Sanzo v. Sanzo, 052708 CTSUP, NNICV074007525S

Kathleen Sanzo

v.

David Sanzo et al.

NNI-CV-07-4007525-S

Superior Court of Connecticut, Meriden

May 27, 2008

Caption Date: May 27, 2008

Judge (with first initial, no space for Sullivan, Dorsey, and Walsh): Rubinow, Nicola E., J.

Opinion Title: MEMORANDUM OF DECISION

This memorandum addresses the issues raised by the plaintiff's motion for protective order (#107) and motion to quash (#108), directed at the defendant David Sanzo's efforts to access records reflecting a bank account maintained in part by Catherine Sanzo, who is deceased. This memorandum also addresses the issues raised by David Sanzo's objection to the motion to quash (#109); his objection to the motion for protective order (#110); and Kathleen Sanzo's reply to those objections (#111).[1] For the following reasons, the court denies the motion to quash in part, grants the motion for protective order in part, and concomitantly sustains or partially overrules the objections to those motions. Orders which effectuate these rulings are issued herein.

I. HISTORY OF THE PROCEEDINGS

The present action commenced with a complaint filed on April 27, 2007, at the Superior Court, by the plaintiff Kathleen Sanzo against David Sanzo and numerous other defendants.[2] The present complaint alleges, among other things, that Catherine Sanzo died on July 22, 2005 leaving a will dated July 17, 2005; that this will named Kathleen Sanzo as the executor of Catherine Sanzo's estate (estate); and that David Sanzo and Patrick Benedetto successfully contested the will in Probate Court on the ground that Kathleen Sanzo did not sufficiently prove that Catherine Sanzo possessed testamentary capacity when the will was executed.

The present complaint further alleges that on February 15, 2007, at the Probate Court, David Sanzo filed an application to determine title to certain funds that Catherine Sanzo had placed in a Bank of America account (Bank of America funds), which account was held with rights of survivorship and therefore should not be considered an asset of the estate; that through the application, David Sanzo claimed that the estate was entitled to the Bank of America funds; that Kathleen Sanzo denied the claims presented in the application; and Kathleen Sanzo instead contended that Catherine Sanzo intentionally segregated the Bank of America funds from her estate.[3]

On June 20, 2007, David Sanzo answered the present complaint asserting, among other things, that the Bank of America funds should have been part of the estate (#103). On July 17, 2007, Kathleen Sanzo filed a certificate of closed pleadings (#106). However, the matter has not yet been scheduled for trial.

On October 15, 2007, in the present action, David Sanzo noticed the deposition of Cheryl Cammarota, a manager at Bank of America, and issued a subpoena duces tecum directing

Cammarota to produce copies of cancelled checks, correspondence, and account authorizations (financial records) that are ostensibly related to the account holding the Bank of America funds. (See Exhibits to #108.) Neither Cammarota nor the Bank of America has objected to the deposition or the subpoena at issue. However, on November 1, 2007, the plaintiff filed the pending motion for protective order (#107) and the motion to quash the subpoena duces tecum (#108). On November 16, 2007, David Sanzo filed his objections to the motion to quash (#109) and to the motion for protective order (#110). On December 17, 2007, Kathleen Sanzo filed her reply to David Sanzo's objections (#111). On February 11, 2008, the court heard oral argument on both motions, their respective objections, and Kathleen Sanzo's reply.

II. STATUS OF THE FINANCIAL RECORDS

To resolve the motion to quash and corresponding objection, the court must first determine whether Cammarota's information regarding the status of the account holding Bank of America funds and/or the subpoenaed financial records are properly subject to discovery in the present action. In addressing this preliminary issue, the court has remained mindful that, as "[o]ur Supreme Court has noted: '[The] rules of discovery are designed to make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent . . .' (Internal quotation marks omitted.) *Wexler v. DeMaio,* 280 Conn. 168, 188-89, 905 A.2d 1196 (2006), quoting *United States v. Procter & Gamble Co.,* 356 U.S. 677, 682, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958)." *Travelers Property & Casualty Co. v. Christie,* 99 Conn.App. 747, 759, 916 A.2d 114 (2007). The Supreme Court has "long recognized that the granting or denial of a discovery request rests in the sound discretion of the [trial] court . . ." (Internal quotation marks omitted.) *Barry v. Quality Steel Products, Inc.,* 280 Conn. 1, 16, 905 A.2d 55 (2006); see also *Olson v. Accessory Controls & Equipment Corp.*, 254 Conn. 145, 156, 757 A.2d 14 (2004). "That discretion is limited, however, by the provisions of the rules pertaining to discovery . . . especially the mandatory provision that discovery '*shall* be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action.' . . . The court's discretion applies to decisions concerning whether the information is material, privileged, substantially more available to the disclosing party, or within the disclosing party's knowledge, possession or power . . ." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Standard Tallow Corp. v. Jowdy,* 190 Conn. 48, 57-60, 459 A.2d 503 (1983).

In accordance with this stated policy and in reliance upon the rules of practice and legal principles discussed below, the court finds that the documents are properly discoverable. Accordingly, subject to the limitations delineated in the orders set forth in Part IV., the plaintiff's motion for protective order (#107), the motion to quash (#108), and the objections thereto (## 109, 110) must be granted in part and denied in part.

Several rules of practice govern the court's decision. Practice Book §13-28(c) states, in relevant part: "A subpoena issued for the taking of a deposition may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents or tangible things which constitute or contain matters within the scope of the examination permitted by Sections 13-2 through 13-5."[4] Practice Book §13-28(e) states in relevant part: "The court in which the cause is pending . . . may, upon motion made promptly and,

in any event, at or before the time for compliance specified in a subpoena authorized by subsection (b) of this section, (1) quash or modify the subpoena if it is unreasonable and oppressive or if it seeks the production of materials not subject to production under the provisions of subsection (c) of this section . . ."

In addition, our statutes clearly and unambiguously establish the circumstances under which a bank is authorized to release financial records of a customer's account, such as that Catherine Sanzo is alleged to have maintained at Bank of America prior to her death.[5] General Statutes §36a-42 provides in relevant part: "A financial institution may not disclose to any person, except to the customer or the customer's duly authorized agent, any financial records relating to such customer *unless* the customer has authorized disclosure to such person *or the financial records are disclosed in response to* . . . (2) *a lawful subpoena,* summons, warrant or court order as provided in section 36a-43 . . ." (Emphasis added.) General Statutes §36a-43 provides in relevant part: "(a) . . . [A] financial institution *shall disclose financial records pursuant to a lawful subpoena*, summons, warrant or court order served upon it if the party seeking the records causes such subpoena, summons, warrant or court order or a certified copy thereof to be served upon the customer whose records are being sought, at least ten days prior to the date on which the records are to be disclosed . . . (b) A customer of a financial institution shall have standing to challenge a subpoena of the customer's financial records, by filing an application or motion to quash in a court of competent jurisdiction . . . (d) No such financial institution shall be held civilly or criminally responsible for disclosure of financial records pursuant to a certificate, subpoena, summons, warrant or court order which on its face appears to have been issued upon lawful authority." (Emphasis added.)

III. MOTION TO QUASH (#108)

Against this legal framework, the plaintiff argues that the subpoena duces tecum must be quashed because it seeks information that is not an appropriate subject of discovery. Specifically, the plaintiff claims that the subpoena duces tecum "is improper in that it seeks to obtain additional financial records and private information of the plaintiff, which are irrelevant to the issues in this case. The subpoena therefore constitutes an improper invasion into the plaintiff's personal and private matters." (#108.) The plaintiff further argues that the defendant's current discovery efforts "constitute an unnecessary further intrusion into [her] confidential bank information"; that "[a]ny repetitive production is burdensome and oppressive and wastes the parties,' the Bank's and the Earth's resources"; and that the defendant has not "identified any compelling need for the highly confidential information he seeks to discover." (#108, #111.) The plaintiff cautions that "courts . . . are wary about granting [financial information] discovery requests in the absence of a *compelling need demonstrated by the proponent*," citing General Statutes §§36a-41 et seq. as support for this proposition, and relying upon to several trial court opinions from Connecticut and New York, as well. (Emphasis added.) (#108.)

The defendant counters that the financial records are not protected under §36a-42, that the subpoena duces tecum was properly issued in compliance with the rules of practice, and that through prior disclosure, the plaintiff has waived any privacy right with respect to at least one set of documents requested in the subpoena. (#109.) More specifically, the defendant argues that the

financial records contain highly relevant information about the status of the account holding the Bank of America funds, and that the plaintiff failed to show good cause for purposes of quashing the subpoena.

There is no dispute concerning David Sanzo's compliance with the notice provisions of §36a-43(a) and (b) or Practice Book §§13-27 (requiring "reasonable notice in writing" of a scheduled deposition). David Sanzo has not contested the plaintiff's standing to challenge the subpoena duces tecum directed at Cammarota, a non-party. See General Statutes §36a-43(b); *Cahn v. Cahn*, 26 Conn.App. 720, 727-28, 603 A.2d 759, aff'd, 225 Conn. 666, 626 A.2d 296 (1993). No contest has been raised concerning the sufficiency of the subpoena duces tecum served upon Cammarota. See Practice Book §13-28(c). However, the parties markedly disagree on the relevance or propriety of discovering the financial documents in question.

Fundamental to Kathleen Sanzo's argument in support of her motion to quash is her claim that "[u]nder Connecticut law, a litigant may not obtain a party's private financial documents without showing a *compelling need*." (Emphasis added.) (#111.) To support this claim, she relies, in part, upon General Statutes §36a-42, but without explicitly designating any particular text from which the argument is derived. Upon review, the terms "compelling" and/or "need" do not appear in the text of §§36a-42 or 36a-43. The plaintiff has failed to reference any caselaw or other authority that supports her proposition that this legislation requires the defendant to show a "compelling need" for the financial records at issue before the discovery can be had.

Moreover, our Supreme Court has recently examined §36a-42 and its sister statutes, and has concluded that this legislation primarily serves to protect financial institutions, not account holders, from liability for disclosing a customer's financial records that have been duly subpoenaed for litigation purposes. See *Rollins v. People's Bank Corp.*, 283 Conn. 136, 137-39, 155-56, 925 A.2d 315 (2007) (no private cause of action under §36a-42 or 36a-43 for a customer against a bank that released a customer's financial records in response to a subpoena). *Rollins* acknowledges the legislation's express identification of certain exceptions to the general rule that, unless authorized by the customer, a bank is prohibited from disclosing "any financial records relating to such customer . . ." *Id.*, 143. Those exceptions clearly contemplate the bank's disclosure of the records "'in response to . . . (2) *a lawful subpoena* . . . as provided in section 36a-43 . . ." (Emphasis added.) *Id.*, quoting §36a-42. Moreover, Rollins reminds us of the directory component of §§36a-42 and 43: if the notice provisions of this legislative scheme have been followed, "a financial institution *shall disclose* financial records pursuant to a lawful subpoena . . ." (Emphasis added.) *Id.*, quoting §36a-43.

Because David Sanzo's notice of Cammarota's deposition was accomplished with the issuance of a subpoena that is, without contest, presumably "lawful," the court concludes that §36a-42 and §36a-43 authorize, rather than limit, the financial institution's disclosure of the records related to the Bank of America funds. *Id.* Despite the vigor of the plaintiff's claim, given the factual allegations she has raised in the present action, the documents subpoenaed by David Sanzo are material to the issues raised in the complaint; furthermore, their disclosure would be of assistance in this matter because the documents are likely to contain relevant information regarding the status of account in which the disputed Bank of America funds were held. The

plaintiff has not established that compliance with the subpoena will require unreasonable exertion, or cause any measurably oppressive effect upon her, within the ambit of the rules of practice. The plaintiff has provided insufficient factual or legal authority to support her "compelling need" argument. While the court understands the plaintiff's claim that the subpoena constitutes an improper invasion into her personal and private matters, any such valid concerns can be assuaged through the imposition of an appropriate protective order.[6]

As these financial records, as a whole, are not available to defendant absent the deposition and the subpoena, and as the documents are properly discoverable in the present matter, the motion to quash (#108) must be denied in part while the objection thereto (#109) must be sustained in part. See Part V.

IV. MOTION FOR PROTECTIVE ORDER (#107)

To resolve the central questions raised by the motion for protective order and corresponding objection, the court must determine whether the plaintiff has made a threshold showing of good cause for a protective order to issue, thereby preventing the defendant David Sanzo's from deposing Cammarota and from accessing records related to Catherine Sanzo's Bank of America funds. The plaintiff specifically argues that her requested protective order "is necessary to protect her from discovery of confidential personal and financial information, and from annoyance, oppression, undue burden and expense." (#107.) Presciently, however, in the event that the court denies her motion to quash, the plaintiff also requests that: (1) the deposition be limited to certain issues; (2) the production of additional bank documents be limited to certain issues; (3) the parties enter into a confidentiality agreement to protect the information produced; and (4) pending the execution of such an agreement, any financial documents produced be disclosed solely to the parties' attorneys. *Id.* The plaintiff supports these requests by relying upon the arguments presented in her motion to quash (#108). In objecting to the motion for protective order, the defendant David Sanzo relies upon the same general arguments as those he raised in objection to the motion to quash, to wit: that the deposition notice and Cammarota's subpoena duces tecum have been properly issued in compliance with the rules of practice and applicable statutes, and that the documents at issue are not protected. (#107.)

Practice Book §13-5 places the burden of showing "good cause" for a protective order upon one who moves for such relief.[7] On its face, the text of Practice Book §13-5 would appear to limit the court's authority to granting motions for protective orders made "by a *party* from whom discovery is sought . . ." (Emphasis added.) However, this construction would unreasonably restrict the opportunities for a party to receive protection from the court, upon a showing of good cause, where the discovery sought is from a third party or from a non-litigant. Thus, as Judge Shapiro has explained, in *Cahn v. Cahn*, *supra*; 26 Conn.App. 728, the Appellate Court "found that '[a]lthough the discovery being sought by the defendant was not from the plaintiff, the protective order was necessary to protect a party's interest. Accordingly, the plaintiff properly filed a motion for a protective order, to prevent the defendant from conducting depositions of *nonparty* witnesses.'_" (Emphasis added.) *Hodgate v. Ferraro*, Superior Court, judicial district of Hartford, Complex Litigation Docket at Hartford, Docket No. X04 CV 05 4034694 (April 16, 2008,Shapiro, J.). Using *Cahn v. Cahn's* analysis of the premises underlying §13-5, Kathleen Sanzo has

standing to raise her request for protection from discovery regarding a third-party, non-litigant in this matter.

Nonetheless, in the context of the present motion for protective order, where the plaintiff seeks to prevent discovery proceedings intended to require disclosures by a third party, she must make a threshold showing that there is "good cause" as contemplated by Practice Book §13-5. "Good cause has been defined as a sound basis or legitimate need to take judicial action . . . Good cause must be based upon a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." (Internal and external quotation marks and citations omitted." *Welch v. Welch,* 48 Conn.Sup. 19, 20, 828 A.2d 707 (2003). Although the burden is on the plaintiff to make this threshold showing by a specific demonstration of fact, the court also retains, and must utilize, its discretion to balance David Sanzo's interest in discovering relevant information against the plaintiff's legitimate concerns regarding the protection of personal information, even that which is properly disclosed pursuant to a lawful subpoena. See *Barry v. Quality Steel Products, Inc., supra*, 280 Conn. 16; §§36a-42, 43.

As discussed in Part II, the documents subpoenaed by the defendant David Sanzo are properly discoverable, because the financial records and information that may be acquired through Cammarota's deposition are relevant and likely to be of assistance in defending this action. Against this finding of discoverability, however, the plaintiff has failed meet to her burden of demonstrating any particular need for protection from any "annoyance, embarrassment, oppression, or *undue* burden or expense" that would fall upon her during this aspect of the discovery process, even though some unspecified bank records, related to the Bank of America funds, have previously been disclosed. (Emphasis added.) Practice Book §13-5.

Even so, the court fully appreciates the plaintiff's valid concerns regarding the potentially harmful effects of disclosing the financial records at issue, beyond the context of this present action. The legislature clearly contemplated those general concerns when requiring that a financial institution disclose a customer's records only "in response to . . . a lawful subpoena, summons, warrant or court order as provided in section 36a-43." §36a-42. David Sanzo apparently appreciates these concerns, as well; while maintaining his right to disclosure for purposes of the pending matter, the defendant does not contest plaintiff's reasonable arguments concerning the propriety of protecting certain identifying and/or personal information, relating to Kathleen Sanzo herself, as may be contained in financial records reflecting the status of the Bank of America funds.

Accordingly, consistent with the purposes of Practice Book §13-5, as explicated by *Cahn v. Cahn*, *supra*, the court finds that the plaintiff is entitled to protection of identificatory information and documents reflecting her personal financial status in connection with the Bank of America account, although the information and documents are subject to discovery pursuant to the lawful subpoena issued upon Cammarota. With specific orders for redaction, use and custody requirements for all of the financial records and information that are subject to disclosure, the plaintiff will receive appropriate protection without impeding the discovery process.

Therefore, the motion for protective order is denied insofar as it seeks to preclude the deposition of Cammorata, but is granted in part, and the objection thereto is similarly sustained

and overruled in part, insofar as Kathleen Sanzo's identificatory data should not be disclosed or utilized except in the context of the present action, to enable David Sanzo to defend himself in connection with the present complaint.

V. ORDERS

The motion to quash (#108) is denied in part, and the objection thereto (#109) is sustained in part, in conformance with the protective orders that follow.

The motion for protective order (#107) is denied in part and granted in part, and the objection thereto (#110) is, accordingly, sustained in part and overruled in part.

The following PROTECTIVE ORDERS shall enter:

Pursuant to due notice and lawful subpoena:

1. The deposition of Cheryl Cammarota may be taken without limitation to the three issues identified by the plaintiff in motion #107.

2. The financial records relating to the Bank of America funds, and the relationship, if any, of Catherine Sanzo and/or Kathleen Sanzo to this account, may be produced without limitation to the three issues identified by the plaintiff in motion #107, and without limitation as to documents not already produced.

3. The financial records described in Paragraph 2 are to be inspected by counsel and kept in the custody of the parties attorneys, for their use in connection with the present action. Copies of these records or of the transcript of Cammarota's deposition testimony are not to be distributed to the individual parties or to any other person for any purpose absent further order of the court. The parties' attorneys shall work together to ensure that any tax identification number, social security number, account number, date of birth or other identity-specific information contained in the financial records and/or deposition transcripts are completely and thoroughly redacted or removed from all documents, including copies of documents, that are kept in the custody of the parties' attorneys.

4. Absent further order of this court, the documents produced or information gained through the discovery process is for use only in the present action and not in any other actions pending in this court or any other forum. While the orders of this court are for discovery purposes only but the use of such discovery materials at trial is not hereby precluded; rather, such a determination as to the use of such materials at trial is to be made by the trial judge at the appropriate time.

BY THE COURT

N. Rubinow, J.

Footnotes

[1]. In the present action, Patrick Benedetto, Frank Neninger, and Karen Sanzo, alleged to be relatives of the decedent, are also named defendants, as is Mark Ziogas, the administrator of the estate. However, only the plaintiff Kathleen Sanzo and the defendant David Sanzo are parties to the pending motions.

[2]. Multiple, distinct legal claims have arisen from the death of Catherine Sanzo. For clarity, the term "present action" or "present complaint" will be used in this decision to reference to the matter

pending at the Superior Court under Docket No. NNI-CV-07-4007525-S, in which the relevant motions have been filed.

[3]. On March 5, 2007, Karen Sanzo brought an appeal of this Probate Court ruling at the Superior Court for the judicial district of New Haven at Meriden. That appeal remains pending under Docket No. NNI-CV07-4007290-S. Kathleen Sanzo brought a similar appeal on March 12, 2007; that appeal remains pending at the judicial district of New Haven at Meriden under Docket No. NNI-CV07-4007330-S.

[4]. The scope of discovery is set forth in Practice Book §13-2, which provides in relevant part that ". . . discovery of information or disclosure, production and inspection of papers, books or documents material to the subject matter involved in the pending action, which are not privileged, . . . and which are within the knowledge, possession or power of the party or person to whom the discovery is addressed. Discovery shall be permitted if the disclosure sought would be of assistance in the prosecution or defense of the action and if it can be provided by the disclosing party or person with substantially greater facility than it could otherwise be obtained by the party seeking disclosure . . ."

Limitations on discovery are set forth in Practice Book §13-5, which provides in relevant part: "Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters . . ."

[5]. In construing §§36a-42 and 43, the court has fully considered, but declines to adopt, the plaintiff's proposed use of this legislation. See Parts III and IV, below.

[6]. The plaintiff has astutely anticipated this aspect of the court's response to motion #108, as she requested, in the event the motion is denied, "that any documents produced be disclosed only to the attorneys of the parties . . ." *Id.*

[7]. Practice Book §13-5 provides: "Upon motion by a party from whom discovery is sought, *and for good cause shown*, the judicial authority may make any order which justice requires to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the judicial authority; (6) that a deposition after being seated be opened only by order of the judicial authority; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judicial authority." (Emphasis added.)