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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES F. RIGBY, Chapter 7 Trustee
of Michael R. Mastro,

Plaintiff,

v.

MICHAEL J. CORLISS, et al.,

Defendants.

Case No. C14-0340RSL

ORDER GRANTING IN PART
DEFENDANT’S MOTION TO
COMPEL

This matter comes before the Court on the “Defendant’s Motion to Compel Production of Documents for Which Plaintiff Has Waived Attorney-Client Privilege.” Dkt. # 13. Plaintiff is the trustee in an involuntary bankruptcy proceeding involving Michael R. Mastro. The trustee accuses defendants of assisting Mastro in secreting assets and leaving the district, causing the trustee to incur additional expenses to locate both the debtor and the assets. One of the issues to be decided in this matter is whether and to

1 | what extent the trustee incurred additional expenses in investigating Mastro's assets as a
2 | result of omissions in defendant Michael Corliss' August 20, 2012, declaration. In
3 | particular, the trustee argues that Corliss failed to disclose that he had wired money to
4 | Mastro in 2011, and that the trustee incurred unnecessary costs between the date of the
5 | declaration and September 21, 2012, trying to figure out where that money had come
6 | from.

7 | In an effort to support his contention that he was unaware of the connection
8 | between Corliss and the wire transfer until September 21, 2012, the trustee submitted an
9 | email from counsel stating:

10 | Jim –

11 | Preliminary results from our more in-depth investigation at RBC is that the
12 | account was opened with funds on July 22, 2011 where the remitter was Michael
13 | J. Corliss. Funds in the account were withdrawn in September 2011 with a bank
14 | draft. We don't know the payee on the draft or where it was deposited yet. That
15 | information is forthcoming.

16 | Assuming this information is correct, this means that Corliss gave you a false
17 | affidavit and is assisting Mastro in post-bankruptcy with concealing himself and
18 | his assets. As we have always thought, Corliss is intertwined with the fraud on the
19 | bankruptcy estate and you may have an action against him and his assets. All the
20 | more reason that this Canadian discovery action is important to the estate. I
21 | suggest that this information be discussed with Gayle and the court so that our
22 | budget is not so limited.

18 | Rick

19 | Wyrwich Decl., Ex. E. The email is dated September 21, 2012. The bankruptcy court
20 | considered this evidence when concluding that there were triable factual issues regarding
21 | whether the trustee knew, at the time Corliss provided his declaration, that Corliss had
22 |

1 made the wire transfer and/or whether the failure to disclose his connection to the transfer
2 caused plaintiff injury.

3 The parties agree that the email was protected by the attorney-client privilege. The
4 privilege was undoubtedly waived as to this email. In addition, such a disclosure waives
5 the privilege as to undisclosed communications that concern the same subject matter and
6 “ought in fairness to be considered together.” Fed. R. Ev. 502(a). The parties disagree
7 regarding the scope of the waiver in this case. Defendant seeks an order compelling the
8 production of all privileged documents pertaining to the trustee’s investigation of Corliss
9 through October 30, 2013. The trustee, on the other hand, argues that if any further
10 disclosures are required, the Court should perform an in camera review to identify
11 communications from his attorneys that identify the date on which the trustee discovered
12 Corliss’ omission, including his connection to the bank account from which the transfer
13 was sent.

14 Having reviewed the memoranda, exhibits, and declarations submitted by the
15 parties, the Court finds that the trustee has used a privileged document to support his
16 claim that he was unaware of Corliss’ connection to the wire transfer until September 21,
17 2012, and that he should not be permitted to withhold other privileged communications
18 on that issue which may or may not support an earlier discovery date. An in camera
19 review of privileged documents is not necessary. The trustee shall produce all documents
20 and information withheld as attorney-client communications or work product through
21 September 21, 2012, that are relevant to the issue of when the trustee discovered the
22

1 connection.¹ The production shall include communications from attorneys and
2 investigators: both may be relevant to when the material falsehood was discovered.

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4 Dated this 6th day of December, 2017.

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6 Robert S. Lasnik
7 United States District Judge
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21 ¹ Defendant's request for documents regarding the entirety of the trustee's investigation
22 of Corliss through October 30, 2013, is overbroad as to both subject matter and time. The limited
production ordered will enable defendant to test the trustee's contention that he was unaware of
Corliss' connection to the wire transfer until September 21, 2012. Fairness will be served without
unnecessarily expanding the scope of the waiver.