

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: February 26, 2019]

JENNIFER DARLING, :
Plaintiff, :

v. :

C.A. No. PC-2018-0940

CITIZENS FINANCIAL GROUP, INC., :
D/B/A CITIZENS BANK, :
THE RHODE ISLAND BANKERS :
ASSOCIATION, INC., THE RHODE ISLAND :
STATE POLICE and COLONEL ANN :
CLAIRE ASSUMPICO, in her capacity as :
Superintendent of the Rhode Island State Police, :
GREGORY DEMARCO, individually and in :
his capacity as a Detective in the Rhode Island :
State Police, :
Defendants. :

DECISION

GIBNEY, P.J. Before this Court is a motion by Jennifer Darling (Plaintiff) to strike Defendant Rhode Island State Police’s (RISP) objections to Interrogatories Nos. 1-4 of Plaintiff’s second set of interrogatories and to compel further answers if any information was withheld by the RISP based upon improper objections. Plaintiff additionally moves to strike Defendant Rhode Island State Police Detective Gregory DeMarco’s (DeMarco) objection to Interrogatory No. 1 of Plaintiff’s first set of interrogatories, and to compel DeMarco’s further answer, if any information was withheld based upon an improper objection. Finally, Plaintiff moves to compel DeMarco’s further response to Request No. 2 of Plaintiff’s request for production of documents.

The RISP and DeMarco object to Plaintiff's motions. This Court exercises jurisdiction pursuant to Super. R. Civ. P. 37.

I

Facts and Travel

In January 2017, the RISP and Citizens Financial Group, Inc., d/b/a Citizens Bank (Citizens) opened investigations into a series of fraudulent checks cashed at Citizens. One such check was cashed at a Citizens branch in Providence, Rhode Island on January 4, 2017. On January 26, 2017, Citizens forwarded information to the RISP about several individuals Citizens believed to have cashed the fraudulent checks, including the name and Rhode Island driver's license number of the individual who allegedly cashed the fraudulent check on January 4, 2017. Citizens subsequently provided the RISP with a copy of this check, along with surveillance photographs of what Citizens believed at the time to be the January 4, 2017 transaction.

Plaintiff was the individual in the photographs Citizens sent to the RISP, although her name, physical description and fingerprints did not match the information on the driver's license of the individual who cashed the check on January 4, 2017. Moreover, the photographs were from January 3, 2017, the day before the check at issue was cashed. DeMarco posted these surveillance photographs on the "Rhode Island Most Wanted" website on February 3, 2017, accompanied by a statement from the RISP.¹ On February 6, 2017, WPRI-TV televised the story

¹The caption on the Rhode Island Most Wanted website stated:

"The Rhode Island State Police are attempting to identify a suspect involved in a fraudulent check and forgery scheme that occurred in Providence, RI.

"On January 3, 2017, at 5:00 PM, the suspect attempted to negotiate a fraudulent check from Foster Forward at the Citizens Bank in the Branch Avenue Stop and Shop in Providence, RI.

along with the surveillance photographs of Plaintiff. On February 7, 2017, Citizens informed DeMarco that it had provided the wrong photographs.

On February 13, 2018, Plaintiff filed this action including counts of defamation and deprivation of privacy. On November 7, 2018, Plaintiff moved to strike the RISP's objections and to compel further answers to Plaintiff's second set of interrogatories, to strike DeMarco's objections and to compel further answers to Plaintiff's first set of interrogatories, and to compel DeMarco's further response to Plaintiff's request for production of documents. The RISP and DeMarco object to the motions.

II

Standard of Review

Underlying the rules of discovery is the principle "that prior to trial, all data relevant to the pending controversy should be disclosed unless the data is privileged." *Cabral v. Arruda*, 556 A.2d 47, 48 (R.I. 1989) (citing 8 Wright & Miller, *Federal Practice and Procedure: Civil* § 2001 at 15 (1970)). Accordingly, trial courts have broad discretion over discovery matters and may sanction recalcitrant litigants. *Martin v. Howard*, 784 A.2d 291, 296 (R.I. 2001) (citing *Colvin v. Lekas*, 731 A.2d 718, 720 (R.I. 1999)); Super. R. Civ. P. 37(b). This discretion extends to motions to compel discovery, which will be disturbed by the Supreme Court only in the event it finds "an abuse of that discretion." *Colvin*, 731 A.2d at 720 (citing *Corvese v. Medco Containment Servs., Inc.*, 687 A.2d 880, 882 (R.I. 1997)). In reviewing discovery orders, the

"The description of the person who's [sic] name was on the check (Beth S. Green) does not match our suspect. The suspect appears to be part of a larger fraud ring that is attempting to negotiate fraudulent checks from Foster Forward. The suspect is a Caucasian female with brown hair."

Rhode Island State Police: 401-444-1205
Investigator: Detective Greg DeMarco

Supreme Court has adopted a test “to determine relevancy . . . [that examines] ‘whether the material sought is relevant to the subject matter of the suit, not whether it is relevant to the precise issues presented by the pleadings.’” *Cardi v. Med. Homes of R.I., Inc.*, 741 A.2d 278, 279 (R.I. 1999) (quoting *DeCarvalho v. Gonsalves*, 106 R.I. 620, 627 262 A.2d 630, 634 (1970)). “It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” Super. R. Civ. P. 26(b)(1).

III

Analysis

A

Plaintiff’s Motion to Strike the RISP’s Objections and to Compel Further Answers to Plaintiff’s Second Set of Interrogatories

The RISP object to Interrogatories Nos. 1–4 of Plaintiff’s second set of interrogatories. Plaintiff moves to strike these objections and to compel further responses if any information was withheld on an improper basis. Interrogatory No. 1 states:

“describe, in detail, any and all policies and procedures for the posting of information and photographs on the Rhode Island Most Wanted website by any person, including, but not limited to Rhode Island Most Wanted Staff members, Rhode Island Fusion Center members, members of the Rhode Island State Police and their collective agents, representatives and employees.”

The RISP argue that this interrogatory is overly broad because Plaintiff has not specified a timeframe. The RISP state that “[w]ithout waiving said [o]bjection, there is no formal promulgated policy . . . [but] the established procedure on how to post . . . onto the website is set forth in the Frequently Asked Questions (FAQ) section of the website.”

According to the Supreme Court, the proper timeframe for a discovery request is the time relevant to the controversy. *DeCarvalho*, 106 R.I. at 627, 262 A.2d at 634. Here, Plaintiff has requested “all policies and procedures for the posting . . . on the Rhode Island Most Wanted website . . .” With respect to Interrogatory No. 1, the Court finds relevant the timeframe when DeMarco posted the photographs of Plaintiff on the Rhode Island Most Wanted website: February 2017. The Court therefore grants Plaintiff’s motion with the aforementioned time restriction, and orders the RISP to state all policies and procedures for posting photographs on the Rhode Island Most Wanted website in place at that time.

Plaintiff additionally moves to strike the RISP’s response and compel a further answer to Interrogatory No. 2, which asks that the RISP “describe, in detail, all training given to any . . . persons who perform work in connection with the Rhode Island Most Wanted website.” The RISP object on the grounds that the interrogatory is vague and overly broad, arguing Plaintiff should have specified a timeframe. Notwithstanding this objection, the RISP state “there is no formal training given to Fusion Center members regarding posting content to the . . . website” but “the established procedures [are] posted on the FAQ section” of the Rhode Island Most Wanted website.

“Only rarely is it held that an interrogatory is so unclear that the other party cannot reasonably be required to answer it.” 8B Charles Alan Wright et al., *Federal Practice and Procedure* § 2168 (3d ed. 2010); *see, e.g., Rucker v. Wabash R.R. Co.*, 418 F.2d 146, 154 (7th Cir. 1969) (holding an interrogatory containing an incomplete sentence was overly vague such that the defendant was not required to provide a response). Here, the Court is not persuaded that Interrogatory No. 2 is vague, and therefore strikes the RISP’s objection and orders them to provide Plaintiff with a detailed response. With respect to the proper timeframe, the Court finds

to be relevant any and all times of the training of all persons eligible to post on the Rhode Island Most Wanted website at the time of this controversy, February 2017. *DeCarvalho*, 106 R.I. at 627, 262 A.2d at 634 (holding the proper timeframe for a discovery request is the time relevant to the controversy).

Interrogatory No. 3 requests the RISP to “fully describe the role of the Rhode Island State Police in the ownership, maintenance, updating, and operation of the Rhode Island Most Wanted website.” The RISP object on the grounds that the interrogatory is vague because Plaintiff has not specified a timeframe and has not defined the word “ownership.”

“Although it has been said that the term ‘owner’ has a definite meaning and that the definition of ‘owner’ is a matter of law, generally, the term has no definite legal meaning and is not a legal term.” 73 C.J.S. *Property* § 39 (2014). Rather, the meaning depends upon the context. *Id.* In the context of Interrogatory No. 3, the Court is unpersuaded that “ownership” is vague. 8B Charles Alan Wright et al., *Federal Practice and Procedure* § 2168 (3d ed. 2010) (“rarely is it held that an interrogatory is so unclear that the other party cannot reasonably be required to answer it”). The RISP have demonstrated their understanding of Plaintiff’s use of the word “ownership” in the RISP’s objection, which describes the RISP’s role in the Rhode Island Most Wanted website since its inception.² The Court therefore strikes this objection and orders the RISP to answer fully Interrogatory No. 3, and to provide details of the website’s ownership since it was founded in 2005, as the RISP did in their previous objection.

² In their objection, the RISP state, “[w]ithout waiving said Objection, at the outset, and currently, the Rhode Island Most Wanted website is funded by the Rhode Island Bankers Association. Getfused, Inc., is the web provider and was involved with the development and creation of the website. The Rhode Island State Police, through the Rhode Island Fusion Center, currently manages the website. In 2018, there was an upgrade to the website funded exclusively by contributions from the Rhode Island Bankers Association and the Rhode Island Credit Union League.”

Plaintiff finally moves to strike the RISP's objection to Interrogatory No. 4 and to compel a further response. Interrogatory No. 4 states:

“fully describe all screening procedures and protocols to be followed by any person including, but not limited to Rhode Island Most Wanted Staff members, Rhode Island Fusion Center members, members of the Rhode Island State Police and their collective agents, representatives and employees, before photographs and information are posted on the Rhode Island Most Wanted Web Site.”

The RISP object, again arguing the interrogatory is vague and overly broad because Plaintiff did not limit the request to a particular timeframe. As in Interrogatory No. 1, the Court finds the relevant timeframe to be the time when the RISP posted the surveillance photographs online and when the photographs appeared on WPRI-TV: February 2017. *See DeCarvalho*, 106 R.I. at 627, 262 A.2d at 634. The Court, therefore, strikes the RISP's objection and orders them to respond with “all screening procedures and protocols to be followed . . . before photographs and information are posted on the Rhode Island Most Wanted Web Site” during February 2017.

B

Plaintiff's Motion to Strike DeMarco's Objections and to Compel Further Answers to Plaintiff's First Set of Interrogatories

DeMarco objects to Interrogatory No. 1 of Plaintiff's first set of interrogatories, and Plaintiff moves to strike this objection and to compel a further response. Interrogatory No. 1 states:

“In your answer to plaintiff's interrogatory #4 to the Rhode Island State Police, you state that ‘Based on prior experience and training, in good faith’ you believed that Citizens Bank had sent over the correct photographs. Please fully describe the experience and training you relied on and include the following information in your description:

- “a. The experience you relied on;
- “b. The training you relied on;

- “c. The date(s) you received the specific training that you relied on;
- “d. The identity of any documents that memorialize the training you relied on; and,
- “e. The custodian of any documents identified in subpart d.”

DeMarco objects arguing the interrogatory is overly broad because it does not limit the timeframe of the request. DeMarco adds that:

“Without waiving said Objection, I have worked with Citizens Bank on numerous occasions. From December 2016 through February 2017 I investigated a number of potentially fraudulent checks cashed at various Citizens Bank locations. My training consists of basic investigation training for newly transferred Detectives which occurred on January 11, 2017. For documents that memorialize the training I relied on, please see Defendant’s Response to Plaintiff’s First Request for Production of Documents to Defendant Detective Gregory DeMarco No. 2, Bates number 00018.”

Plaintiff responds that the request is not overly broad, noting it was made in response to an earlier interrogatory in which DeMarco stated he relied upon his experience and training when posting the surveillance photographs of Plaintiff online.

Under Rule 37, “an evasive or incomplete answer or response is to be treated as a failure to answer or respond” for the purpose of imposing sanctions during the discovery process. Super. R. Civ. P. 37(a)(3). The scope of discovery is broad and liberal, and trial courts possess the authority to impose sanctions in order to protect the sanctity of the discovery process. *DeCarvalho*, 106 R.I. at 627, 262 A.2d at 634; *Joachim v. Straight Line Prods., LLC*, 138 A.3d 746, 752 (R.I. 2016) (noting courts may impose discovery sanctions even in the absence of the violation of a court order).

Here, under Rhode Island’s liberal discovery standards, this Court does not find Interrogatory No. 1 overbroad. *Bashforth v. Zampini*, 576 A.2d 1197, 1202 (R.I. 1990) (“Rule 26 . . . adopts a liberal approach in determining when discovery may be advanced”); *see also*

DeCarvalho, 106 R.I. at 627, 262 A.2d at 634. Rather, the Court finds DeMarco’s response evasive, strikes this answer and orders DeMarco to provide a further response. Super. R. Civ. P. 37(a)(3). Plaintiff seeks to gather ancillary support for the allegation that DeMarco did not act in good faith because he failed to verify the photograph, making this interrogatory relevant. *See Bashforth*, 576 A.2d at 1201 (“[o]ur discovery rules are designed to clarify the scope of the issues involved in litigation and to facilitate effective preparation for trial”). With respect to the proper timeframe, DeMarco is aware of the time of the training and experience upon which he relied in posting Plaintiff’s photograph on the Rhode Island Most Wanted website and thus, must provide such information.

C

Plaintiff’s Motion to Compel DeMarco’s Further Response to Plaintiff’s Request for Production of Documents

DeMarco does not object to Request No. 2 of Plaintiff’s request for production of documents. However, Plaintiff argues DeMarco provided an incomplete response and seeks to compel DeMarco’s further answer. The request states:

“In your answer to plaintiff’s interrogatory #4 to the Rhode Island State Police, you state that ‘Based on prior experience and training, in good faith’ you believed that Citizens Bank had sent over the correct photographs. Please provide all documents which evidence, document, or memorialize the training you relied on.”

DeMarco’s response references documents identified as “Bates numbers: 00001–00018.” DeMarco also explains, in response to Interrogatory No. 4 of Plaintiff’s first set of interrogatories to the RISP,³ “[b]ased on prior experience and training” he believed Citizens had provided the correct photographs, explaining that the “document[] that memorialize[s] the training [he] relied on . . . [is] Bates number 00018.”

³ See Section III(A) for a more detailed discussion of Interrogatory No. 4 to the RISP.

Plaintiff argues that this response is incomplete because “none of the actual training materials were provided” and therefore moves to compel DeMarco to provide all documents used in his training. DeMarco argues he provided a complete response, explaining that documents 00001–00017 include emails evidencing a relationship between DeMarco and Citizens—the “experience” upon which he relied—while the one-page itinerary identified as Bates number 00018 evidences his training. Overall, DeMarco asserts Plaintiff’s request was of limited scope, and that these eighteen documents comprise a complete response.

The Court is unpersuaded by DeMarco’s argument. Instead, the Court finds Request No. 2 to be broad, but not unduly so, as it seeks “*all* documents which evidence, document, or memorialize” the training upon which DeMarco relied when erroneously posting Plaintiff’s photograph on the Rhode Island Most Wanted website. (Emphasis added.) The Court interprets this request to include all documentation of DeMarco’s training, not simply the itinerary displaying the order in which the RISP administered such training. *See Cabral*, 556 A.2d at 48 (“all data relevant to the pending controversy should be disclosed unless the data is privileged”); *see also Card*i, 741 A.2d at 279 (relevancy is based upon “whether the material sought is relevant to the subject matter of the suit, not whether it is relevant to the precise issues presented by the pleadings”) (internal citation omitted). The Court, therefore, orders DeMarco to produce a further response that includes “all documents which evidence, document, or memorialize” DeMarco’s training. The Court interprets this request, as does Plaintiff, to encompass “all documents that were used in the training and provided to DeMarco in the training.”

IV

Conclusion

For the foregoing reasons, this Court grants Plaintiff's motions, including Plaintiff's interrogatories, Plaintiff's motion to strike DeMarco's objections and to compel further answers to Plaintiff's first set of interrogatories, and Plaintiff's motion to compel DeMarco's further response to Plaintiff's request for production of documents. The RISP and DeMarco must provide Plaintiff's requested discovery materials in accordance with the timeframes prescribed herein, within thirty days of this Decision.

Counsel shall present the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Jennifer Darling v. Citizens Financial Group, Inc., et al.

CASE NO: PC-2018-0940

COURT: Providence County Superior Court

DATE DECISION FILED: February 26, 2019

JUSTICE/MAGISTRATE: Gibney, P.J.

ATTORNEYS:

For Plaintiff: Joseph A. Keough, Jr., Esq.

For Defendant: Geoffrey W. Millson, Esq.; J. Richard Ratcliffe, Esq.; Sean Lyness, Esq.