

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DE 19801-3734

Final Report: November 29, 2012
Draft Report: November 15, 2012
Submitted: October 25, 2012

Matthew M. Carucci, Esquire
Carucci Di Lorenzo, LLC
1220 King Street
Wilmington, DE 19801

Ms. Shirley Ogata
1224 Cornerstone Boulevard, Apt 145
Downingtown, PA 19335
sogata@wlgore.com

Re: *Passales v. Ogata*
C.A. No. 7397-ML

Dear Mr. Carucci and Ms. Ogata:

The petitioner, Michael Passales, has moved to compel the production of documents from the respondent, Shirley Ogata. The documents at issue are bank statements for the past twelve months for all accounts titled in Ms. Ogata's name. For the reasons set forth below, the motion to compel is denied.

BACKGROUND

The complaint in this action alleges that Mr. Passales and Ms. Ogata were engaged in a romantic relationship for approximately twelve years. Mr. Passales contends that he and Ms. Ogata purchased a home together during their relationship, although that home was solely titled in Ms. Ogata's name. The parties also held funds in a joint account, and

Mr. Passales purportedly kept \$10,000 in cash in the home. Mr. Passales alleges that when the relationship ended, Ms. Ogata took sole possession of the funds in the joint account and the \$10,000 in cash. Mr. Passales seeks a constructive trust over those funds, and a resulting trust over a one-half interest in the home. Ms. Ogata denies Mr. Passales' version of events and contends that Mr. Passales is not entitled to the relief sought. Ms. Ogata also filed a counterclaim relating to debts she alleges Mr. Passales owes to her.

In May 2012, Mr. Passales served his First Request for Production of Documents, which sought, *inter alia*, “[b]ank statements from all accounts titled with [Ms. Ogata’s] name for the past 12 months.”¹ Ms. Ogata responded to the document requests on June 18, 2012. In response to the request for bank statements, Ms. Ogata responded “N/A.”² When Mr. Passales’ counsel requested a revised response, Ms. Ogata responded that “[t]his question was answered and is not relevant to this case since your client and I have not been in a relationship since June 2008.”³ Mr. Passales then filed a motion to compel, arguing that the bank statements are discoverable because Mr. Passales contends that Ms. Ogata took possession of the \$10,000 cash and the entirety of the parties’ joint bank account, and the bank statements might substantiate those claims.⁴ In response, Ms. Ogata continues to take the position that the parties’ relationship ended over three years

¹ Mot. to Compel, Ex. A, ¶ 8.

² *Id.* at Ex. B, ¶ 8.

³ *Id.* at Ex. D.

⁴ Reply in Support of Mot. to Compel, ¶ 3-4.

ago and bank statements dated within the last twelve months therefore have no relevance to this proceeding.⁵

Although the timeline of events in this case is not clear from the complaint or the motion to compel, all the facts before me indicate that the parties' relationship ended in 2008 or 2009. I therefore assume, perhaps mistakenly, that Ms. Ogata's alleged seizure of the funds in question occurred within that timeframe.⁶ Notably, and despite Ms. Ogata's contention that the documents bear no relation to the time period at issue in this case, Mr. Passales has not explained to the Court how bank statements within the past twelve months relate to events that transpired three years ago. Mr. Passales' Motion and the reply in support thereof do not even address that issue. Without further background, the Court cannot ascertain how Ms. Ogata's recent bank statements relate to events that took place three years ago.

Because Mr. Passales has not shown that these documents are relevant or reasonably calculated to lead to the discovery of admissible evidence,⁷ the Motion is denied. This is my final report in this matter.

/s/ Abigail M. LeGrow
Master in Chancery

⁵ Response to Mot. to Compel ¶¶1-2.

⁶ See Verified Petition ¶ 5 ("Respondent took possession of the Cash after the Parties' separated, without Petitioner's permission"); ¶ 6 ("After the parties ended their relationship, Respondent took the entirety of the funds in the Joint Account into her possession, without Petitioner's permission.")

⁷ Ct. Ch. R. 26(b)(1).