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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:)
GIUSEPPE ENZO CECCONI,)
Debtor.)
_____)
SARAH CECCONI,)
Plaintiff,)
v.)
GIUSEPPE ENZO CECCONI, A.C.)
SPICER, TRUSTEE IN BANKRUPTCY)
(UNDER U.K. INSOLVENCY LAWS),)
Defendants.)
_____)
A.C. SPICER, TRUSTEE IN)
BANKRUPTCY (UNDER U.K.)
INSOLVENCY LAWS),)
Counterclaimant,)
v.)
SARAH CECCONI,)
Counter-defendant.)
_____)
A.C. SPICER, TRUSTEE IN)
BANKRUPTCY (UNDER U.K.)
INSOLVENCY LAWS),)
Cross-claimant,)
v.)
GIUSEPPE ENZO CECCONI,)
Cross-defendant.)
_____)

Case No. 02-50653
Chapter 304
Ancillary Proceeding

ADV. PRO.No 03-5024-ASW

Hearing:
Date: 2/26/04
Time:
Judge: Weissbrodt

ORDER ON DISCOVERY MOTIONS

This matter came before the Court on February 26, 2004, for hearing on two motions - - Plaintiff and Cross Defendant Sarah Cecchoni's (?Plaintiff?) Motion to Compel Production of Subpoenaed Documents by the Royal Bank of Scotland (?RBS?) and Defendant and Counterclaimant A.C. Spicer's (?Spicer?) Motion to Deem Facts Admitted and to Compel Responses to Requests for Admission. Elaine Seid, Esq., of the law

1 firm of McPharlin Sprinkles LLP, represented Plaintiff; Amy Hesperheide, Esq., of the law firm of Shartis
2 Friese & Ginsburg LLP, represented both Spicer and RBS .¹

3 Plaintiff's Motion

4 The Court has reviewed the record, including the pleadings filed by both sides following the February
5 26, 2004 hearing on these two motions. First, with respect to Plaintiff's Motion to Compel, that Motion is
6 granted in part and denied in part. Except as otherwise provided in this Order, within twenty (20) days from
7 the date of this Order, RBS shall produce all documents responsive to such requests except that RBS need not
8 provide any documents responsive solely to Request Number 7. That Request is duplicative of the earlier
9 requests and superfluous.

10 The Court finds that all such documents may be relevant to the issues in this Adversary Proceeding or
11 at least may lead to discovery of relevant documents. The scope of discovery under the Federal Rules of Civil
12 Procedure is very broad. Plaintiff might possibly be entitled at trial or during motion practice to attempt to
13 demonstrate that the couple (Debtor and Plaintiff) kept all of their financial assets and liabilities separate, and
14 to argue that the fact that they kept all of their other respective assets separate bolsters Plaintiff's argument that
15 the couple intended to keep the subject property as the separate property of the Plaintiff, and not co-owned
16 by Debtor and Plaintiff. The Court is not prepared, at this juncture in the proceedings, to rule that, as a matter
17 of law, Plaintiff is not entitled to make such a showing because it would be completely irrelevant and of no
18 probative value. The Court, however, specifically reserves that issue. Moreover, there is virtually no burden
19 to RBS in producing these documents because they are all in the possession of the Shartsis firm.

20 RBS' objections concerning the technical deficiencies of the subpoena are overruled and no amended
21 signature lines will be required. No prejudice has been shown, or even claimed.

22
23 _____
24 ¹Ms. Hesperheide, of the Shartsis firm, represented orally on the record that the Shartsis firm
25 represents the Royal Bank of Scotland specifically in opposing the Plaintiff's motion to compel production of
26 the subpoenaed documents, and also represents Defendant and Cross-Complainant, AC Spicer, in this
Adversary Proceeding. As counsel for Plaintiff correctly pointed out, Spicer has no standing to assert
privileges or other defenses on behalf of RBS.

1 RBS' arguments with respect to the amount of time to respond to the document requests are moot.
2 RBS is given additional time to respond as part of this Order.

3 The Court rejects RBS' blanket objections of attorney-client and work-product privileges (i.e., RBS'
4 contention that all responsive documents in the possession of the Shartsis firm are privileged ipse dixit.) If RBS'
5 position were correct, then virtually every document in the possession of an attorney would be privileged. RBS
6 offers no persuasive support for such a broad proposition.

7 Furthermore, the Court agrees with Plaintiff that the Shartsis firm's choice of documents to ask RBS
8 for in a collection action is not likely to reveal significant strategy in the instant litigation.²

9 On the other hand, while the Court has overruled RBS' blanket privilege claims, there appears to be
10 no harm to either party in allowing RBS an alternative option i.e., the one specifically discussed at the February
11 26, 2004 hearing. Accordingly, as discussed at the hearing, RBS hereby is given the option of treating the
12 request for production as if it had been properly served on both the Shartsis' firm and on RBS in Scotland.
13 If RBS chooses to treat the subpoena in that fashion, it must produce all responsive documents regardless of
14 whether they are located in California or outside California. If RBS voluntarily chooses to treat the subpoena
15 in that way, RBS hereby has 35 days from the date of this Order to comply fully with it. The Court notes that,
16 if RBS chooses this option, RBS can protect itself from any possible argument (however unconvincing to the
17 Court) that the mere fact that the documents are in the possession of the Shartsis firm means that they are
18 privileged - - for Plaintiff need not be told whether each responsive document was found in the possession of
19 the Shartsis firm or elsewhere.

20 _____
21 ²The Court also notes that RBS has not demonstrated whether the Shartsis firm in fact has possession
22 of only very specific documents - - or very limited categories of documents - - rather than having all or most
23 of the documents that Plaintiff requests. Indeed, RBS would certainly know what documents Shartsis
24 requested of, and received from, RBS. However, all RBS says on this issue (see Declaration of Mary Jo
25 Shartsis filed February 12, 2004 which is Exhibit J to RBS' Memorandum of Points and Authorities in
26 Opposition to Motion to Compel Production of Subpoenaed Documents) is as follows:

I have no reason to believe, and consider it highly improbable based on the number of
documents received from RBS, that all of RBS' customer files were sent to me in their
?entirety."

1 If RBS still asserts the attorney work-product or the attorney-client privilege for any particular
2 document (RBS' blanket claim of privilege having been overruled by this Order), then RBS shall, within (20)
3 days from the date of this Order, produce a privilege log for each such document containing, at a minimum, all
4 of the following information.

- 5 1. A description of the document.
- 6 2. The date of the document.
- 7 3. The identity of each author of the document.
- 8 4. The identity of each person or entity to whom the document was sent.
- 9 5. The identity of any person or entity who was copied ("cc'd") on the document or who received a
10 copy.
- 11 6. The privilege(s) asserted.
- 12 7. A full justification for each privilege asserted.

13 Spicer's Motion

14 Turning to Spicer's Motion to Deem Facts Admitted, the Court has considered the parties' submissions
15 filed after the February 26th hearing, including Plaintiff's Exhibit A to Plaintiff's Supplemental Opposition to
16 Spicer's Motion to Deem Facts Admitted, i.e., containing Plaintiff's
17 revised responses to Spicer's Requests for Admission.

18 For the reasons stated by the Court orally on the record, Plaintiff's responses, as now revised, are
19 adequate. To the extent the Requests inquire about what the documents say, the documents speak for
20 themselves and there is no reason to require admissions. To the extent the Requests ask for legal opinions,
21 Plaintiff, a lay person, is not qualified to admit or deny such Requests, and is not obligated to provide any such
22 legal opinions.

23 IT IS SO ORDERED.

24
25 Dated _____

26 Judge Arthur S. Weissbrodt

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