the problem is the new post-COVID norm where deponents may not appear in person at a deposition with documents in hand. (See CCP §2025.310 and CRC 3.1010(c).)

Although this impasse is somewhat novel, resolution is easily achieved by going back to the basics. First, the purpose of discovery is to take the "game" element out of trial preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand. (*Emerson Electric Co. v. Superior Court* (1997) 16 Cal.4th 1101, 1107; *Roche v. Hyde* (2020) 51 Cal.App.5th 757, 815.) Second, discovery is supposed to be self-executing and purposefully broad, so long as the evidence sought might (1) be admissible, (2) lead to admissible evidence, or (3) reasonably assist that party in evaluating the case, preparing for trial and/or facilitating resolution. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557.) Third, while the moving party on a discovery motion ordinarily bears the burden of proof, when the issue involves evidentiary objections to discovery, that burden shifts to the party resisting discovery. (See *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.)

The documents sought must be described with reasonable particularly, and bear some facial relevance (i.e., good cause) to the issues. (See CCP §§ 2025.220(a)(4), 2031.030(c)(1).) Although the inquiry naturally depends in part on the circumstances of each case, a discovery request should be sufficiently definite and limited in scope that it can be said to apprise a person of ordinary intelligence what documents are required, and to enable a court to evaluate compliance. (See, *e.g.*, *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 222; *Mailhoit v. Home Depot USA, Inc.*, 285 F.R.D. 566, 570 (C.D. Cal. 2012).) This Court agrees with the deposing parties that there is good cause for Nos. 11, 13, 19, 20, and 21, and that they are described with sufficient particularity given that only the defendant could know what documents exculpate him. Defendant's complaint about the requests being too vague/broad is like the pot calling the kettle black. Defendant's defense is vague and broad, and so the journey to disprove it must be equally vague and broad.

Although this Court finds that the document request was proper, the mechanism employed by the parties was not. The motion to compel a substantive production is DENIED, Without prejudice. Defendant's 12/07/21 "objection" is stricken since it does not address an "error or irregularity" as that phrase is intended. The deponent shall produce all documents in his care, custody or control that are responsive to Requests 11, 13, 19, 20, and 21 and/or a proper privilege log, at least 72 hours prior to the deposition. Regardless of the response, the deposition shall proceed. Counsel is free to lodge objections at the deposition. Defendant's request for sanctions is denied because defendant did not prevail substantively. Deposing parties' request for sanctions is denied because taking the deposition off-calendar was the wrong approach and not in the spirit of a proper meet and confer.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order shall be required.

IN RE FORFEITURE OF $3,800.00

22CF13701

RESPONDENT'S MOTION TO STRIKE CLAIM OPPOSING FORFEITURE

This is a special proceeding by which an individual aggrieved by a government seizure may challenge a forfeiture thereof. Although the claimant is not a defendant in a pending criminal matter, the claim here is related to 21C19856 and 21CF13584, and the alleged fruit of an unlawful marijuana cultivation venture.

Before the Court is a motion by The People to strike the claim as untimely.

Pursuant to H&S §11488.5(a)(1), any person laying claim to property seized pursuant to the Uniform Controlled Substances Act has 30 days from actual notice of the seizure, or 30 days from the last published notification of seizure, to file with the Superior Court a verified claim establishing a legal right to the property seized. The People first contend that claimant had "actual notice" of the seizure because she was present when it occurred, but this contention is not supported with any competent evidence. However, notice of the seizure ran in the Valley Springs News on 09/15/21, 09/22/21, and 09/29/21 – leaving claimant 30 days thereafter to file the claim. Her claim was not filed until 01/14/22, and was thus untimely.

There is another reason to strike the claim, and that is for want of proper verification. While the claim form does contain a signature for the claimant under oath, the signature was obviously placed there by electronic means. Pursuant to Civil Code §1633.9(a), an electronic signature may be attributed to a person only if "it was the act of the person." The mere presence of an e-signature, with nothing more, is generally not compelling evidence of intent. (See *Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 546.)

Nevertheless, the motion to strike is procedurally defective and must be continued. Pursuant to H&S Code §11488.5(c)(3), "the provisions of the Code of Civil Procedure shall apply to proceedings under this chapter," and the Code of Civil Procedure requires a good faith meet and confer before any motion to strike may be filed/heard. (See CCP §435.5(a).) Because there is no declaration evincing that meet and confer process, the motion must be continued. (See CCP §435.5(a)(4).) Hearing continued to April 15, 2022, at 9:00 a.m. in Department 2. At least 10 calendar days prior, The People must file and serve a §435.5 declaration.

The Clerk shall provide notice of this Ruling to the parties forthwith. No further formal order shall be required.

KRPAN v. SLIGHT et al

20CV44854

REALTOR DEFENDANTS' MOTIONS TO COMPEL FURTHER RESPONSES TO RPDS, FROGS AND SROGS

This is a civil action based on a residential real property transaction allegedly tainted by construction and undisclosed defects. Before the Court are three additional discovery motions filed by the "realtor defendants" against plaintiff. (Although the time is not yet upon us, this Court notes that if called upon to resolve many more discovery disputes, a discovery referee may be appointed.)

The first motion involves a request for production of all communications concerning the subject property between plaintiff and Tanko Well Drilling (No. 10), Dave's Plumbing (No. 11), AL Guy Jordan Company (No. 13), Mark Lawrence Baymiller (No. 15), Life Safety Fire Protection (No.17), American Gutter Solutions (No. 18), and Weatherby-Reynolds Consulting Engineers, Inc. dba Weatherby-Reynolds-Fritson Engineering (No. 19). For each, plaintiff *initially* responded as follows: "after a diligent search and reasonable inquiry, Responding Party is unable to produce documents responsive to this request because no such documents are in the Responding Party's possession, custody, or control."

Defendants are correct that the *initial* response was not code-complaint. (See CCP §2031.230.) Plaintiff has since served a supplemental response, which also is not code-complaint since "not locating documents" and "no documents in possession" are not responses enumerated in §2031.230. Defendants have accepted the supplemental response, but now contend that no documents were actually provided (despite a representation that some documents were attached to the supplemental response). A request for actual documents to be produced is a *different* motion than one seeking a code-compliant response, and is difficult to resolve in a vacuum. As such, this Court will GRANT the motion for a code-compliant response, and order plaintiff to produce the

written response, INCLUDING all located responsive documents, within 20 calendar days of this Ruling.

The second and third motions involve responses to interrogatories. The party responding to interrogatories has an obligation to provide responses which are "as complete and straightforward" as possible, which obligates the party to make a "reasonable and good faith effort to obtain the information" from sources within its reach/control. (CCP §2030.220.) Here, plaintiff generally claimed to either not have the information sought, or invited defendants to "see" some other document and find the answer for themselves. This response is not code-complaint. In addition, the purpose of discovery is to take the "game" element out of trial preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand. (*Emerson Electric Co. v. Superior Court* (1997) 16 Cal.4th 1101, 1107; *Roche v. Hyde* (2020) 51 Cal.App.5th 757, 815.) Requiring the asking party to hunt for the legal basis of a claim is improper. Moreover, to rely on the "see my pile of records" option for responding to interrogatories, plaintiff must show that (1) a compilation, abstract, audit or summary of the responding party's records is necessary in order to answer the interrogatory; (2) no such compilation, abstract, audit or summary of the responding party's records presently exists; (3) the burden or expense of preparing or making the compilation, abstract, audit or summary of the responding party's records would be substantially the same for the propounding party; AND (4) the responding party has specified the writings with sufficient detail to permit the propounding party to readily locate and identify where in those records the interrogatory answer lies. (CCP § 2030.220.) There is no indication in the verified discovery response or in counsel's declaration regarding (1) necessity, (2) burden/expense, or (3) specification. Simply offering to produce files without the required elements established is insufficient to support the 'production' option. (*Fuss v. Superior Court* (1969) 273 Cal.App.2d 807, 815. See also, *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1190; *Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 293.)

Although plaintiff has now provided supplemental responses, sifting through the stack to determine if the supplemental responses are code-compliant is simply unreasonable. The motion to compel a further, code-compliant response is GRANTED. Plaintiff shall provide an appropriate, code-compliant, verified response within 20 calendar days of this Ruling.

Finally, there is the issue of sanctions. Opposing discovery motions with supplemental responses is not substantial justification. Although the meet and confer effort for these particular motions could have been better, "An evaluation of whether, from the perspective of a reasonable person in the position of the discovering party, additional effort appeared likely to bear fruit, should also be considered. Although some effort is required in all instances, the level of effort that is reasonable is different in different circumstances, and may vary with the prospects for success." (*Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 432–433.) The history of this case suggests defendants did enough in this instance. Defendants are entitled to recover the $60 filing

fee for each motion. For the RPD, this Court finds that 2 hrs (@ $225/hr) is sufficient. For the interrogatories, this Court finds that 2 hours (@ $225/hr) also is warranted. Thus, plaintiff is ordered to pay defendants $510 for the RPD motion and $510 for the interrogatory motion, within 20 days.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to prepare a formal Order for their respective motions pursuant to CRC 3.1312 in conformity with this ruling.