

IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

COMPLEX LITIGATION UNIT

CASE NO. 12-034123 (07)

P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; and S&P
ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited
partnership; PHILIP VON KAHLE as Conservator
of P&S ASSOCIATES,
GENERAL PARTNERSHIP, a
Florida limited partnership; and
S&P ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership,

Plaintiffs,

vs.

MICHAEL D. SULLIVAN, an
individual, STEVEN JACOB, an
individual, MICHAEL D.
SULLIVAN & ASSOCIATES, INC.,
a Florida corporation, STEVEN F. JACOB,
CPA & ASSOCIATES, INC., a Florida
corporation, FRANK AVELLINO,
an individual, MICHAEL BIENES,
an individual, KELKO FOUNDATION,
INC., a Florida Non Profit Corporation,
and VINCENT T. KELLY, an individual,

Defendants.

**DEFENDANT MICHAEL BIENES'S
RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

Defendant, MICHAEL BIENES ("Defendant" or "Bienes"), pursuant to Rule 1.380,
Florida Rules of Civil Procedure and Rules 5.10 and 5.14 of the Complex Litigation Unit
Procedures, hereby opposes the Motion to Compel Defendant Michael Bienes to Produce

Documents and Provide Better Responses to Plaintiffs' Interrogatories (the "Motion") filed by Plaintiffs, Phillip J. Von Kahle, P&S Associates General Partnership, and S&P Associates General Partnership ("Plaintiffs"), stating:

INTRODUCTION

1. The Motion is based on three flawed arguments. First, Plaintiffs complain that Bienes's objections make it hard for them to tell whether he has withheld any responsive documents or other information based on his objections. Second, Plaintiffs fault Bienes for not altering his response to request no. 15 to account for the supplemental production he provided in connection with that request, when in fact he did. And third, Plaintiffs incorrectly argue that Bienes's interrogatory answers are "incomplete," without specifying what information they believe is missing. Because the Motion fails to provide a basis for this Court to enter an order compelling discovery from Bienes, it should be denied.

ARGUMENT

I. Bienes's objections have no bearing on the substance of his discovery responses and, in any event, Plaintiffs rejected Defendants' offer to remove them.

2. Plaintiffs fail to inform the Court that Bienes has made clear, both in his written responses and in multiple good-faith conferences, that no responsive documents or information has been withheld based on his general objections, or merely because a particular response states that it is made "subject to and without waiving " more specific objections that precede it. With the exception of objections based on attorney-client privilege or the work-product doctrine, none of Bienes's objections—whether "general" or "specific"—have any bearing on the content of his responses.¹

¹ Any privilege-based objections to Plaintiffs' discovery requests were listed in a privilege log served to Plaintiffs' attorneys in accordance with Rule 1.280(c)(5), Florida Rules of Civil Procedure, on May 15,

3. Nowhere do the supplemental responses state that the "general objections" are incorporated into each specific response. In fact, they state precisely the opposite: that no responsive documents or information is being withheld based on the general objections. *See* Supplemental Response to First Request for Production, at ¶ 12, pg. 10, attached as Exhibit B to the Motion ("Currently, no documents or information is being withheld on the basis of the foregoing general objections"); Supplemental Interrogatory Answers, Exhibit C to the Motion, at ¶ 13, pg. 3 ("Currently, no information is being withheld on the basis of the foregoing general objections."). In other words, Plaintiffs have lost out on no responsive information owing to any of Bienes's general objections.

4. As to any specific objections that may precede a given response, Plaintiffs rejected Bienes's offer to remove this type of language from both parties' responses. Following an April 18, 2014 meet-and-confer in connection with an earlier round of discovery, Bienes's counsel specifically offered to remove any and all objections that precede a substantive discovery response (i.e., "prefatory" objection language), provided that Plaintiffs would agree to do the same. But Plaintiffs refused. A copy of Bienes's counsel's April 19 e-mail, along with Plaintiffs' counsel's April 20 response, is attached as **Exhibit A**.

5. In response to the Motion, Bienes's counsel politely reminded Plaintiffs' attorneys that they refused his previous offer and requested that Plaintiffs' explain their seemingly inconsistent position—seeking as they do to compel Bienes to abandon his objections while refusing to withdraw their own. A copy of the June 3 e-mail from Bienes's counsel to Plaintiffs' attorneys' is attached hereto as **Exhibit B**.

2014. *See* Ex. C to this Response. These objections are not subject to the Motion.

6. Plaintiffs never provided an explanation, and their Motion does not elaborate on why they believe Bienes's objections should be overruled and their own permitted to stand. Thus, to the extent the Motion seeks an order striking the same sort of prefatory objection language from Bienes's supplemental responses that Plaintiffs have refused to remove from their own, the Motion should be denied. On the other hand, to the extent the Court is inclined to require Bienes to remove his objections, the same should be required of Plaintiffs.

II. Bienes amended his response to request no. 15 when he served his supplemental production.

7. Plaintiffs either neglect to mention or fail to appreciate that Bienes had already amended his written response to request number 15 at the time he served his supplemental production on May 15, 2015. A copy of the May 15 e-mail to Plaintiffs' attorneys attaching Bienes's supplemental production in response to request no. 15 and his corresponding privilege log is attached, without enclosures, as **Exhibit C**.

8. Plaintiffs' apparent confusion seems to stem from the fact request number 15 was misnumbered in Bienes's supplemental responses as request number 14, due to an unintentional typographical error. Many of Plaintiffs' initial document requests are quite similar. When the requests were being transcribed into Bienes's responses, request number 3 was inadvertently omitted. This had the effect of throwing the numbering of the remaining requests off by a factor of one. Therefore, when Bienes's attorneys served supplemental production in response what they correctly referred to in their May 15 e-mail as request number 15, Plaintiffs understandably might have been confused and believed that Bienes had failed to amend his corresponding written response in the event they referred only to Bienes's supplemental responses and not to the language of the First Request itself.

9. But, had Plaintiffs' counsel conferred with Bienes's attorneys on this particular issue prior to filing their Motion, however, Bienes is confident this misunderstanding would have been cleared up without having to involve the Court. Unfortunately, they did not, and Bienes has been forced to address this matter after the fact, both with Plaintiffs' counsel in the June 3 e-mail, and with the Court in this response.²

10. Plaintiffs' perceived issues with Bienes's response to request number 15 are solely of their own creation. Bienes has produced all documents responsive to request number 15 and has provided an appropriately amended written response. Accordingly, there is no reason for the Court to enter an order compelling Bienes to do either one, and the Motion should be denied to the extent it asks the Court to do so.

III. Plaintiffs provide no basis to compel better interrogatory answers.

11. Plaintiffs complain that Bienes's interrogatory answers are "incomplete," but they provide no indication as to what they believe is missing or how Bienes could say more than he already has. To try to better understand Plaintiffs' position, Bienes's attorneys requested a further meet-and-confer with them on this issue in the attached June 3 e-mail, but they have not received a response or any further elaborate since that request was made. And while Bienes can only speculate as to why Plaintiffs think his answers are "incomplete," the fact that Plaintiffs may not like the answers he has provided is no basis for a motion to compel. Because Plaintiffs cannot provide more specificity as to how, precisely, they believe Bienes's answers are deficient, the Motion should be denied.

CONCLUSION

For the reasons stated above, the Motion should be denied.

² Bienes's attorneys explained the error in their June 3 email, apparently to no avail. *See* Ex. B to this response.

Respectfully submitted,

/s/ Shane P. Martin

Mark F. Raymond (373397)
mraymond@broadandcassel.com
ssmith@broadandcassel.com
Jonathan Etra (686905)
jetra@broadandcassel.com
msoza@broadandcassel.com
Shane P. Martin (056306)
smartin@broadandcassel.com
msanchez@broadandcassel.com
BROAD AND CASSEL
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305.373.9400
Facsimile: 305.373.9443
Counsel for Defendant, Michael Bienes

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2014, this notice and the aforementioned interrogatories were served via E-mail to: Thomas E. Messina, Esq., Thomas Zeichman, Messina, P.A., 401 East Las Olas Boulevard, Suite 1400, Ft. Lauderdale, FL 33301 (tmessana@messana-law.com, tmessana@bellsouth.net, mwslawfirm@gmail.com, tzeichman@messana-law.com); Leonard K. Samuels, Esq., Etan Mar, Esq., Steven D. Weber, Esq., Berger Singerman LLP, 350 East Las Olas Boulevard, Suite 1000, Ft. Lauderdale, FL 33301 (lsamuels@bergersingerman.com, vleon@bergersingerman.com, emark@bergersingerman.com, lyun@bergersingerman.com, drt@bergersingerman.com, sweber@bergersingerman.com, mvega@bergersingerman.com, zhyman@bergersingerman.com, clamb@bergersingerman.com); Peter G. Herman, Esq., Tripp Scott, 110 S.E. 6th Street, 15th Floor, Ft. Lauderdale, FL 33301 (pgh@trippscott.com, rep@trippscott.com, ele@trippscott.com); Paul V. DeBianchi, Esq., Paul V. DeBianchi, P.A., 111 S.E. 12th Street, Ft. Lauderdale, FL 33316 (Debianchi236@bellsouth.net); Gary A. Woodfield, Esq., Susan B. Yoffee, Esq., Haile, Shaw & Pfaffenberger, P.A., 660 U.S. Highway One, Third Floor, North Palm Beach, FL 33408 (gwoodfield@haileshaw.com, bpetroni@haileshaw.com, eservices@haileshaw.com, syoffee@haileshaw.com, cmarino@haileshaw.com); Matthew Triggs, Esq., Andrew Thomson, Esq. Proskauer Rose LLP, 2255 Glades Road, Suite 421 Atrium, Boca Raton, FL 33431 (mtriggs@proskauer.com, athomson@proskauer.com, florida.litigation@proskauer.com); Robert J. Hunt, Esq., Debra D. Klingsberg, Esq., Hunt & Gross, P.A., 185 Spanish River Boulevard, Suite 220, Boca Raton, FL 33431 (bobhunt@huntgross.com, eservice@huntgross.com, Sharon@huntgross.com) and Harry Winderman (harry4334@hotmail.com).

/s/ Shane P. Martin

Shane P. Martin

Shane Martin

From: Steven D. Weber <SWeber@bergersingerman.com>
Sent: Sunday, April 20, 2014 9:04 PM
To: Shane Martin; Jonathan Etra; Mark Raymond
Cc: Leonard K. Samuels; 'Thomas M. Messana (tmessana@messana-law.com)'; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman
Subject: RE: S&P et al. v. Sullivan et al.

Shane,

As to (a), that is correct. As to (b), we cannot agree to your proposal. We are maintaining the objections that we believe are appropriate. We'll remove the "subject to" language and state what we are producing.

From: Shane Martin [mailto:smartin@broadandcassel.com]
Sent: Saturday, April 19, 2014 1:26 PM
To: Steven D. Weber; Jonathan Etra; Mark Raymond
Cc: Leonard K. Samuels; 'Thomas M. Messana (tmessana@messana-law.com)'; 'Thomas Zeichman (tzeichman@messana-law.com)'; Zachary P. Hyman
Subject: RE: S&P et al. v. Sullivan et al.

Steve,

Leaving aside the deposition, I wanted to confirm a few things with you. As you know, we made the reciprocal agreement during our call on Friday to: (a) remove or indicate that our general objections are not incorporated into each specific response and that no information is currently being withheld based on any general objection; and (b) remove the "subject to but without waiving" language from all responses and answers. It makes sense to me that since we have mutually agreed to remove the "subject to" language from responses and answers, we should also reciprocally agree to remove any objection language that precedes it. In other words, if a given request or interrogatory is actually answered, both parties should dispense with the prefatory objection language. Please confirm that you are agreeable to handling the responses this way.

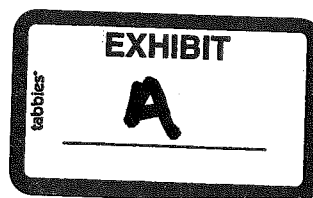
As for your specific issues with our answers to interrogatories nos. 3, 12, 14, 18, 21 and 23, and our responses to request nos. 3, 13 and 14, I hope to have more specific answers as to how we can accommodate the issues we discussed with you yesterday later this afternoon.

Thanks,
Shane

	HOME	BIO	VCARD
--	------	-----	-------

**Shane P. Martin, Esq.**
2 SOUTH BISCAYNE BLVD.
21ST FLOOR
MIAMI, FL 33131
TELEPHONE: 305.373.9400
FACSIMILE: 305.373.9443
DIRECT LINE: (305) 373-9455
DIRECT FACSIMILE: (305) 995-6434
E-MAIL: SMARTIN@BROADANDCASSEL.COM

www.broadandcassel.com



Shane Martin

From: Jonathan Etra
Sent: Tuesday, June 03, 2014 5:33 PM
To: 'Info'; 'lsamuels@bergersingerman.com'; 'emark@bergersingerman.com'; 'drt@bergersingerman.com'; 'sweber@bergersingerman.com'; 'vleon@bergersingerman.com'; 'gwoodfield@haileshaw.com'; 'bpetroni@haileshaw.com'; 'eservices@haileshaw.com'; 'syoffee@haileshaw.com'; 'cmarino@haileshaw.com'; Mark Raymond; Christopher C. Cavallo; Stacy Smith; Meylin Soza
Cc: Shane Martin; Marietta Sanchez
Subject: RE: SERVICE OF COURT DOCUMENT - CASE NUMBER CACE 12-034123 (07)

Gentlemen,

In response to your motion

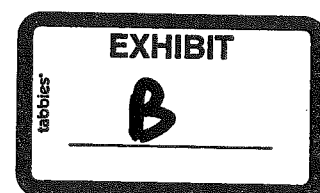
- 1) The bulk of it seems to be that you believe we should be required to remove our objections. We long ago offered to have both sides remove objections but for reasons no one has ever explained to me, that offer was refused by you. So while you seek to compel me to remove my objections, you are holding onto yours. Perhaps someone can explain this me.
- 2) There is some confusion about the number of the document requests. It seems that we did not include no. 3 in our response. So, while we say in our response that we will produce documents in response to request 14 re the SEC, in fact that related to request 15.
- 3) As a result, we see that our amended response did not include any change to document request 3. As it appears to be covered by document request 1, please accept our response to document request 1 as our response to document request 3.
- 4) While you complain that our interrogatory responses are not complete, I don't see how they are not complete. Perhaps there is something in particular you are concerned about.

I am available to continue to meet and confer at your convenience.

Thank you.

Jonathan Etra
Tel: 305.373.9447
Fax: 305.995.6403
Cell: 305.318.3396
jetra@broadandcassel.com

From: Info [<mailto:info@moecker.com>]
Sent: Friday, May 30, 2014 2:23 PM
To: lsamuels@bergersingerman.com; emark@bergersingerman.com; drt@bergersingerman.com; sweber@bergersingerman.com; vleon@bergersingerman.com; gwoodfield@haileshaw.com; bpetroni@haileshaw.com; eservices@haileshaw.com; syoffee@haileshaw.com; cmarino@haileshaw.com; Jonathan Etra; Mark Raymond; Christopher C. Cavallo; Stacy Smith; Meylin Soza; bobhunt@huntgross.com; dklingsberg@huntgross.com; eservice@huntgross.com; Sharon@huntgross.com
Cc: Harry4334@hotmail.com; mtriggs@proskauer.com; athomson@proskauer.com; florida.litigation@proskauer.com; Shane Martin; Marietta Sanchez
Subject: SERVICE OF COURT DOCUMENT - CASE NUMBER CACE 12-034123 (07)



**IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL
CIRCUIT, IN AND FOR BROWARD
COUNTY, FLORIDA**
CASE NO.: 12-034123 (07)
COMPLEX LITIGATION UNIT

PHILIP J. VON KAHLE, as Conservator of
P&S Associates, General Partnership and
S&P Associates, General Partnership

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

Documents being served:

- Motion to Compel Bienes to Produce Documents
- Motion to Compel Avellino to Produce Documents

Nadira
954-252-1560

Shane Martin

From: Shane Martin
Sent: Thursday, May 15, 2014 4:56 PM
To: 'Zachary P. Hyman'
Cc: 'tzeichman@messana-law.com'; 'Steven D. Weber'; 'tmessana@messana-law.com'; Mark Raymond; Jonathan Etra
Subject: P&S, et al. v. Sullivan, et al., Case No. 12-034123 (07)
Attachments: BIENES-RFP 000001 - 000043.pdf; Bienes - Privilege Log.pdf

Attached are documents responsive to request no. 15 in Plaintiffs' First Request for Production of Documents to Michael Bienes, along with a privilege log of responsive documents withheld from this production. Thank you.

Regards,
Shane

Attachments

Home Bio VCard

Shane P. Martin, Esq.
2 South Biscayne Blvd.
21st Floor
Miami, FL 33131
Telephone: 305.373.9400
Facsimile: 305.373.9443
Direct Line: (305) 373-9455
Direct Facsimile: (305) 995-6434
E-mail: smartin@broadandcassel.com

www.broadandcassel.com

