

Brown-Jodoin v Pirrotti
2012 NY Slip Op 33835(U)
October 1, 2012
Supreme Court, Westchester County
Docket Number: 51283/2011
Judge: Francesca E. Connolly
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To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - COMPLIANCE PART

-----X
SHARON BROWN-JODOIN, Individually, as Executor-Elect of the Estate of Selvyn D. Brown, and as Trustee of the Selvyn D. Brown Revocable Living Trust,

Plaintiff,

DECISION & ORDER

-against-

Index No. 51283/2011
Motion Date: Oct. 1, 2012
Seq No. 4

ANTHONY JOSEPH PIRROTTI, LAW OFFICES OF ANTHONY J. PIRROTTI, P.C., and PIRROTTI & PIRROTTI, LLP,

Defendants.

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CONNOLLY, J.

The following papers were read on this motion by plaintiff to compel defendant Anthony Joseph Pirrotti ("Pirrotti") to appear for a continuation of his deposition at defendant Pirrotti's law office located at 501 Ashford Avenue, Ardsley, New York, to answer questions that he refused or was directed not to answer at his deposition, and for costs associated with filing this motion.

Order to Show Cause - Affirmation in Support - Exhibits
Affirmation in Opposition-Exhibits

Upon the foregoing papers and the proceedings held on October 1, 2012 this motion is determined as follows:

In this legal malpractice action, plaintiff alleges that defendants were negligent in connection with the probate of plaintiff's father's estate and breached the retainer agreement. Plaintiff alleges, among other things, that defendants failed to take necessary steps to have the decedent's will admitted to probate or to have letters testamentary issued to plaintiff.

On or about July 19, 2012, plaintiff deposed defendant Pirrotti for a full day. On or about July 20, 2012, plaintiff deposed defendant Pirrotti for an additional 2 ½ hours. At defendant Pirrotti's deposition, he refused to answer certain questions. Plaintiff avers that defendant Pirrotti's refusal to answer these questions was inappropriate.

In support of the instant motion, plaintiff argues that defendant Pirrotti violated the Uniform Rules of the Trial Courts [22 NYCRR] § 221.2 in refusing to answer questions at his deposition. Plaintiff asserts that defendant Pirrotti refused to answer questions concerning: the steps to probate a will, the statute of limitations for legal malpractice actions, whether he was ever disciplined as a lawyer, and the fees he charged plaintiff for “secretarial services.” Plaintiff maintains that responses to these questions are material and necessary to the claims or defenses in this action. Furthermore, plaintiff avers that responses to these questions would not have caused significant prejudice to anyone, that objections to these questions were not meant to preserve any privilege or right of confidentiality, and that the questions were otherwise proper. In addition, plaintiff argues that given defendant Pirrotti’s, and his counsel’s, unreasonable conduct at his deposition, the court should award costs associated with the filing of this motion.

In opposition to the instant motion, defendants argue that plaintiff’s motion should be denied since the questions posed by plaintiff’s counsel were improper and prejudicial. With respect to the questions concerning the steps needed to probate a will and the statute of limitations in a legal malpractice action, defendants aver that plaintiff’s line of questioning called for expert testimony. Thus, defendants argue that defendant Pirrotti’s refusal to respond to such questions was appropriate because he was testifying as a fact witness and not an expert witness. Regarding the questions concerning whether defendant Pirrotti was ever disciplined as an attorney in another case, defendants argue that these questions were wholly improper and overly prejudicial. Furthermore, with respect to the questions concerning the fees defendant Pirrotti allegedly charged plaintiff for secretarial services, defendants aver that the question was inartfully phrased since plaintiff’s counsel asked “what someone would understand from - reasonably understand from the retainer agreement.” In addition, defendants assert that the question was answered when the deponent stated that the reference in the retainer agreement to “computer time” referred to “data entry.” Defendants also argue that plaintiff’s request for costs associated with this motion should be denied because the questions were improper.

At oral argument, defendants requested that to the extent a further deposition of defendant Pirrotti was ordered, such deposition should take place at defense counsel’s office instead of defendant Pirrotti’s office.

CPLR 3101(a) requires “full disclosure of all matter material and necessary in the prosecution or defense of an action.” The phrase “material and necessary” is “to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason” (*Allen v Crowell-Collier Publishing Co.*, 21 NY2d 403 [1968]; *Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). Although the discovery provisions of the CPLR are to be liberally construed, “a party does not have the right to uncontrolled and unfettered disclosure” (*Merkos L’Inyonei Chinuch, Inc. v Sharf*, 59 AD3d 408 [2d Dept 2009]; *Gilman & Ciocia, Inc. v Walsh*, 45 AD3d 531 [2d Dept 2007]). “It is incumbent

on the party seeking disclosure to demonstrate that the method of discovery sought will result in the disclosure of relevant evidence or is reasonably calculated to lead to the discovery of information bearing on the claims” (*Foster v Herbert Slepoy Corp.*, 74 AD3d 1139 [2d Dept 2010]). The trial court has broad discretion to supervise discovery and to determine whether information sought is material and necessary in light of the issues in the matter (*Auerbach v Klein*, 30 AD3d 451 [2d Dept 2006]; *Feeley v Midas Properties, Inc.*, 168 AD2d 416 [2d Dept 1990]).

Pursuant to the Uniform Rules of the Trial Courts [22 NYCRR] § 221.2, a deponent shall answer all questions at a deposition except to preserve a privilege or right of confidentiality, to enforce a court ordered limitation, or when the question is plainly improper and would, if answered, cause significant prejudice to any person.

Here, defendant Pirrotti refused to answer certain questions, or was directed not to answer questions, which were proper and to which he should have provided responses. Questions concerning the steps to probate a will, the statute of limitations for legal malpractice actions, and the fees he charged plaintiff for “secretarial services” would not have caused significant prejudice to defendant Pirrotti or any other person, and were not otherwise improper. In addition, questions concerning probating a will and the statute of limitations are relevant to defendant Pirrotti’s knowledge regarding the area of law that is the subject of the alleged malpractice, and questions concerning his billing practices are relevant to plaintiff’s claims that he breached the retainer agreement.

However, defendant Pirrotti properly refused to answer questions concerning any potential prior disciplinary proceedings against him since his responses may have caused him significant prejudice and are not otherwise relevant to these proceedings. Accordingly, on or before October 15, 2012, defendant Pirrotti shall be produced for a further deposition at his law office to answer questions concerning: the steps to probate a will, the statute of limitations for legal malpractice actions, and the fees defendant Pirrotti charged plaintiff for secretarial services. Defendant Pirrotti’s conduct at his deposition does not warrant awarding costs at this time.

In view of the foregoing, it is

ORDERED that the branch of plaintiff’s motion for an order to compel defendant Pirrotti to appear for a continuation of his deposition is granted only to the extent that on or before October 15, 2012, defendant Pirrotti shall appear for a deposition at defense counsel’s office, and respond to questions concerning the steps to probate a will, the statute of limitations for legal malpractice actions, and the fees he charged plaintiff for secretarial services; and it is further

ORDERED that the branch of plaintiff's motion for costs is denied; and it is further

ORDERED that plaintiff shall serve a copy of this order with notice of entry upon defendants within 10 days of entry; and it is further

ORDERED that all parties are directed to appear for a conference in the Compliance Part, Courtroom 800, on October 18, 2012 at 9:30 a.m.

Dated: White Plains, New York
October 1, 2012


HON. FRANCESCA E. CONNOLLY, J.S.C.

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