

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CAMPBELL & WILLIAMS
DONALD J. CAMPBELL, ESQ. (1216)
PHILIP R. ERWIN, ESQ. (11563)
700 South Seventh Street
Las Vegas, Nevada 89101
Telephone: (702) 382-5222
Facsimile: (702) 382-0540
and
HUNTERTON & ASSOCIATES
C. STANLEY HUNTERTON, ESQ. (1891)
627 South Seventh St.
Las Vegas, Nevada 89101
Telephone: (702) 388-0098
Facsimile: (702) 388-0361

Attorneys for Interested Parties
Kirk and Amy Henry

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KIRK and AMY HENRY,

Plaintiffs,

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,

Defendants.

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

**PLAINTIFFS' KIRK AND AMY
HENRY'S MOTION TO
COMPEL DISCOVERY AS
TO DEFENDANT KIMTRAN
RIZZOLO AND REQUEST
FOR SANCTIONS**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiffs KIRK and AMY HENRY, by and through their attorneys of record, hereby file the following Motion to Compel Discovery as to Defendant Kimtran Rizzolo and Request for Sanctions.

DECLARATION OF PHILIP R. ERWIN IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT LISA RIZZOLO'S AMENDED MOTION TO COMPEL AND FOR APPROPRIATE SANCTIONS

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 Henry in the above-captioned action.

3. On September 9, 2011, Plaintiffs Kirk and Amy Henry served their first set of Interrogatories and Requests for Production on Defendant Kimtran Rizzolo's attorney Herb Sachs, Esq. See Exhibit "1," First Set of Interrogatories; Exhibit "2," First Set of Requests for Production. Accordingly, Ms. Rizzolo's responses were due on October 10, 2011.

4. On September 12, 2011, Plaintiffs noticed the videotaped deposition of Ms. Rizzolo for October 6, 2011 at 9:00 a.m.

5. On September 13, 2011, I spoke with Mr. Sachs over the telephone regarding the deposition of his client. He noted that the deposition was scheduled to commence prior to the deadline for Ms. Rizzolo's discovery responses. I informed Mr. Sach's that Ms. Rizzolo's



1 deposition would proceed as scheduled. At no time did Mr. Sachs request a continuance of the
2
3 deadline to respond to Plaintiffs' written discovery nor did I grant one.

4 6. Later that same day, Plaintiffs issued an amended notice of deposition for Ms.
5 Rizzolo which changed the date to October 12, 2011 at 9:00 a.m.

6 7. Ms. Rizzolo did not respond to Plaintiffs' discovery requests on October 10,
7 2011.

8 8. On October 11, 2011, I spoke with Mr. Sachs regarding his client's failure to
9 produce discovery responses. He informed me that Ms. Rizzolo was in the process of
10 completing her discovery responses and Plaintiffs would receive them soon.

11 9. On October 12, 2011, Ms. Rizzolo appeared for her deposition at the law offices
12 of Campbell & Williams. When shown Plaintiffs' First Set of Interrogatories and Requests for
13 Production, Ms. Rizzolo testified that she did not recall ever seeing those documents prior to the
14 deposition. *See* Exhibit "3," Deposition of Kimtran Rizzolo, pgs. 74-81. She further testified
15 that she had not been asked to gather any documents by her counsel Mr. Sachs. *Id.* Moreover,
16 Ms. Rizzolo testified that no one had asked her to respond to the questions presented in
17 Plaintiffs' First Set of Interrogatories. *Id.* Once it became apparent that Ms. Rizzolo and her
18 counsel had not even attempted to respond to Plaintiffs' discovery requests, Mr. Sachs stated on
19 the record that Ms. Rizzolo would produce discovery responses by no later than October 19,
20 2011. *Id.*

21 10. Ms. Rizzolo did not respond to Plaintiffs' discovery requests on October 19,
22 2011.

23 11. On October 25, 2011, I had a telephone conversation with Mr. Sachs wherein he
24 informed me that Ms. Rizzolo would produce her discovery responses on October 26, 2011 at the
25
26
27
28



1 very latest. *See* Exhibit “4,” Erwin Letter of October 26, 2011. I further informed Mr. Sachs
2 that any potential objections to Plaintiffs’ discovery requests were waived by Ms. Rizzolo’s
3 failure to comply with the Federal Rules of Civil Procedure. *Id.*
4

5 12. On October 31, 2011, I received a letter from Mr. Sachs wherein he represented
6 that I had granted a continuance to respond to the discovery requests during our telephone
7 conversation of September 13, 2011. *See* Exhibit “5,” Sachs Letter of October 31, 2011. That is
8 false. Moreover, Mr. Sachs stated that Plaintiffs are already in possession of all information
9 requested in the subject discovery. *Id.* This too is false.
10

11 13. On November 1, 2011, Mr. Sachs faxed unexecuted discovery responses to my
12 office with no documents attached. Subsequently, I responded to Mr. Sachs’ misrepresentations
13 in his letter of October 31, 2011 and addressed the woefully deficient nature of his clients so-
14 called “discovery responses.” *See* Exhibit “6,” Erwin Letter of November 1, 2011. I also
15 requested that Mr. Sachs contact me immediately to conduct a meet-and-confer conference
16 pursuant to Local Rule 26-7. *Id.*
17

18 14. On November 2, 2011, Mr. Sachs and I conducted a meet-and-confer conference
19 over the telephone in accordance with Local Rule 26-7. *See* Exhibit “7,” Erwin Letter of
20 November 2, 2011. We were unable to resolve the discovery dispute.

21 15. On November 7, 2011, Plaintiffs finally received Ms. Rizzolo’s executed
22 discovery responses. *See* Exhibit “8,” Responses to First Set of Interrogatories; Exhibit “9,”
23 Responses to First Set of Requests for Production.
24

25 15. I present to the court pursuant to LR 26-7(b) that, after personal consultation and
26 sincere effort to do so, I have been unable to resolve the matter without court action.

27 16. I certify that all attached exhibits are true and correct copies
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. 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 17th day of November, 2011.

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

POINTS AND AUTHORITIES

I. INTRODUCTION

The Court is familiar with the background of this proceeding as well as the litany of discovery-related issues that have significantly slowed its progress. In sum, Defendants Rick and Lisa Rizzolo concealed relevant information regarding their financial condition throughout discovery in an effort to frustrate Plaintiffs' prosecution of this matter.¹ As the Court is well aware, one such instance of Defendants' concealment involved Rick Rizzolo's surreptitious sale of his interest in a strip club in Philadelphia, Pennsylvania. Once Defendants' deception was revealed, Plaintiffs were forced to seek leave to amend the Complaint and re-open discovery into the fraudulent transfers that arose from Philadelphia transaction.

In the Third Amended Complaint (#539), Plaintiffs asserted a cause of action under the Nevada Uniform Fraudulent Transfer Act against Defendant Rick Rizzolo's stepmother Kimtran Rizzolo relating to her illicit receipt of proceeds from the Philadelphia transaction. Shortly thereafter, Plaintiffs propounded written discovery to Ms. Rizzolo in the form of interrogatories and requests for production. Unsurprisingly, Ms. Rizzolo did not respond to Plaintiffs' discovery

¹ Defendant Rick Rizzolo's obfuscation led to Magistrate Judge Foley entering a finding that the "trier of fact may conclude that Mr. Rizzolo's false or deceptive answers to interrogatories demonstrate an ongoing intent to conceal assets or the disposition of those assets." See Order (#437), p. 9 n. 3.



1 requests in an accurate and timely manner. Indeed, Ms. Rizzolo has simply continued her
2 family's pattern of discovery abuse and she must be compelled to provide responsive answers.

3
4 **III. ARGUMENT**

5 Pursuant to LR 26-7(a), Plaintiffs set forth, in full, their First Set of Interrogatories and
6 Requests for Production and Defendant Kimtran Rizzolo's responses thereto. The discovery
7 propounded below is common and extremely relevant in cases involving fraudulent transfer
8 claims. As such, Defendant should be compelled to answer and produce documents responsive
9 to these Interrogatories and Requests for Production. Objections should be waived as both
10 untimely and obstreperous. Further, the discovery abuse evident on the facts stated herein
11 warrants imposition of sanctions including but not limited to, attorney's fees.

12
13 **A. Defendant's Responses to Interrogatories**

14 **INTERROGATORY NO. 1:**

15 State the full name and present address of each person with whom you have engaged in
16 any partnership, business enterprise or business venture since January 1, 2005.

17 **RESPONSE TO INTERROGATORY NO. 1:**

18 There are no persons with whom Defendant engaged in any partnership, business
19 enterprise or business adventure.

20 **INTERROGATORY NO. 2:**

21 State the date, place and name of each person or institution to whom you have furnished
22 or exhibited any statement of your financial condition since January 1, 2005.

23 **RESPONSE TO INTERROGATORY NO. 2:**

24 Objection, too broad. However, Defendant does not recall any person or institution to
25 whom she has furnished any statement of her financial condition.

26 **INTERROGATORY NO. 3:**

27 State the full description and present location and ownership of any asset or property you
28 presently possess. If any such asset or property is not presently owned by you, state the full



1 details concerning its disposition by you, including to whom it went, when, and for what
2 consideration, including its sale price, if any.

3 **RESPONSE TO INTERROGATORY NO. 3:**

4 Objection, too broad.

5 **INTERROGATORY NO. 4:**

6 List any business you have an ownership interest in, including the name of the entity, its
7 location, all other officers, and contact information.

8 **RESPONSE TO INTERROGATORY NO. 4:**

9 None.

10 **INTERROGATORY NO. 5:**

11 List any stocks, bonds, or other securities of any class in any government, governmental
12 organization, company, firm or corporation, whether foreign or domestic that you own.

13 **RESPONSE TO INTERROGATORY NO. 5:**

14 Defendant is not aware of any stocks, bonds, or other securities that they may own.

15 **INTERROGATORY NO. 6:**

16 List any and all financial institution accounts you currently maintain, whether business or
17 personal, checking or savings, or jointly owned, or to which you hold in trust for anyone else.

18 **RESPONSE TO INTERROGATORY NO. 6:**

19 Bank of America, Citibank, Nevada State Bank, City National Bank and Union Bank.

20 **INTERROGATORY NO. 7:**

21 List and give full details concerning any account not listed above, held in any name other
22 than your own, or over which you have dominion, possession, or control.

23 **RESPONSE TO INTERROGATORY NO. 7:**

24 None.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY NO. 8:

List any safe deposit box or other depository for securities, cash or other valuables that you maintain and its location since January 1, 2005, to the present date.

RESPONSE TO INTERROGATORY NO. 8:

Citibank.

INTERROGATORY NO. 9:

List any causes of action you presently have, or identify any claims for money you have against any others and the circumstances giving rise to the claim.

RESPONSE TO INTERROGATORY NO. 9:

None to Defendant's knowledge.

INTERROGATORY NO. 10:

List any property you hold or have held as trustee of a testamentary or inter vivos trust since September 20, 2001, and identify any trust you have created or contributed to for the benefit of others since September 20, 2001.

RESPONSE TO INTERROGATORY NO. 10:

None to the best knowledge of Defendant.

INTERROGATORY NO. 11:

State whether you are an heir-at-law or beneficiary under the terms of the will of any person and list the terms of your entitlement under such will.

RESPONSE TO INTERROGATORY NO. 11:

Please see the Will that has been produced in Defendant's responses to Plaintiff's request.

INTERROGATORY NO. 12:

List any interest you have in any pension plan, retirement fund, profit-sharing plan, or life insurance policy payable to you, your estate, your former husband, his estate, or any other entity.

RESPONSE TO INTERROGATORY NO. 12:

None to the best knowledge of Defendant.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY NO. 13:

State if you have at any time since January 1, 2005, conveyed or disposed of any property either by sale, gift, court order or otherwise, for which such property has been conveyed or transferred and is now being held for you in the name of some person other than yourself and describe the terms thereof.

RESPONSE TO INTERROGATORY NO. 13:

See Number Interrogatory 12 above.

INTERROGATORY NO. 14:

State if you have at any time since January 1, 2005, received any property either by sale, gift, court order or otherwise, for which such property has been conveyed or transferred and is now being held by you for the benefit of some person other than yourself and describe the terms thereof.

RESPONSE TO INTERROGATORY NO. 14:

See number Interrogatory 12 above.

INTERROGATORY NO. 15:

List any conveyances, transfers, gifts or other dispositions of property since January 1, 2005, with any reservation of rights, benefits, or options running to you for the reacquisition of the property at some future date.

RESPONSE TO INTERROGATORY NO. 15:

See Number Interrogatory 12 above.

INTERROGATORY NO. 16:

Identify if you have, at any time since January 1, 2005, entered into any transaction with Bartholomew Rizzolo, Rick Rizzolo, Lisa Rizzolo or any other relative involving the transfer, conveyance, assignment, gift or other disposition of real or personal property and describe the terms thereof.

RESPONSE TO INTERROGATORY NO. 16:

To the best knowledge and interpretation of the wording of the Interrogatory herein, Defendant has not entered into any transaction.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORY NO. 17:

State whether you have, at any time since January 1, 2005, been a party to any contract or any other agreement, whereby you granted an option to anyone to purchase any or all of your assets and describe the terms of the contract.

RESPONSE TO INTERROGATORY NO. 17:

None.

INTERROGATORY NO. 18:

List any creditors you have at the present time and the amount and terms of the debt along with any property which you claim is exempt from collection by plaintiff or any other creditors.

RESPONSE TO INTERROGATORY NO. 18:

To the best knowledge of Defendant at the moment this response is made the, only creditors of Defendant is Chase Bank for \$20,000.00 and a Visa credit card in the amount of \$2,000.00

INTERROGATORY NO. 19:

Identify any certified public accountant or any other individual you have employed for financial services, or had employed in your behalf, at any time since January 1, 2005.

RESPONSE TO INTERROGATORY NO. 19:

Jerry Andrews.

INTERROGATORY NO. 20:

Identify any and all attorneys retained or paid for by you for the benefit of Bartholomew Rizzolo, Rick Rizzolo, Lisa Rizzolo, or any other relative and describe the terms of the arrangement.

RESPONSE TO INTERROGATORY NO. 20:

To the best knowledge of Defendant, she has not retained any attorney for Bartholomew Rizzolo, Rick Rizzolo and/or Lisa Rizzolo

INTERROGATORY NO. 21:

Identify any and all financial obligations, debts, liabilities or responsibilities assumed by you on behalf of Bartholomew Rizzolo, Rick Rizzolo, or Lisa Rizzolo since January 1, 2005.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPONSE TO INTERROGATORY NO. 21:

My husband, Bart Rizzolo, owed money to Rick Rizzolo for purchase of jewelry and directed his wife (Defendant) to pay the obligation by transferring monies owed by Rick Rizzolo for attorney's fees to Kenneth Frizzell, Esq. and Gordon & Silver, Esq.

INTERROGATORY NO. 22:

Identify any and all contracts, business arrangements, entitlements, assignments, or cash inflows entered into or assumed by you on behalf of Bartholomew Rizzolo, Rick Rizzolo, or Lisa Rizzolo since January 1, 2005.

RESPONSE TO INTERROGATORY NO. 22:

See response to Answer to Interrogatory No. #21 above.

INTERROGATORY NO. 23:

Identify and describe your involvement in the business entity styled TEZ Real Estate LP.

RESPONSE TO INTERROGATORY NO. 23:

None.

INTERROGATORY NO. 24:

Identify and describe your involvement in the Crazy Horse Too in Philadelphia, Pennsylvania.

RESPONSE TO INTERROGATORY NO. 24:

None.

INTERROGATORY NO. 25:

Identify and describe your relationship including all business dealings with Vincent Piazza, Stuart Cohen, and the Piazza Family Limited Partnership or any owner, member, employee or agent thereof.

RESPONSE TO INTERROGATORY NO. 25:

None.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Defendant's Responses To Requests for Production

REQUEST NO. 1:

Produce all documents including but not limited to statements of account with securities brokerage firms dividend statements, earning reports or similar documents which reflect, refer, or relate to any stocks, bonds, debentures, certificates of deposit, or any other security owned by you either alone or jointly with another person at any time since January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 1:

Annuities, Met life, Prudential and Transamerica attached hereto. No documents are in the possession of the Defendant.

REQUEST NO. 2:

Produce all documents which reflect, refer, or relate to any interests held by you in any corporation, partnerships, general or limited, or limited liability companies at anytime from January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 2:

Since Defendant has no interest in any corporation or partnerships or limited liability companies, there are no documents to produce.

REQUEST NO. 3:

Produce all titles, leases or other evidence of any possessory interest for any house, apartment, office, warehouse, garage or other real estate held by you since January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 3:

Copies of deeds to two home are attached hereto.

REQUEST NO. 4:

Produce all documents which reflect, refer, or relate to any trust under which you are or was a settlor or beneficiary, at any time January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 4:

Defendant is unaware of any trust in which she was named as beneficiary or settlor. There are no documents to produce.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REQUEST NO. 5:

Produce all documents which reflect, refer, record or relate to any assignments or transfers of real or personal property made by you to any other person at any time January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 5:

No assignments or transfers of real or personal property made by Defendant, therefore there are no documents to produce.

REQUEST NO. 6:

Produce all documents which reflect, record, refer, or relate to, or contain information concerning your financial condition and/or net worth at any time January 1, 2005 to the present date.

RESPONSE TO REQUEST NO. 6:

Objection, request it too broad. There are no documents in Defendants possession which reflect her net worth of financial condition.

REQUEST NO. 7:

Produce all other books, records, receipts, contracts, agreements, invoices, documents of title, ownership, or indebtedness, or documents otherwise pertaining to your assets.

RESPONSE TO REQUEST NO. 7:

See to Response Number 3 herein.

REQUEST NO. 8:

Produce documents which record, or reflect gifts given to or received from relatives, friends, or any other individual entity during the years 2005 through the present date.

RESPONSE TO REQUEST NO. 8:

There are no documents in possession of Defendant.

REQUEST NO. 9:

Produce documents which record, refer, or relate to your domestic and/or foreign bank accounts, regardless of whether the same be held in sole or joint names since January 1, 2005.



1 **RESPONSE TO REQUEST NO. 9:**

2
3 Defendant has no documents as requested in this request but has accounts in Nevada
4 State Bank, City National Bank, and Bank of America.

5 **REQUEST NO. 10:**

6 Produce documents which identify or record all items of tangible personal property owned
7 in whole or in part by you since January 1, 2005 to the present date.

8 **RESPONSE TO REQUEST NO. 10:**

9 There are no documents in possession of Defendant that she is aware of.

10 **REQUEST NO. 11:**

11 Produce copies of your financial statement prepared at any time during the period January
12 1,2005, to the present date.

13 **RESPONSE TO REQUEST NO. 11:**

14 Please see Response to Request Number 10 above.

15 **REQUEST NO. 12:**

16 Produce documents which record, reflect, refer or relate to any will which identifies you as
17 an heir-at-law of or beneficiary under said will.

18 **RESPONSE TO REQUEST NO. 12:**

19 Relative portions of husbands will are attached hereto.

20 **REQUEST NO. 13:**

21 Please communications with Bartholomew Rizzolo, Rick Rizzolo, Lisa Rizzolo, Vincent
22 Piazza, Stuart Cohen or any other remember, employee or agent of the Piazza Family Limited
23 Partnership related to TEZ Real States LP, the Crazy Horse Too, or any other business venture
24 between the foregoing parties.

25 **RESPONSE TO REQUEST NO. 13:**

26 No documents are in possession of Defendant.

27 **REQUEST NO. 14:**

28 Produce documents, contracts, assignments or communications which record, reflect, refer
or relate to TEZ Real Estate LP or Crazy Horse Too in Philadelphia, Pennsylvania.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPONSE TO REQUEST NO. 14:

Please see Response to Request Number 13 above.

REQUEST NO. 15:

Produce documents which record, reflect, refer or relate to the receipt of funds or other consideration arising out of Rick Rizzolo's sale of his interest in TEZ Real Estate LP including but not limited to account statements, checks, memoranda, wire transfer records, and communications.

RESPONSE TO REQUEST NO. 15:

Please see Response to Request Number 13 above.

REQUEST NO. 16:

Produce documents which record, reflect, refer or relate to the receipt of funds or other consideration arising out of the assignment executed by Bartholomew Rizzolo in relation to Rick Rizzolo's sale of his interest in's sale of his interest in TEZ Real Estate LP including but not limited to account statements, checks, memoranda, wire transfer records, and communications.

RESPONSE TO REQUEST NO. 16:

Please see Response to Request Number 13 above.

REQUEST NO. 17:

Produce documents which record, reflect, refer or relate to the payment of legal bills, restitution or any other debts, liabilities or financial obligations on behalf of Rick Rizzolo since January 1, 1995.

RESPONSE TO REQUEST NO. 17:

Please see Response to Request Number 13 above.

REOUEST NO. 18:

For each document you contend you cannot produce, state a time and place for when and where said documentation may be inspected.

RESPONSE TO REQUEST NO. 18:

Since there were not documents in Defendant's possession, none can be produced at any time or any place for inspection, with the exception of the documents that have been attached hereto.



1
2
3
4
5
6
7
8
9

C. Defendant's Objections Should Be Waived As Untimely Under The Federal Rules Of Civil Procedure

In order to properly assert an objection to an interrogatory, the responding party must serve its answers and objections within 30 days after initial service. Fed. R. Civ. P. 33(b)(2). Here, Ms. Rizzolo did not produce her discovery responses until November 7, 2011; *59 days* after Plaintiffs served their discovery requests. Nevertheless, her responses to the discovery requests were littered with objections to interrogatories and requests for production. These objections must be waived as untimely.

10
11

1. Interrogatories

12
13
14
15
16
17
18
19
20
21
22
23
24

Ms. Rizzolo violated the timeliness provision of Rule 33, and any and all objections stated in her responses are waived. *See Horace Mann Ins. Co. v. Nationwide Mut. Ins. Corp.*, 238 F.R.D. 536, 538 (D. Conn. 2006) (party who fails to file timely objections waives all objections); *Deal v. Lutheran Hospitals and Homes*, 127 F.R.D. 166, 168 (D. Alaska 1989) (“the law is well settled that the failure to timely file objections to the interrogatories under Rule 33 results in a waiver of objections...”); *Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 665 (D. Kan. 2004) (strict application of waiver to late objections applied even though defendant had objected on grounds that plaintiff exceeded permissible number of interrogatories); *Safeco Ins. Co. of America v. Rawstrom*, 183 F.R.D. 668, 671 (C.D. Cal. 1998) (“Both the language of Rule 33 and its promulgation history suggest that grounds for objection must be stated in a response filed within the period allowed for response, and that objections sought to be imposed later are waived...”).

25
26

2. Requests for Production

27
28

This Rules governing waiver are not limited to interrogatories but rather extend to other forms of discovery as well, including requests for the production of documents. *See Pham v.*



1 *Hartford Fire Ins. Co.*, 193 F.R.D. 659, 661 (D. Colo. 2000) (there is no reason for “a dissimilar
 2 interpretation” when assessing whether the automatic waiver provision for interrogatories should
 3 apply to document requests); *Deal*, 127 F.R.D. at 168 (the result of waiver for failure to timely
 4 assert objections to document requests should parallel the rules for waiver of objections to
 5 interrogatories). In *Krewson v. City of Quincy*, 120 F.R.D. 6 (D. Mass. 1988), the court
 6 articulated the justified rationale for imposing waiver on untimely objections to Rule 34
 7 document requests:
 8

9
 10 *“If a party fails to file timely objections to document requests, such a*
 11 *failure constitutes a waiver of any objections which a party might have*
 12 *to the requests. Slauenwhite v. Bekum Maschinenfabriken, GMBH, 35*
 13 *F.R.Serv.2d 975 (D. Mass., 1983) citing Perry v. Golub, 74 F.R.D. 360,*
 14 *363 (N.D. Ala., 1976) and cases cited therein, i.e. United States v. 58.16*
 15 *Acres of Land, 66 F.R.D. 570 (E.D. Ill., 1975); Davis v. Romney, 53*
 16 *F.R.D. 247 (E.D. Pa. 1971). ‘Any other result would ... completely*
 17 *frustrate the time limits contained in the Federal Rules and give a*
 18 *license to litigants to ignore the time limits for discovery without any*
 19 *adverse consequences.’ Slauenwhite v. Bekum Maschinenfabriken,*
 20 *GMBH, supra.”*

21 120 F.R.D. at 7 (emphasis added).

22 The holding in *Krewson* supports waiver of Ms. Rizzolo’s objections. Permitting the
 23 objections to stand when raised in an untimely, dilatory fashion only frustrates the discovery
 24 process.

25 **D. Defendant Should Be Compelled To Produce All Financial Information**
 26 **Requested By Plaintiffs**

27 Ms. Rizzolo refused to respond to Plaintiffs’ discovery responses concerning her
 28 financial condition. Defendant’s inaction is clearly borne out of a desire to conceal her financial
 activity and reinforces her total disregard for the Federal Rules of Civil Procedure. Her
 noncompliance with discovery is even more egregious considering the Court’s mandate that the
 parties conduct expedited discovery on Plaintiffs’ new cause of action in the Third Amended



CAMPBELL
 & WILLIAMS
 ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
 LAS VEGAS, NEVADA 89101
 PHONE: 702/382-5222
 FAX: 702/382-0540

1 Complaint. *See* Order (#537). Plaintiffs will address the particular details of Ms. Rizzolo's
2 failure to comply with discovery below.

- 3
- 4 • *Interrogatories Nos. 21, 22, 23, 24, and 25 and Requests for Production Nos. 13, 14, 15, and 16*

5 Obviously, Plaintiffs issued discovery requests related to Ms. Rizzolo's receipt of
6 proceeds from Rick Rizzolo's sale of his interest in the Philadelphia strip club. It is undisputed
7 that Ms. Rizzolo knew of the assignment of proceeds and took affirmative action to ensure that
8 she continued to receive the funds after Bart Rizzolo's death. *See* Exhibit "10," May 6, 2010
9 Letter to Jody Shepherdson. To be sure, Ms. Rizzolo received hundreds of thousands of dollars
10 as a result of this fraudulent transfer. *See* Exhibit "11," Breakdown of Stock Put Payments;
11 Exhibit "12," Collection of Checks. Nevertheless, Ms. Rizzolo has disclaimed any knowledge of
12 the Philadelphia sale or interaction with the other participants. This is demonstrably false and
13 indicative of Ms. Rizzolo's fraudulent intent.

- 14
- 15 • *Requests for Production Nos. 1 and 9*

16 As is commonplace in fraudulent transfer actions, Plaintiffs also requested financial
17 information in the form of statements for checking, saving, and investment accounts. Indeed,
18 courts routinely compel the production of statements of account because it reveals the movement
19 and tracing of funds as well as account activity during a relevant time period. *See, e.g., In re*
20 *Mendez*, 2008 WL 597280 (E.D. Cal. 2008) (plaintiff's motion to compel production of bank
21 statements granted because the "statements are more probative on the point for which they are
22 offered than any other evidence which the proponent can procure through reasonable efforts
23 because they show all of defendant's transactions for a period of approximately ten years...").²

24

25 ² *See also In re Dubrowsky*, 244 B.R. 560, 579 (E.D.N.Y. 2000) ("...finding that
26 [defendant] failed to turn over various financial documents including credit card accounts, bank
27



1 Here, Ms. Rizzolo maintains accounts with at least *nine (9)* different financial institutions
 2 which, in turn, hold millions of dollars. In her deposition, Ms. Rizzolo testified that she has
 3 checking accounts with Nevada State Bank, Bank of America, and Citibank. See Exhibit “3,”
 4 Deposition of Kimtran Rizzolo, pgs. 49-57. She also testified that she has annuity and CD
 5 accounts with Metlife, Transamerica, Citibank and Fidelity. *Id.* Ms. Rizzolo further stated that
 6 the foregoing accounts represented the extent of her banking activity. *Id.*
 7

8 In her deficient discovery responses, however, Ms. Rizzolo identified additional accounts
 9 at City National Bank, Prudential, and Union Bank. She then produced a single monthly
 10 statement for the accounts at City National Bank, Prudential, Transamerica, and Metlife. So
 11 clearly, Ms. Rizzolo’s responses to Plaintiffs’ inquiries regarding her financial condition have
 12 been inconsistent, incomplete, and misleading.
 13

14 Ms. Rizzolo did not produce any documentation for numerous accounts with at least five
 15 (5) financial institutions.³ As to the monthly statements which were produced, Ms. Rizzolo did
 16 not provide Plaintiffs with documentation dating back to January 1, 2005. Accordingly, Ms.
 17 Rizzolo must produce the requested information for each and every account with the foregoing
 18 financial institutions.
 19

20
 21
 22
 23 statements and cancelled checks despite a Court order that he turn over those documents,
 24 establishes a sufficient basis for those sanctions.”). *In re Harmon*, 379 B.R. 182, 185 (M.D. Fla.
 25 2007) (court granted motion to compel turnover of documents which included “bank statements
 26 and cancelled checks for twelve months prepetition for all accounts as to which either of them
 had signing authority or held title, directly or beneficially...”); *In re Hamblen*, 354 B.R. 322, 328
 (N.D. Ga. 2006) (“...Court ordered the debtors to produce copies of all bank statements and
 cancelled checks...”).

27 ³ Plaintiffs have received some additional documentation from these financial institutions
 28 through the use of third-party subpoenas. Plaintiffs, however, are not in possession of complete
 information reflecting Ms. Rizzolo’s financial condition.



CAMPBELL
& WILLIAMS
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- *Interrogatory No. 3 (Description of Assets)*

Plaintiffs requested that Ms. Rizzolo “[s]tate the full description and present location and ownership of any asset or property you presently possess.” Ms. Rizzolo objected that the interrogatory was “too broad” and did not provide an answer. As stated above, Ms. Rizzolo waived her potential objections by failing to respond in a timely manner and, therefore, must be compelled to answer Interrogatory No. 3.

- *Interrogatory No. 10 and Request for Production No. 4 (Trusts)*

Ms. Rizzolo responded to Interrogatory No. 10 by representing under oath that she does not have any interest in a trust. She also refused to produce documents in response to Request for Production No. 4 because she is supposedly “unaware of any trust in which she was named a settler or beneficiary...” This is a lie.

For example, Ms. Rizzolo testified in her deposition that she has a living trust. See Exhibit “3,” Deposition of Kimtran Rizzolo, pgs. 85-86. She likewise produced the deed to her residence which is owned by the “Kimtran Rizzolo Living Trust” through its Co-Trustees Kimtran and Tina Rizzolo. See Exhibit “13,” Grant, Bargain, Sale Deed. Accordingly, Ms. Rizzolo’s discovery responses as to her trust interests are decidedly false.

- *Interrogatory No. 11 and Request for Production No. 12 (Wills)*

Because Ms. Rizzolo inherited all of Bart Rizzolo’s assets, Plaintiffs justifiably inquired into Ms. Rizzolo’s entitlements under any wills. In response, Ms. Rizzolo produced a portion of Bart Rizzolo’s will. See Exhibit “14,” Last Will and Testament of Bart Rizzolo. The will, however, provides that Bart Rizzolo’s property would be distributed pursuant to his instructions in a separate writing. *Id.* Ms. Rizzolo did not produce this separate writing or explain its

1 contents meaning Plaintiffs still lack information as to the details of Bart Rizzolo's estate. Ms.
2 Rizzolo should be compelled to produce the remainder of Bart Rizzolo's will.
3

- 4 • *Interrogatories Nos. 16 and 20 and Requests for Production No. 17*

5 As the Court is aware, Ms. Rizzolo testified in Rick Rizzolo's revocation proceedings
6 that she frequently paid his legal bills on demand. As such, Plaintiffs propounded discovery
7 requests regarding this arrangement and also inquired into any other financial transactions with
8 members of the Rizzolo family. Ms. Rizzolo, however, refused to provide any information or
9 documentation beyond the following explanation:
10

11 My husband, Bart Rizzolo, owed money [to] Rick Rizzolo for purchase [sic] of
12 jewelry and directed his wife (Defendant) to pay the obligation by transferring
13 monies owed by Rick Rizzolo for attorney's fees to Kenneth Frizzell, Esq. and
Gordon & Silver, Esq.

14 *See* Response to Interrogatory No. 21.

15 To begin with, Plaintiffs do not doubt that this supposed "debt" was never memorialized.
16 However, there would certainly be documentation reflecting these payments in the form of
17 checks, receipts, and account statements. Ms. Rizzolo must produce these documents.

18 Moreover, Ms. Rizzolo claimed that she has not engaged in any transactions with
19 members of the Rizzolo family regarding the transfer of property. This is, in a word, absurd.
20 Not only does Ms. Rizzolo's admission to the payment of legal bills on behalf of Rick Rizzolo
21 disprove this claim but her inclusion of the caveat, "to the best knowledge and interpretation of
22 the wording of the Interrogatory..." also calls her veracity into doubt. There is no feasible way
23 that Ms. Rizzolo did not participate in transfers of property with members of the Rizzolo family
24 including her husband since January 1, 2005. As such, Ms. Rizzolo must be compelled to
25 provide truthful responses to Plaintiffs' discovery requests.
26
27
28



1 **E. Appropriate Sanctions Should Be Awarded To Plaintiffs**

2 A party may move to compel discovery if the opposing party fails to answer
3 interrogatories or fails to respond to a request for the production of documents. Fed. R. Civ. P.
4 37(a)(3)(iii)-(iv). Further, “an evasive or incomplete disclosure, answer, or response must be
5 treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4). In the event the
6 Court requires discovery be answered or produced after the filing of this motion, Plaintiff is
7 entitled to “reasonable expenses incurred in making the motion, including attorney’s fees.” Fed.
8 R. Civ. P. 37(a)(5(A). Actions intended to “stonewall” a plaintiff in a fraudulent transfer case
9 have been scorned and serious sanctions imposed. *See Heritage*, 223 F.R.D. at 531 fn. 1. When
10 a defendant fails to timely disclose clearly relevant documents and waits until discovery motions
11 are filed, sanctions are proper and serve as a remedy to the wrong. *Id.*

12 Here, Defendant engaged in the same dilatory discovery practices as the defendant in
13 *Heritage*. Defendant has “failed to timely disclose clearly relevant documents” and “wait[ed]
14 until discovery motions were filed” just like defendants in *Heritage*. *Id.* Accordingly,
15 Defendant should be sanctioned. The factors to be considered for imposing sanctions under Rule
16 37 include: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
17 manage its docket; (3) the risk of prejudice to [the party seeking sanctions]; (4) the public policy
18 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”
19 *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002) (sanctions imposed
20 and costs and attorney’s fees awarded for violation of discovery orders).

21 Ms. Rizzolo and her counsel have obstructed Plaintiffs’ access to discovery through
22 persistent inaction and disregard for the Federal Rules of Civil Procedure. Indeed, Ms. Rizzolo
23 apparently feels that she is not required to participate in the discovery process. It has now been
24



1 more than 65 days since Plaintiffs' First Set of Interrogatories and Requests for Production were
 2 served on Defendant's counsel and Plaintiffs are still not in possession of adequate responses.
 3
 4 By comparison, the entire length of the discovery period for Plaintiffs' fraudulent transfer claim
 5 against Ms. Rizzolo was 45 days. The Court's interest in an expeditious resolution and
 6 adherence to the discovery plan would best be served by the imposition of sanctions, including
 7 but not limited to, attorney's fees and costs incurred in bringing the instant motion.

8 **IV. CONCLUSION**

9
 10 Accordingly, it is respectfully requested that Defendant Kimtran Rizzolo be compelled to
 11 produce responsive documents and answers to Plaintiffs' First Set of Interrogatories and
 12 Requests for Production. In addition, all objections asserted against Plaintiff's discovery
 13 requests should be waived as untimely and/or overruled as improper. This relief is requested, in
 14 addition, to appropriate sanctions including but not limited to, attorney's fees and costs.

15 DATED this 17th day of November, 2011.

16 HUNTERTON & ASSOCIATES

CAMPBELL & WILLIAMS

17
 18 By /s/ C. Stanley Hunterton
 19 C. STANLEY HUNTERTON, ESQ. (1891)
 627 South Seventh St.
 Las Vegas, Nevada 89101

By /s/ Philip R. Erwin
 Philip R. Erwin, ESQ. (11563)
 700 South Seventh Street
 Las Vegas, Nevada 89101

20 *Attorneys for Victim Amy Henry*

Attorneys for Victim Kirk Henry



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing was served on the 17th day of November, 2011 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ Philip R. Erwin, Esq.
An Employee of Campbell & Williams



**CAMPBELL
& WILLIAMS**
ATTORNEYS AT LAW

700 SOUTH SEVENTH STREET
LAS VEGAS, NEVADA 89101
PHONE: 702/382-5222
FAX: 702/382-0540