

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA
CASE NO. 12-034123 (07)

P & S ASSOCIATES GENERAL
PARTNERSHIP, etc. et al.,
Plaintiffs,

vs.

MICHAEL D. SULLIVAN, et al.
Defendants.

**DEFENDANT FRANK AVELLINO'S MOTION FOR
RECONSIDERATION AND/OR TO COMPEL**

Defendant, Frank Avellino ("Avellino") moves this Court for an order reconsidering its Order Denying in Part Defendant Frank Avellino's Motion to Compel, dated September 15, 2014 and to compel Plaintiffs to produce documents and statements provided Plaintiffs by defendant, Michael Sullivan ("Sullivan"), in connection with and pursuant to the Settlement Agreement entered into between Plaintiffs and Sullivan and in support thereof, state as follows:

1. On September 15, 2014, this Court entered an order on Avellino's motion to compel documents responsive to his second request for production. The Court required Plaintiffs to produce copies of the settlement agreements Plaintiffs entered into with defendants, redacted to exclude the dollar amounts of such settlements. However, the Court did not order Plaintiffs to produce related documents which were requested in the second request for production. A copy of the Court's order is attached as Exhibit "A". Subsequently, Plaintiffs, pursuant to the Court's Order, produced the redacted Settlement Agreements.

2. At the time of the hearing, the undersigned counsel could not articulate the relevance and need of related documents which had been requested in the Second Request to Produce, because he had not been provided copies of the Settlement Agreements. Hence there

was no argument or discussion of producing the related documents at the hearing. Now that the redacted Settlement Agreements have been produced, it is clear that, interrelated with and as part of the Settlement Agreement, Sullivan was required to cooperate with Plaintiffs by providing answers to Plaintiffs' questions, which were to be transcribed under oath, and providing Plaintiffs with documents relevant to such questions.

3. On November 4, 2014, Sullivan filed a motion to dismiss/enforce settlement in which Sullivan alleges that he "has given a sworn statement and delivered documents to Plaintiff's counsel in accordance with the terms of the settlement...". Motion, ¶ 6. A copy of the motion is attached as Exhibit "B".

4. Although the undersigned counsel has not seen the sworn statement and documents Sullivan provided Plaintiffs it is obvious that they will include facts and information relating to the transactions and other actions alleged in Plaintiffs' claims against Avellino. Accordingly, the documents and statements that Michael Sullivan has provided Plaintiffs will be relevant to the issues raised in this matter as well as may be relevant to Avellino's defense of this action. Such discovery should be produced by Plaintiffs.

5. Avellino's second request for production sought not only the settlement agreements Plaintiffs entered into with the other defendants, but also related documents. Documents and statements that Sullivan has now apparently provided to Plaintiffs in conjunction with and as an integral part of the Settlement Agreement are just such documents.

6. Avellino should not be required to request such documents through another request for production. Avellino has already requested such documents through his second request to produce, which it is respectfully submitted was stricken from the proposed order provided the Court because neither the undersigned nor the Court had been advised that there

were such relevant related documents to the Settlement Agreement. Requiring Avellino to issue a new document request for such documents could result in substantial delay in such production, and will allow Plaintiffs to avoid the broad spirit of discovery by not producing all relevant Settlement Agreement documents which were clearly contemplated, negotiated for and expressly referred to, if not incorporated in, the Settlement Agreement which has been ordered to be produced. This Court's September 15, 2014 order addressed Avellino's request for production served on April 29, 2014. Avellino will be prejudiced if he is required to wait another four months for the requested documents.

WHEREFORE, Defendant Frank Avellino requests that this Court to enter an order reconsidering its September 15, 2014 order and/or requiring Plaintiffs to produce the documents and statements provided them by Sullivan.

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By: /s/ Gary A. Woodfield
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document is being served on those on the attached service list by electronic service via the Florida Court E-Filing Portal in compliance with Fla. Admin. Order No. 13-49 this 5th day of November, 2014.

By: /s/ Gary A. Woodfield
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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR BROWARD COUNTY

CASE NO.: 12-034123 (07)
COMPLEX LITIGATION UNIT

P&S ASSOCIATES, GENERAL
PARTNERSHIP, etc., et al.,

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.

**ORDER GRANTING DEFENDANT FRANK AVELLINO'S MOTION TO COMPEL
PLAINTIFF TO PRODUCE DOCUMENTS IN RESPONSE TO HIS SECOND
REQUEST FOR PRODUCTION DATED APRIL 29, 2014**

THIS CAUSE came before the Court upon Defendant Frank Avellino's Motion to Compel Plaintiff to Produce Documents in Response to His Second Request for Production dated April 29, 2014, and the Court having heard argument of counsel and being fully advised in the premises, hereby

Jes
ORDERED and **ADJUDGED** that Defendant's motion to compel is granted, in part. Plaintiff shall produce ^{KELLY, KELCO FOUNDATION, AND SULLIVAN} the settlement agreements ~~and related documents entered into with any of~~ ^{UNITY (30)} the defendants in this action within ten (10) days from the date of this order. Plaintiff may redact such documents to exclude the ^{following} financial consideration for such settlements: *SEE BELOW **

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida this 15th day of September, 2014.

JE Streitfeld
The Honorable Jeffrey E. Streitfeld
CIRCUIT COURT JUDGE

Conformed copies to:

Jes
Counsel of record
* AS TO KELLY & KELCO - REDACT ALL OF #2 AFTER THE WORD "PAYMENT"
AS TO SULLIVAN - REDACT THE DOLLAR AMOUNT OF THE JUDGMENT IN #3.

EXHIBIT

A

CASE NO.: 12-034123 (07)
Order Granting Defendant Frank Avellino's
Motion to Compel

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intending the Fourth Amended Complaint to act as some form of enforcement to force testimony from the Defendant that the Defendant has refused to give since the commencement of this action and for which it appears that Plaintiff has no good faith basis to threaten Defendant by continuing Defendant's presence in the Fourth Amended Complaint.

6. Defendant's counsel has operated under the oral representation of Plaintiff's counsel almost from the inception of these proceedings that Defendant would be released and the execution of the Confidential Settlement Agreement was to be the fulfillment of that representation. In fact, Defendant has given a sworn statement and delivered documents to Plaintiff's counsel in accordance with the terms of the settlement and that discovery and trial preparation was terminated based on the settlement of the parties.

7. It would be prejudicial to Defendant to be compelled to proceed to trial after the parties agreed to the Confidential Settlement Agreement that was negotiated in good faith.

8. Defendant is entitled to entry of a court order enforcing the Confidential Settlement Agreement and an award of attorneys' fees and costs for the execution of this motion.

MEMORANDUM OF LAW

As a general matter, "[s]ettlement agreements are highly favored" and policy favors "enforce[ing] such agreement whenever possible. Where the parties have agreed to the essential terms of a settlement, it will be enforced." State Farm Mut. Auto. Inc. Co. v. InterAmerican Car Rental, Inc., 781 So.2d 500, 502 (Fla. 3d DCA 2001) (citations omitted). In that regard, a party may move to enforce a settlement agreement that has not

been complied with by another party to the agreement. See e.g. Spiegel v. H. Allen Holmes, Inc., 834 So.2d 295, 298 (Fla. 4th DCA 2002). In ruling on such a motion, the court may consider evidence provided at the hearing and award attorneys' fees to the movant. *Id.* (Holding that "[a]s the defendant was forced to file a motion... and participate in an evidentiary hearing to enforce the settlement agreement, it is entitled to attorney's fees."). Where the evidence reflects that there was a meeting of the minds to form an agreement, such as in this matter, the court will enforce the agreement. *Id.* at 297; State Farm, 781 So.2d at 502 (citation omitted).

In this matter, the parties have executed the Confidential Settlement Agreement; however, the Plaintiff has failed to comply therewith. As such, the Defendant has been forced to file this motion to enforce the Confidential Settlement Agreement and/or continue the pending trial.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant its Motion to Dismiss/Enforce Settlement and award attorneys' fees and costs for the execution of this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was sent by this Court's E-Filing System to all registered parties this November 4, 2013.

/s/ Harry Winderman
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