

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

December 7, 2012

Robert E. Taglialatela, Jr.
P.O. Box 541
Flourtown, PA 19301

Natalie S. Woloshin, Esq.
Woloshin, Lynch, Natalie & Gagne, P.A.
3200 Concord Pike
P.O. Box 7329
Wilmington, DE 19803

RE: Taglialatela v. Galvin
C.A. No. 5841-MA

Dear Counsel and Parties:

Pending before me is a motion for protective order filed by Defendant Phyllis T. Galvin ("Galvin"), Trustee of the Irrevocable Trust of Robert E. Taglialatela, Sr., ("Trust") in an action to remove the trustee. This is my draft report recommending that the protective order be denied.

Robert E. Taglialatela, Jr. ("Taglialatela") is a beneficiary of the Trust. The Trust was established by a trust agreement dated February 14, 1998 and named Galvin as trustee, and Diane T. Green ("Green") as successor trustee in the event the Galvin ceases to act as trustee. Robert E. Taglialatela, Sr. passed away on July 21, 2010.

Taglialatela filed a Petition to Remove Trustee with the Court on September 22, 2010, seeking the removal of Galvin as trustee, an audit, disclosure of actions taken by

Galvin as trustee, and the appointment of Green as the successor trustee of the Trust.

Galvin's response included counterclaims alleging that Tagliatela has filed frivolous and unnecessary lawsuits that are dissipating the Trust's assets.

On August 31, 2012, Tagliatela submitted his first set of interrogatories and a request for production. Galvin submitted her answers to the interrogatories on September 28, 2012. Interrogatory Number 2 requested the Employer Identification Number ("EIN") for the Trust, which was provided to Tagliatela. Galvin now requests a protective order for the EIN, alleging that the Plaintiff is using the number as a means to file more frivolous lawsuits and to harass and annoy Defendant.

Pursuant to Chancery Court Rule 26(c), the Court, "upon motion by [the] party . . . from whom discovery is sought," may issue a protective order "for good cause shown" to protect the party from "annoyance, embarrassment, oppression, or undue burden or expense." The language of the Rule directs the Court to impose restriction on discovery only when "strong justification exists for such action."¹ The protection of a party from, *inter alia*, annoyance must be construed to apply only to the extraordinary conditions that exceed the degree of annoyance that is present and inherent in any litigation; thus, the requirement of a good cause showing.² The request for a protective order therefore carries a substantial burden for the movant.³

¹ *Ramada Inns, Inc. v. Drinkhall*, 490 A.2d 593, 598 (Del. Super. 1985).

² *Id.*

³ *Id.*

Among the factors to consider in determining if a request for a protective order should be granted is a consideration of the interests of the parties involved.⁴ This may include balancing the potential prejudice to the non-movant for the loss or destruction of relevant information and documents against the benefit of efficiency in time and expense for the party seeking the protective order.⁵ Furthermore, the timing of the request may be taken into account. Because the application requesting a protective order seeks to avoid or limit discovery, timing is key. Such a request must be timely, as determined by the Court's discretion.⁶

Galvin's request for a protective order for the Trust's EIN fails to demonstrate good cause for an order to restrain discovery. Taglialatela allegedly has referred this matter to the Internal Revenue Service for an audit. Taglialaela's referral is within his spectrum of options and cannot be said to lift this case beyond what could be expected in litigation over the handling of a trust. Galvin's assertion that the EIN request has subjected her to "frivolous, time-consuming and unnecessary litigation" is, at this point, purely speculative. Furthermore, Galvin ignores the problem of the timing of her request. A request for a protective order seeks to restrain discovery. The information requested by Taglialatela was provided by Galvin and done so intentionally. Galvin cannot now retroactively seek to apply a protective order. Since the Trust's EIN has already been provided to Taglialatela in Galvin's answer to his interrogatories, the relief provided by a protective order under Rule 26(c) is inapplicable.

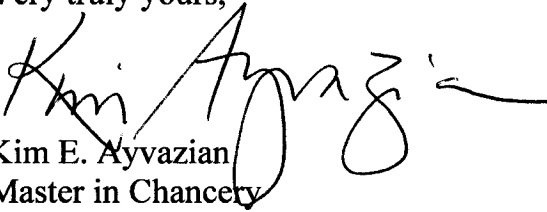
⁴ *Szeto v. Schiffer*, 1993 WL 513229, at *2 (Del. Ch. Nov. 24, 1993).

⁵ *Id.*

⁶ *Layton v. Lee*, 196 A.2d 578, 580 (Del. Super. 1963).

For the foregoing reasons, Galvin's motion for a protective order for the Trust's EIN should be denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kim Ayvazian", with a long horizontal flourish extending to the right.

Kim E. Ayvazian
Master in Chancery