Transamerica Life Insurance Company v. Caramadre et al Doc. 81

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants.	C.A. No.: 09-470-WS
TRANSAMERICA LIFE INSURANCE COMPANY, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., ESTELA RODRIGUES, EDWARD MAGGIACOMO, JR., LIFEMARK SECURITIES CORP., and PATRICK GARVEY, Defendants.	C.A. No.: 09-471-WS
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., ADM ASSOCIATES, LLC, EDWARD HANRAHAN, THE LEADERS GROUP, INC., and CHARLES BUCKMAN, Defendants.	C.A. No.: 09-472-WS

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WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., DK LLC, EDWARD HANRAHAN, THE LEADERS GROUP, INC., and JASON VEVEIROS, Defendants.	C.A. No.: 09-473-WS
WESTERN RESERVE LIFE ASSURANCE CO. OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., NATCO PRODUCTS CORP., EDWARD HANRAHAN, and THE LEADERS GROUP, INC., Defendants.	C.A. No.: 09-502-WS
TRANSAMERICA LIFE INSURANCE COMPANY, Plaintiff, vs. LIFEMARK SECURITIES CORP., JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC. and EDWARD MAGGIACOMO, JR., Defendants.	C.A. No. 09-549-WS

WESTERN RESERVE LIFE ASSURANCE COMPANY OF OHIO, Plaintiff, vs. JOSEPH CARAMADRE, RAYMOUR RADHAKRISHNAN, ESTATE PLANNING RESOURCES, INC., HARRISON CONDIT, and FORTUNE FINANCIAL SERVICES, INC., Defendants.	)	C.A. No. 09-564-WS

RESPONSE IN OPPOSITION OF DEFENDANT ESTATE PLANNING RESOURCES, INC. TO PLAINTIFFS' OBJECTION TO THE MAGISTRATE JUDGE'S DENIAL OF PLAINTIFFS' OMNIBUS MOTION FOR PROTECTIVE ORDER STRIKING DEFENDANT ESTATE PLANNING RESOURCES, INC.'S INTERROGATORIES AND OBJECTION TO PLAINTIFFS' MOTION TO STAY THE MAGISTRATE JUDGE'S ORDER PENDING DETERMINATION OF THIS OBJECTION

Pursuant to LR Cv 72(c)(3), Defendant Estate Planning Resources, Inc. ("EPR"), by and through its undersigned attorneys, hereby responds in opposition to Plaintiffs Western Reserve Life Assurance Company of Ohio and Transamerica Life Insurance Company's (hereinafter referred to collectively as the "Plaintiffs" or the "AEGON Companies") Objection to the Magistrate Judge's Denial of Plaintiffs' Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.'s Interrogatories (the "Plaintiffs' Objection"). Furthermore, EPR objects to the Plaintiffs' Motion to Stay the Magistrate Judge's Order Pending Determination of this Objection (the "Plaintiffs' Motion to Stay").[1]

In their latest effort to rewrite the Initial Case Management Order (the "ICMO") that they helped to draft, Plaintiffs have returned to Court to appeal Magistrate Judge Martin's January 14,

[1] Plaintiffs filed their Objection and Motion to Stay in the same pleading across all seven of the above-captioned cases. For the sake of clarity, EPR is following the same procedure for this Response and Objection.

2011 Order (the "Magistrate Judge's Order"), which held Plaintiffs to the obligations that they freely undertook when they sought to engage in early discovery. See Order, Western Reserve Life Assurance Co. of Ohio v. Caramadre, C.A. No. 09-470 S (D.R.I. Jan. 14, 2011), ECF No. 80 (omnibus Order entered in all seven of the above-captioned cases). The Court should affirm the Magistrate Judge's Order and deny Plaintiffs' Motion to Stay because the Magistrate Judge's Order is correct and not clearly erroneous or contrary to law. Pursuant to the ICMO, EPR is entitled to receive answers to its interrogatories, which it served upon Plaintiffs nearly three months ago.[2]

FACTS[3]

Conveniently for the AEGON Companies, the Plaintiffs' Memorandum shuns the elephant in the room, which is the fact that Plaintiffs' counsel helped to draft the terms of the ICMO that they are now so quick to characterize as a "loophole."[4] Pls.' Mem. at 3.

As the Court is well aware, the ICMO that it entered on September 13, 2010 was jointly submitted by the parties on September 8, 2010. It was subject to extensive negotiation between the parties, and the Plaintiffs had plenty of time to consider its language. Contrary to what Plaintiffs would have the Court believe, they were not "induced" by Defendant Joseph Caramadre ("Mr. Caramadre") or Defendants Edward Hanrahan, Edward Maggiacomo, Jr., and Raymour Radhakrishnan (hereinafter referred to collectively with Mr. Caramadre as the

[2] EPR served its interrogatories upon Plaintiffs by mail on November 1, 2010.

[3] EPR hereby restates and incorporates by reference the facts and arguments that it recited in its Memorandum of Law, which it filed in support of its Objection to Plaintiffs' Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.'s Interrogatories ("EPR's Memorandum") on December 10, 2010. A copy EPR's Memorandum is attached hereto as Exhibit A.

[4] The term "Plaintiffs' Memorandum" refers to the Memorandum in Support of Plaintiffs' Objection to the Magistrate Judge's Denial of Plaintiffs' Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.'s Interrogatories and Motion to Stay the Magistrate Judge's Order Pending Determination of this Objection.

"Targets") to do anything. Pls.' Mem. at 6. In fact, rather than offering Mr. Caramadre a "temporary reprieve" from participating in full discovery, the ICMO granted the Plaintiffs the extraordinary opportunity to take discovery earlier than would normally be allowed by the Federal Rules of Civil Procedure.[5] Id. at 3. See ICMO, Western Reserve Life Assurance Co. of Ohio v. Conreal LLC, C.A. No. 09-470 S (D.R.I. Sept. 13, 2010), ECF No. 58 (attached hereto as Exhibit B). Plaintiffs bargained for this privilege, and in consideration, they agreed to postpone testimonial discovery of the Targets to avoid the risk of jeopardizing the Targets' Fifth Amendment rights against self-incrimination.

The ICMO does not preclude EPR from propounding interrogatories, and it does not preclude Plaintiffs from propounding interrogatories upon EPR. The relevant provision simply states the following:

> Notwithstanding the pendency of any Motions to Dismiss, the parties may forthwith propound interrogatories pursuant to Rule 33, requests for admission pursuant to Rule 36, and notice the deposition of any party, or of any third party witness, whether pursuant to Rule 30 or Rule 31, except that no Target Defendant shall propound interrogatories or requests for admission, or notice any such deposition, nor shall any Target Defendant, whether on his own behalf or on behalf of any organization pursuant to the procedures outlined in Rule 30(b)(6) or Rule 31(a)(4), be required to respond to any such interrogatories or requests for admission, nor be noticed or subpoenaed for any deposition, orally or in writing, until further order of the Court; provided that any Target Defendant may participate by attendance and cross-examination in any deposition of any other party or third party witness noticed by any other party.

Exhibit B at ¶ 5. The absence of a restriction upon organizations propounding interrogatories, simply because they are organizations in which Targets have a partial or fractional interest, is unmistakable. What is also notably absent is any restriction that would prohibit other parties

[5] EPR's Memorandum discusses the procedural travel of the above-captioned cases more thoroughly. See Exhibit A at 4-6. By way of summary, Plaintiffs first brought suit on October 2, 2009. Yet as a result of seemingly endless rounds of amendments that they have made to their Complaints, there are still outstanding Renewed Motions to Dismiss before the Court. Accordingly, the majority of the Defendants have not yet filed their Answers. See Fed. R. Civ. P. 12(a)(4)(A). In most cases, parties cannot seek discovery until after the last answer or responsive pleadings has been filed by all parties against whom claims have been asserted. See Fed. R. Civ. P. 26(d)(1); LR Cv 26(a).

from propounding interrogatories upon those same companies. While Plaintiffs cannot compel Mr. Caramadre to respond to any interrogatories on behalf of EPR, there is nothing to prevent Plaintiffs from serving interrogatories upon EPR that could be answered by another one of EPR's officers or agents. See Fed. R. Civ. P. 33(b)(1)(B) (stating that in cases where the responding party is a corporation, interrogatories must be answered by "any officer or agent, who must furnish the information available to the party."). Because Plaintiffs have not pursued this option, there is no way of knowing what answers they might receive from EPR were they to try.

Magistrate Judge Martin properly considered all of the foregoing facts when he denied Plaintiffs' Omnibus Motion for Protective Order Striking Defendant Estate Planning Resources, Inc.'s Interrogatories. Accordingly, the Court should affirm his decision.

STANDARD OF REVIEW

A magistrate judge's pre-trial order on a non-dispositive matter is reversible by a district court only if it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A); see also Fed. R. Civ. P. 72(a) (setting forth same standard). "A determination is 'clearly erroneous' when, although there is evidence to support it, the court, after reviewing all the evidence, is left with the definite and firm conviction that the magistrate judge made a mistake." Consorzio del Prosciutto di San Daniele v. Daniele, Inc., C.A. No. 07-039ML, 2010 U.S. Dist. LEXIS 53607 at *11 (D.R.I. June 1, 2010) (quoting Harvard Pilgrim Health Care of New England v. Thompson, 318 F.Supp.2d 1, 6 (D.R.I. 2004)).

EPR objects to Plaintiffs' request that the Court review the Magistrate Judge's Order under a *de novo* standard. See Pls.' Mem. at 7. The ICMO is not a Rule 16 scheduling order, and the parties have not yet had their Rule 26(f) conference; let alone a Rule 16 conference. See Fed. R. Civ. P. 16(b) (governing the requirements applicable to scheduling orders). Accordingly,

Plaintiffs' reference to the Court's discretion under Rule 16 misses the mark. See Pls.' Mem. at 7. Furthermore, having been involved with these cases since their outset (when he considered Plaintiffs' Motion to Conduct Expedited Discovery in October of 2009), Magistrate Judge Martin is no stranger to their procedural background. The Court should apply the same standard of review that is dictated by statute and the Federal Rules of Civil Procedure. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a).

ARGUMENT

Magistrate Judge Martin was not mistaken when he ordered Plaintiffs to respond to EPR's interrogatories, and his decision was not an abuse of discretion. Plaintiffs' counsel were actively involved in negotiating the terms of the ICMO, and they agreed to everything in the ICMO that was eventually entered by the Court. See Exhibit B at 3 ("The parties having conferred among counsel and with the Court, and pursuant to the parties' agreement, the Court now orders . . . ."). The Court should not now allow Plaintiffs to impose an *ex post facto* restriction upon EPR simply because they did not contemplate what they were doing.

The ICMO is essentially a consent order, and therefore, any unilateral mistake on the part of Plaintiffs should not be grounds for reforming it. See Emhart Indus. v. Home Ins. Co., 515 F. Supp. 2d 228, 247 (D.R.I. 2007) (Smith, J.) ("Generally, to reform a contract, 'it must appear by reason of mutual mistake that the parties' agreement fails in some material respect to reflect correctly their prior understanding.'" (quoting Yates v. Hill, 761 A.2d 677, 680 (R.I. 2000))); Vanderheiden v. Marandola, 994 A.2d 74, 78 (R.I. 2010) ("[A]lthough [a consent order] 'receives a court's imprimatur,' [it] is 'in essence a contract' and therefore must 'be construed as a contract . . . .'" (quoting Now Courier, LLC v. Better Carrier Corp., 965 A.2d 429, 435 (R.I. 2009))) (substitution in original). In effect, Plaintiffs are asking the Court to supply a missing

contract term to which the other parties never expressly agreed. See R.I. Hosp. Trust Nat'l Bank v. Bogosian, 11 F.3d 1092, 1098 (1st Cir. 1993) (holding parties to terms of consent order). Accordingly, there is "nothing unjust" about denying Plaintiffs' request and "leaving the parties where they have found themselves . . . ." Id.

Despite Plaintiffs' protests, the fact that EPR has exercised its rights under the ICMO is not inequitable, in "bad faith," or contrary to the order's "spirit and intent." Pls.' Mem. at 8. In addition to rewriting the IMCO's discovery limitations, Plaintiffs apparently seek to impose their own version of a self-serving mission statement for the ICMO upon the other parties. The lack of any recital in the IMCO about its "spirit and intent" is evident from its plain terms, and simply because Plaintiffs do not want to answer EPR's interrogatories does not make EPR's actions unfair. Mr. Caramadre and EPR are not "one in the same," and Mr. Caramadre is not using EPR as a "straw man." Pls. Mem. at 9. The ICMO clearly defines who the Targets are, and it spells out to whom its limitations apply. When they negotiated its terms with the other parties, Plaintiffs never sought to impose restrictions upon EPR. They agreed to the ICMO the way that the Court entered it, and EPR has done nothing wrong by exercising its rights thereunder.[6]

Plaintiffs' final argument seeks to add ambiguity into the ICMO where there is none. See Pls.' Mem. at 10. Where the ICMO states that parties can "propound interrogatories pursuant to Rule 33, requests for admission pursuant to Rule 36, and notice the deposition of any party, or of any third party witness, *whether pursuant to Rule 30 or 31*," it goes on impose the restrictions that apply to Targets. Exhibit B, at ¶ 5 (emphasis added). After defining depositions as those which are noticed pursuant to Rule 30 or 31, it states that no:

[6] If EPR was not cooperating with Plaintiffs, EPR could have opposed Plaintiffs' request to conduct early discovery. Instead, EPR has "played fair" and consented to allowing limited discovery while the Court considers EPR's latest Motion to Dismiss and Request for Reconsideration.

> Target Defendant, whether on his own behalf or on behalf of an organization pursuant to the procedures outlined in Rule 30(b)(6) or Rule 31(a)(4), [shall] be required to respond to any such interrogatories or requests for admission, nor be noticed or subpoenaed for any deposition, orally or in writing . . . .

Id. Plaintiffs urge the Court to construe this language as limiting only their ability to compel Targets to respond to "depositions on written interrogatories" propounded pursuant to Rule 31(a)(4), but such an interpretation would take this provision out of context and neglect all of the other language in the paragraph that indicates that the "Rule 31(a)(4)" modifier only applies to depositions. From the earlier reference to "interrogatories pursuant to Rule 33" and the later reference to depositions taken "orally or in writing," there can be no question that the parties, when drafting the ICMO, knew the difference between written interrogatories and depositions by written questions. The relevant language prevents the parties from requiring the Targets to answer either sort of inquiry, and if Plaintiffs actually believed otherwise, they would have propounded interrogatories upon the Targets months ago.

EPR has waited long enough for Plaintiffs to respond to the interrogatories that EPR propounded upon them nearly three months ago, so EPR objects to Plaintiffs' request that the Magistrate Judge's Order be stayed pending the outcome of Plaintiffs' Objection. Pursuant to the Magistrate Judge's Order, Plaintiffs must serve answers to EPR's interrogatories by February 14, 2011, which is already two months later than when they were initially due. Plaintiffs have had ample time to consider and prepare their responses, and EPR is entitled to receive their answers so that it can continue preparing its defenses to their claims.

CONCLUSION

For the foregoing reasons, the Court should overrule Plaintiffs' Objection and deny Plaintiffs' Motion to Stay.

Respectfully submitted,

ESTATE PLANNING RESOURCES, INC.

By its attorneys,

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DATED: January 31, 2011

CERTIFICATION

I hereby certify that on January 31, 2011, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF system.

/s/ *Robert G. Flanders, Jr.*