

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Wendy C. H. Wellin, as Special
Administrator of the Estate of Keith S.
Wellin and as Trustee of the Keith S.
Wellin Florida Revocable Living Trust
u/a/d December 11, 2001,

Plaintiff,

vs.

Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, individually and as co-
Trustees and beneficiaries of the Wellin
Family 2009 Irrevocable Trust u/a/d
November 2, 2009, and Friendship
Management, LLC,

Defendants.

Civil Action No. 2:13-cv-01831-DCN

**CONSENT ORDER ADOPTING REPORT
AND RECOMMENDATION, AS
MODIFIED**

Larry S. McDevitt, as Trust Protector of the
Wellin Family 2009 Irrevocable Trust,

Plaintiff,

vs.

Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as Co-
Trustees and Beneficiaries of the Wellin
Family 2009 Irrevocable Trust, Friendship
Management, LLC, and Cynthia W. Plum
as Manager of Friendship Management,
LLC,

Defendants.

Civil Action No. 2:13-cv-03595-DCN

Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, as Co-Trustees of the
Wellin Family 2009 Irrevocable Trust,

Counterclaim

Plaintiffs,

vs.

Lester S. Schwartz, Esquire, as Trust
Protector of the Wellin Family 2009
Irrevocable Trust u/a/d November 2, 2009,
and Wendy C. H. Wellin as Special
Administrator of the Estate of Keith S.
Wellin,

Counterclaim

Defendants.

Peter Wellin, Cynthia W. Plum , Marjorie W.) Civil Action No. 2:14-cv-04067-DCN
King, Individually and as Co-Trustees and)
Beneficiaries of the Wellin Family 2009)
Irrevocable Trust, u/a/d November 2, 2009,)
)
Plaintiffs,)
)
vs)
)
Wendy C.H. Wellin, Individually and as)
Trustee of the Keith S. Wellin Florida)
Revocable Trust u/a/d December 11, 2001,)
)
Defendants.)

This matter comes before the Court on the recommendations contained in Special Master William L. Howard’s Report and Recommendation (“R&R”) concerning the Motion for Protective Order filed by Wendy C. H. Wellin, as Special Administrator of the Estate of Keith S. Wellin and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 (“the Plaintiff”), ECF No. 389¹, dated January 8, 2016. In this R&R, the Special Master recommended that the Court grant the Plaintiff’s Motion for Protective Order, finding that the communications at issue, involving non-party Kevin Kennedy, are protected from disclosure based on the attorney-client privilege and the work product doctrine. In the R&R, the Special Master determined that South Dakota law governs the attorney-client privilege analysis. However, the Special Master held that, based on his in camera review of the documents at issue, he would find that the common interest doctrine and attorney-client privilege protect the documents from disclosure under the most stringent “identical” legal interest requirement first

¹ Though Case Nos. 2:13-cv-1831; 2:13-cv-3595, and 2:14-cv-4067 have been consolidated for pre-trial purposes, all references to electronic filing numbers in this Order will be directed to filings in Case No. 2:13-cv-1831.

articulated in Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1148, 1160 (D.S.C. 1974).
ECF No. 389 at 10.

The Wellin Children filed an Objection to the R&R on February 8, 2016, ECF No. 399. In their Objection, the Wellin Children do not object to the ultimate conclusion that the communications at issue are protected from disclosure. However, the Wellin Children object to the Special Master's holding that South Dakota law applies to the issues relating to attorney-client privilege. The Wellin Children contend that the choice-of-law issue related to the attorney-client privilege need not be reached for purposes of this motion because it is not outcome determinative.

After this objection was filed, counsel for the Plaintiff and counsel for the Wellin Children agreed to submit a consent Order to this Court, adopting Judge Howard's R&R, with the exception of his finding that South Dakota law governs the attorney-client privilege issue, which the parties agree is an issue the Court need not reach for purposes of this motion since choice-of-law is not outcome determinative.

As stated in this Court's February 17, 2015 Order Appointing the Special Master, ECF No. 270, this Court may "adopt or affirm, modify, wholly or partly reject or reverse or resubmit" the Special Master's order. Fed. R. Civ. P. 53(f)(1).

In light of the parties' agreement described herein, the Court adopts the R&R, with the exception of the finding therein that South Dakota law governs the attorney-client privilege issue presented, as such a finding is not necessary to grant the Motion.

Accordingly, the Special Master's R&R is ADOPTED, as modified.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written in a cursive style.

**DAVID C. NORTON
UNITED STATES DISTRICT JUDGE**

September 26, 2016
Charleston, South Carolina

WE CONSENT:

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Keith S. Wellin Florida Revocable
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February 25, 2016
Charleston, South Carolina

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Charleston, South Carolina
February 25, 2016.