Weber v. Chateaugay Corporation

The *Weber* case deals with obstructionist conduct during written discovery, including boilerplate objections. It includes some nice quotes that are potentially useful in discovery disputes, including, “A litigant simply is not permitted to just name a list of legal objections to discovery. He is required to explain why the claimed objections apply to a particular interrogatory.”

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Thomas WEBER and Jane Weber

v.

CHATEAUGAY CORPORATION, Conrail Corporation and Philadelphia Tidewater Dock Co.

CIV. No. 89-7254.

June 25, 1990.

Kenneth D. Freeman, Bensalem P , for plaintiffs.

David O’Brien, Carl D. Buchholz, III, Rawle and Henderson, Philadelphia P , Gordon Gelfond, Margolis, Edelstein, Scherlis Sarowitz & Kramer, Philadelphia, P , for defendants.

MEMORANDUM

ROBERT F. KELLY, District Judge.

***1** This memorandum is necessitated by the unpleasant discovery dispute between two of the parties in this case.

On January 29, 1990 the plaintiff served on defendant Chateaugay Corporation general interrogatories, expert interrogatories and a request for production of documents. The answers to these were due on February 28, 1990. Defendant’s counsel did not provide the answers or

communicate with the plaintiff's counsel in any way regarding this discovery before February 28, 1990.

On March 7, 1990 plaintiff's counsel sent a letter to the defense attorney requesting answers to this discovery before March 15, 1990.

On March 9, 1990 defendant's counsel sent to the plaintiff's counsel documents entitled "Defendant Chateaugay Corporation's Objections to Plaintiff's First Set of Interrogatories," "Defendant Chateaugay Corporation's Objections to Plaintiff's Request for Production of Documents" and "Defendant Chateaugay Corporation's Objections to Plaintiff's Expert Interrogatories. "Defendant did not answer any interrogatories or produce any documents and there was no hint in the objections sent by the defendant that any interrogatories ever would be answered or any documents ever would be produced. The objections are in two sections. The first was labeled General Objections and in boiler plate language objected to everything that the plaintiff asked for. The second section was labeled Specific Objections and in boiler plate language objected to certain of the discovery requests, not specifically, but by paragraph number.

On March 16, 1990 the plaintiff filed a motion to compel. In it the plaintiff's attorney alleged that he had filed discovery requests, that he had heard nothing from the defendant, that after the answers were overdue he sent a letter requesting the answers and in two days he received only objections that applied to everything he asked for, with no mention of answers. This was an accurate statement of what happened with his requests and justified his filing the motion. He also complained about the way the defendant's law firm handled discovery in another case. This was irrelevant.

On March 19, 1990 the defendant's answer was filed. In it the defendant admits that he did nothing to answer the discovery within the period allowed by the rules, did not contact the plaintiff to explain his failure or to seek an extension, and that in response to plaintiff's letter he filed objections that applied to each discovery request. However, he maintained that these objections only applied to each request to the extent that they were objectionable and that he was working on the discovery requests and would file answers to those requests that were not objectionable. No date was given by which this would be done, however. I do not know that I appreciate the distinction between objecting to everything to the extent objectionable and just objecting to everything, but it is the defendant's position that this is a very important distinction.

***2** Rule 37(a)(3) states that, "an evasive or incomplete answer is to be treated as a failure to answer. "The defendant claimed in his answer to the plaintiffs motion that his objections to everything were not evasive because they were merely objections to everything to the extent that everything was objectionable. The defendant did not claim that his answers were complete. The answer itself, therefore, gave me a basis for finding that there was a violation of the rules regarding discovery and that an order to require him to answer was necessary.

Rule 37(a)(4) requires that ordinarily the court should require the party whose conduct necessitated a motion to compel to pay for the reasonable expenses of the motion. Therefore no further findings were necessary to support the order that I issued.

The legal basis of defendant's answer was a terrific misunderstanding of the purpose of Local Rule 24(f). The rule states: "No motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute." The purpose of this rule is to protect the court from unnecessary work on motions that would not

have to be filed if the parties were communicating with each other. The defendant believes that the purpose of this rule is protect litigants who ignore the Rules of Civil Procedure, and do not communicate with opposing counsel, from having to worry about a motion against them unless opposing counsel has done a certain amount of complaining first. The defendant's counsel argues that he is permitted him to ignore the due date for the plaintiff's discovery request and to file, in response to plaintiff's letter seeking answers, objections to everything because Rule 24(f) requires the plaintiff to complain to him about getting only objections and no answers before he can come to the court for aid.

I reject this argument for two reasons. First, because a litigant can never hide behind 24(f) as a excuse for his failure to follow the rules. Second, I find that after the plaintiff's counsel wrote a letter asking for answers and received only objections with no hint or promise of answers, he had made a reasonable effort to resolve the dispute and filing a motion was permissible.

In his answer the defendant asked for a hearing. In paragraph 14 the defendant asks the court "to put plaintiffs' counsel to his proof" on his allegation that defendant's objections were spurious. I did not have a hearing for two reasons. First, it would not have been necessary to have had testimony on the question of whether or not the objections were spurious, because that could have been decided on the basis of the papers filed in the case. Second, this question did not have to be decided for the purposes of this motion because the defendant admitted that it filed incomplete answers which are the equivalent of no answers at all.

***3** The defense attorney was also very indignant about being accused of wrongdoing in discovery in another case and wanted the court "to put plaintiffs' counsel to his proof. "But as the defendant's attorney also pointed out in paragraph 15, the issue is irrelevant. I am not willing

allow my courtroom to be used so that attorneys can litigate irrelevant issues because they are personally offended. Trying relevant issues in the cases assigned to me is enough, I have no intention of trying irrelevant disputes from other judges' cases.

Defendant's answer to plaintiff's motion included a countermotion seeking: 1) sanctions under his interpretation of rule 24(f), which should protect litigants who do not provide discovery, because he had to answer a motion that should not have been filed and, 2) sanctions if at a hearing the plaintiffs were not able to substantiate the allegation of his improper behavior in the other case.

On March 30, 1990, the plaintiff filed an answer to this countermotion.

On April 4, 1990, I issued my order. Because the issues before me could be decided without a hearing, and the defendant did not request a hearing for any relevant issue, I issued my order without holding a hearing. I ordered defendant to answer the discovery because as far as the record showed on that date he still had not filed one answer. (According to a subsequent filing of the plaintiff, no answers were made until April 18.) Because the rules require that a litigant who has forced another litigant to go to court to get discovery should ordinarily pay reasonable expenses, I ordered the defendant to pay the plaintiff $500. I denied defendant's countermotion.

In response the defendant filed an inch thick motion for reconsideration with a twenty-one page memorandum attached. Defendant informed the court that the plaintiff had been provided with answers to the "unobjectionable" discovery. Defendant requests the previous order be reconsidered because the court failed to provide a hearing so that irrelevant issues could be decided.

The defendant also requests that I reconsider certain of the objections that were made to some of the discovery requests. The defendant has not put itself in the most sympathetic posture for the reconsideration of its objections, since the original motion required the court to separate its valid objections from its invalid ones with very little explanation of their basis beyond the boiler plate it originally served on the plaintiff. For example, everything asked for was objected to as a violation of attorney-client privilege and work product doctrine (to the extent that it was objectionable). It was up to the court to decide if that was ever correct, according to the defendant. In the motion for reconsideration the defendant is much more specific. The defendant's objections in his motion for reconsideration have reached the degree of specificity that they should have had when originally sent to the plaintiff.

***4** The defendant's motion for reconsideration could be denied for two reasons.

First, because defendant did not object within the time allowed for objections under the rules and late objections are waived, even as to attorney-client and work product privileges. *Davis v. Fendler,* 650 F.2d 1154, 1160 (9th Cir. 1981); *Fretz v. Kelter,* 109 F.R.D. 303, 309 (D.Kan. 1986); *United States v. 58.16 Acres of Land,* 66 F.R.D. 570, 572 (E.D. Ill. 1975). *See also Moore's Federal Practice* ¶ 33.27 at 33-157, n.7 (Stating that late answers waive attorney-client and work product privilege objections.)

Second, because defendant did not specifically explain why the privileges applied, but relied on boiler plate language. Defendant had the obligation to point out why the named privileges applied. A litigant simply is not permitted to just name a list of legal objections to discovery. He is required to explain why the claimed objections apply to a particular interrogatory. *Josephs v. Harris Corp.,* 677 F.2d 985, 992 (3d Cir. 1982); *Davis v. Fendler,* 650 F.2d 1154, 1160 (9th Cir. 1981); *In re Shopping Carts Anti-trust Litigation,* 95 F.R.D. 299, 305

(S.D.N.Y. 1982); *Roesburg v. Johns-Manville Corp.*, 85 F.R.D. 292, 296-97 (E.D. P 1980); *United States v. 58.16 Acres of Land,* 66 F.R.D. 570, 572-73 (E.D. Ill. 1975).

Defendant complains that plaintiff's expert interrogatories require him to provide information on experts that were consulted, but will not be called for trial. Plaintiff denies this. If they do require this information the defendant need not provide it.

Defendant complains that the interrogatories seek information protected by the work product doctrine, notably photographs and diagrams of the accident scene and statements of witnesses. This accident involves a slip and fall on the gangplank of a ship that was docked in Philadelphia but whose location is at the present time unknown. None of the crew members are now in Philadelphia and they are believed to be in foreign countries. A litigant may discover material developed in anticipation of litigation if he has a "substantial need" for the information and can not acquire it for himself without "undue hardship." Fed. R. Civ. Pro. 26(b)(3). This is sufficient reason to deny defendant's motion for reconsideration. The rule requires that, "the court shall protect against disclosures of mental impressions, conclusions, opinions, or legal theories" when ordering work product discovery. I do not anticipate that there can be a legitimate objection on these grounds, but I will not order the defendant to turn over information that will result in such disclosures. If the defendant does object to turning over information on these grounds, there is to be a prompt and complete objection.

The defendant objects that some of the document requests will be cumulative of other information that the plaintiff has. For example, defendant states that there is a request for any and all agreements or other documents evidencing ownership of the vessel and a request for whether the defendant had a contract, relationship or agreement with any entity or individual on the date of the accident. The defendant does not have to provide information that is so remote

from the issues involved in the case that it can not aid the plaintiff and that would be a burden to produce. The defendant need not produce information that is needlessly cumulative of information that already has been provided to the plaintiff.

*5 For these reasons I will enter the accompanying order.

ORDER

AND NOW, this 25th day of June, 1990, upon consideration of Defendant Chateaugay Corporation's Motion for Reconsideration, Plaintiff's Answer thereto, Defendant's Reply and Plaintiff's Reply to Defendant's Reply it is hereby ORDERED and DECREED that said Motion is GRANTED IN PART and DENIED IN PART. It is GRANTED IN PART to the extent that:

1. Defendant need not provide documents that are would be needlessly cumulative of information that has already been supplied to the Plaintiff.
2. Defendant need not provide information that reveal the Defendant's attorneys' mental impressions, conclusions, opinions and legal theories or communications protected by attorney-client privilege, but must provide all factual work product that has been requested.
3. Defendant need not provide information on experts consulted who will not be called for trial.

Defendant's Motion is otherwise DENIED and all remaining discovery is to be provided to the Plaintiff before July 6, 1990.

E.D.P , 1990.