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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KIRK and AMY HENRY,)
)
Plaintiffs,)

Case No. 2:08-CV-635-PMP-GWF

vs.)

FREDRICK RIZZOLO aka RICK RIZZOLO,)
)
an individual; LISA RIZZOLO, individually)
)
and as trustee of The Lisa M. Rizzolo Separate)
)
Property Trust and as successor trustee of)
)
The Rick J. Rizzolo Separate Property Trust;)
)
THE RICK AND LISA RIZZOLO FAMILY)
)
TRUST; THE RICK J. RIZZOLO SEPARATE)
)
PROPERTY TRUST; THE LISA M. RIZZOLO)
)
SEPARATE PROPERTY TRUST; THE RLR)
)
TRUST; and THE LMR TRUST,)

**PLAINTIFFS' MOTION TO
EXTEND DISCOVERY
DEADLINE**

(First Request)

Defendants.)
)
)

COMES NOW Plaintiffs KIRK and AMY HENRY, by and through their attorneys of
record, DONALD J. CAMPBELL, ESQ. and PHILIP R. ERWIN, ESQ., of the law firm

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CAMPBELL & WILLIAMS, and C. STANLEY HUNTERTON, ESQ., of the law firm HUNTERTON & ASSOCIATES, and hereby file the following Motion to Extend Discovery Deadline.

This Motion is made and based upon all the pleadings and papers on file herein, together with the affidavits and exhibits attached thereto, and any and all oral arguments.

DATED this 8th day of October, 2010.

CAMPBELL & WILLIAMS

HUNTERTON & ASSOCIATES

By /s/ Philip R. Erwin, Esq.
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Kirk Henry

By /s/ C. Stanley Hunterton, Esq.
C. STANLEY HUNTERTON, ESQ. (1891)
333 South Sixth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff Amy Henry

DECLARATION OF PHILIP R. ERWIN, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION TO EXTEND DISCOVERY DEADLINE

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, PHILIP R. ERWIN, declare under penalty of perjury as follows:

1. I am a resident of Clark County, Nevada. I am over the age of eighteen (18) years and I am in all respects, competent to make this Declaration. This Declaration is based upon my personal knowledge, and if called upon to testify, I would testify as set forth in this Declaration.

2. I am a licensed attorney in the State of Nevada Bar Number 11563. I am an associate in the law firm CAMPBELL & WILLIAMS. I am one of the attorneys representing Plaintiffs Kirk and Amy Henry in the above-captioned action.

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3. On October 7, 2010, I called defense counsel Mark. B. Bailus for Defendant Lisa Rizzolo to request a stipulation to extend the discovery deadline for the sole purpose of deposing Vincent Piazza. I left a message requesting a response by the end of the day due to the impending discovery deadline. I did not receive a return phone call.

4. On October 7, 2010, I called defense counsel Paola Armeni for Defendant Rick Rizzolo to request a stipulation to extend the discovery deadline for the sole purpose of deposing Vincent Piazza. I left her a message requesting a response by the end of the day due to the impending discovery deadline. I did not receive a return phone call.

5. I certify that all representations of fact about discovery that has occurred until this point in the proceeding are true and correct.

6. I declare under penalty of perjury of the laws of the United States and the State of Nevada that the foregoing is true and correct.

DATED this 8th day of October, 2010.

/s/ Philip R. Erwin, Esq.
PHILIP R. ERWIN, ESQ.

POINTS AND AUTHORITIES

I. INTRODUCTION

The Scheduling Order in this proceeding originally set the discovery deadline for August 31, 2010. It was subsequently extended to October 8, 2010 due to Defendant Rick Rizzolo's persistent obstruction of the discovery process (#437). On September 24, 2010, counsel for Rizzolo produced a set of documents pertaining to the sale of Philadelphia club real estate. It cannot be disputed that information contained in these documents warrants an extension of the discovery deadline for the extremely limited purpose of deposing Vincent Piazza.

II. ARGUMENT

Pursuant to LR 6-1 and 26-4, Plaintiffs are requesting this Court modify the scheduling order to extend the discovery deadline for the sole purpose of deposing Vincent Piazza. A party wishing to modify a discovery scheduling order must show "good cause" and seek leave of court. Fed. R. Civ. P. 16(b)(4); *Matrix Motor Co., Inc. v. Toyota Jidosha Kabushiki Kaisha*, 218 F.R.D. 667, 671 (C.D. Cal. 2003) (party moving for modification of scheduling order must show good cause). "Good cause" is evident when the party seeking modification shows the deadline cannot reasonably be met despite the diligence of the moving party. *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

Prior to Rizzolo's most recent production of documents, the Henrys' knowledge of the sale of the Philadelphia club real estate was based on cursory statements contained in e-mails and vague deposition testimony from Rizzolo. The subject documents, however, demonstrate that the situation is much more complex than originally thought. The documents provide the following information:

- The Philadelphia club real estate was held by an entity styled "TEZ Real Estate LP." Rizzolo owned a 33.3% interest in TEZ Real Estate LP through Lions Limited

1
2 Partnership. The other owner was Vincent Piazza through his entity styled the Piazza
3 Family Limited Partnership.

- 4
- 5 • The General Partner of TEZ Real Estate LP was an entity styled "TEZ Management
6 LLC." Rizzolo owned a 33.3% membership interest in TEZ Management LLC and was
7 a Manager of the company. The other member was Vincent Piazza through his entity
8 styled the Piazza Family Limited Partnership. Piazza was also a Manager.
 - 9 • Rizzolo's ownership interest in the Philadelphia club real estate was originally held by
10 The Rick and Lisa Family Trust. Although Rizzolo supposedly received the property in
11 his "divorce" in 2005, the assignment of the ownership interest was not fully
12 consummated until March 25, 2008. Further, Lisa Rizzolo actually executed certain
13 documents as part of the sale of the Philadelphia club real estate.
 - 14 • Rizzolo, through The Rick and Lisa Family Trust, entered into the TEZ Real Estate LP
15 Purchase of Limited Partnership Interest Agreement with Piazza on October 17, 2007.¹
16 In that agreement, Piazza agreed to buy Rizzolo's entire ownership interest in the
17 Philadelphia real estate.
 - 18 • Rizzolo executed the First Amendment to Purchase of Limited Partnership Interest
19 Agreement and the other assorted closing documents on March 25-31, 2008. The
20 closing date of the sale was March 31, 2008. Rizzolo's attorney Mark Hafer, Esq.
21 apparently advised Rizzolo during the execution of the documents. He also served as a
22 witness to the execution of many of the documents. Rizzolo was still in federal custody
when he executed the documents and was released shortly thereafter.²
 - Rizzolo's offshore trust, The RLR Trust, was initially utilized as a guarantor of the
transaction although the parties amended the purchase agreement later to exclude the
entity.
 - *The \$1 million payment that the Henrys were originally aware of was only the initial
payment upon closing. Rizzolo is entitled to an additional \$2 million pursuant to the
purchase agreement to be paid once Piazza begins (or began) selling shares of stock
in Rick's Cabaret International, Inc.³ The payments were scheduled to begin in
February 2009.*

23
24 ¹ Rizzolo has not produced the original TEZ Real Estate LP Purchase of Limited Partnership
25 Interest Agreement. In addition, Rizzolo was in federal prison at the this time so it is unknown
who executed the initial agreement on his behalf.

26 ² It is the Henrys' understanding that Rizzolo was in custody in a halfway house in Las
27 Vegas, Nevada on these dates.

28 ³ Vincent Piazza eventually sold the entire Philadelphia club investment to Rick's Cabaret
International, Inc. and was paid in stock.

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2 See Exhibit "1," Philadelphia Sale Closing Documents.

3 Rizzolo's entitlement to these funds is extremely worrisome in light of his self-stated
4 intention to conceal assets. Indeed, Rizzolo expressly admitted to concealing assets from the
5 Henrys and the Government in his sworn deposition testimony. See Exhibit "2," Deposition
6 Testimony of Rick Rizzolo, p. 293-295. In addition, the fax sheet which led to that specific line of
7 questioning stated the following: "*Can Lions LP assign its rights to collect the balance due on*
8 *the Philly sale to Bart before somebody else seeks to attach the payments which are not due to*
9 *begin until approximately next February?"* *Id.* (emphasis added).

10
11 To be sure, Rizzolo's attorneys were discussing the assignment of rights to the \$2 million
12 that was due under the purchase agreement for the Philadelphia club real estate. As noted above,
13 Rizzolo could begin receiving payments from Piazza in February 2009. It is entirely possible,
14 therefore, that Piazza disbursed some or all of the \$2 million over the course of the last year and a
15 half. Further, if foregoing language is any indication, it is likely that an unknown source received
16 the payments as part of a scheme to conceal Rizzolo's assets and frustrate his creditors. This
17 steady influx of money would also explain Rizzolo's ability to maintain a lavish lifestyle despite
18 the apparent absence of income.

19
20 Rizzolo's conduct during discovery reflects his vexatious intentions. Rizzolo actively
21 obstructed Plaintiffs' discovery despite receiving requests on this very subject. Moreover, Rizzolo
22 disregarded the express strictures of multiple court orders compelling the production of such
23 information. Simply put, Rizzolo's motivation for concealing the existence of these documents is
24 now readily apparent.

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26 Now, at the very end of discovery, Rizzolo discloses the existence of such documents when
27 Plaintiffs are essentially out of time to investigate the facts contained therein. As such, Plaintiffs
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do not know whether Piazza actually disbursed the additional \$2 million pursuant to the provisions of the purchase agreement. Further, if Piazza did disburse the money, Plaintiffs do not know the identity of the recipient of such payments. Plaintiffs believe these questions can be answered by deposing Vincent Piazza because he will have personal knowledge of the disbursements and the recipient.

Obviously, this previously unknown source of income is crucial in the instant action. Initially, any remaining funds could be applied to Plaintiffs' outstanding restitution. On the other hand, if Rizzolo secretly received funds pursuant to the purchase agreement then such transactions would clearly constitute additional fraudulent transfers under the UFTA. Regardless, Rizzolo should not be permitted to benefit from his utter disregard for the discovery process. As such, Plaintiffs have demonstrated good cause which warrants the extension of the discovery deadline for the sole purpose of deposing Vincent Piazza.

III. CONCLUSION

Accordingly, it is respectfully requested that the Court grant an extension to the discover deadline for the sole purpose of deposing Vincent Piazza.

DATED this 8th day of October, 2010.

CAMPBELL & WILLIAMS

HUNTERTON & ASSOCIATES

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CERTIFICATE OF SERVICE

I certify that I am an employee of Campbell & Williams and that I did, on the 8th day of October, 2010, serve upon the attorneys in this action a copy of the foregoing **PLAINTIFFS' MOTION TO EXTEND DISCOVERY DEADLINE** via the Court's CM/ECF filing system to the following:

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*Attorneys for Rick Rizzolo,
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The Rick J. Rizzolo Separate Property Trust,
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An Employee of Campbell & Williams