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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, a Florida limited Partnership, *et al,*

Plaintiffs,

v.

MICHAEL D. SULLIVAN, et al.,

Defendants.
____/

MICHAEL D. SULLIVAN MOTION FOR PROTECTIVE ORDER AND TO COMPEL PRODUCTION OF HIS SWORN STATEMENT

COMES NOW THE MOVANT, MICHAEL D. SULLIVAN ("Movant"), by and through his attorney, and moves this Court for an order preventing or limiting the continued deposition of the Movant by the attorneys for the Plaintiff and to compel the Plaintiff to provide the Movant with a copy of his sworn statement and as grounds therefore, states as follows:

1. On December 1, 2015 the Movant duly appeared for his deposition without any party hereto serving the Movant with a subpoena ("Deposition"). In fact, Movant has fully and completely cooperated with the Plaintiff for years in delivering each and every document in his possession, provided Plaintiff with access to each and every email account, has allowed Plaintiff to copy his hard drives of his personal and business computers and cell phone and even providing access to Movant's internet providers. Finally, Movant has given over Seven (7) hours of sworn testimony on September 14, 2014 and in December,

2014 where he was questioned by Plaintiff's counsel and presented with every possible document in this case.

2. There are no possible remaining questions that Plaintiff can ask. In fact, the only reason Plaintiff wants to subject Movant to several more grueling hours of deposition and the reason Plaintiff has taken other actions in this case (see Motion to Enforce Settlement attached hereto) is to coerce Movant to change his stated position that Avellini and Bienes had no role in the management, operation or in any other capacity in Movant's ownership and operation of the P & S and S & P. In fact, Plaintiff has not produced a single document or provided any statements that contradict Movant's position, a position that has remained constant through not only the sworn statement but several and lengthy interviews.

3. Even after hours of interrogation and the vast intrusion into Movant's personal and professional life, Plaintiff has no credible evidence of its central assertion that Movant was a straw man for Avellini and Bienes.

4. All of the matters set forth above would be sufficient grounds to prevent Plaintiff from taking any further discovery but the actions of Plaintiff must be viewed through the actions and statements of Plaintiff in this matter where Plaintiff without any basis in fact claimed that Movant stole over $10,000,000 and hid or destroyed records to prevent any person from discovering his crime. None of these accusations were based on any facts and Plaintiff has taken no action to advise the public that it wrongfully accused Movant.

5. Instead and in a continuing pattern of abuse of Movant, in contravention of the Settlement Agreement between Plaintiff and Movant, Plaintiff failed to advise this Court that the Final Judgment against Movant should not have been made public when it was originally made public or that Plaintiff refuses to comply with the Settlement Agreement.

6. Plaintiff has threatened Movant every step of the way, including threatening consequences if this Motion is filed and Movant has not varied in his recollection of facts that date back to the 90s.

7. Plaintiff has failed to provide Movant with a copy of his sworn statement notwithstanding written and oral requests. Upon request **without the required showing** a person not a party may obtain a copy of a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order to obtain a copy. The provisions of rule 1.380(a)(4) apply to the award of expenses incurred as a result of making the motion. Plaintiff refuses to provide Movant a copy of the sworn statement. Once Movant obtains a copy of the sworn statement Movant will provide this Court a copy for in camera inspection so that the court can determine whether there is a need for any further discovery. The Court will also be asked whether the sworn statement contains any confidential information or any "work product" and instead is just a sworn statement of the matters Movant has told multiple people well before any settlement agreement was ever executed.

8. In deciding whether a **protective order** is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery

or by denying it. *Alterra Healthcare Corp. v. Estate of Shelley,* 827 So.2d 936 (Fla. 2002), *citing* *Rasmussen v. South Florida Blood Service, Inc.,* 500 So.2d 533 (Fla. 1987). The burden of proof for such a showing falls upon the movant. *See* *Towers v. City of Longwood,* 960 So.2d 845 (Fla. 5th DCA 2007).

9. As the Court will surely recognize, the time and formality of a deposition, although necessary, can be both stressful on the deponent and expensive for the parties. However, **multiple depositions** can give rise to undue stress on a deponent, and to an unnecessary expense which is contrary to the Court's goals of judicial economy. As stated above, Plaintiff has had the opportunity to examine the Movant in any and every possible manner. Movant, a party to this Action, is charged with his sworn statement and the sworn statement can be introduced into evidence as a statement of a party. Further, the Defendants will not object to the introduction of the sworn statement since it supports their claims in this action. It is only the Plaintiff that objects to making the sworn statement visible to this Court and the Defendants.

10. The Defendants started the Deposition and have already learned Movant's position that their clients had nothing to do with Movant's ownership and operation of P & S and S & P. The production of the sworn statement will limit any further discovery from Movant by any party. The sworn statement will confirm this and eliminate the need for any further questions. In *Rothschild v. Gaspari*, 287 So. 2d 341 (3d DCA 1974) the court held that in the case of an incomplete deposition which is certified by the officer as the sworn testimony of a party, the incomplete deposition may be used for the impeachment

of that party's testimony when it is filed in the court and no motion is made to suppress the deposition.

11. That sworn statement occurred 12 months ago and nothing has changed, certainly not enough to require another full day of deposition.

12. Any further deposition of Movant is, and can be, nothing more than a fishing expedition, and/or an exercise in harassment of Movant. It is wholly improper for Movant to sit again for deposition concerning matters about which he has already given lengthy, complete, and detailed answers.

13. Repeat depositions of a witness, and particularly a party, are rarely permissible because it constitutes an abuse of the discovery process. Good cause exists to prevent this continuation of Movant's examination, as no new material or evidence has been discovered or revealed which would warrant any further imposition and burden, no changes were made to his prior testimony and no rules of civil procedure allow for multiple depositions of the same deponent absent changes in testimony. Plaintiff's only purpose in deposing Movant essentially a third, fourth, fifth and maybe sixth time would be to annoy, oppress, unduly burden and cause further unnecessary expense to Movant and Defendants. "In deciding whether good cause has been shown, it is necessary to balance the competing interests that would be served by the granting or denying of discovery." *South Florida Blood Service, Inc. v. Rasmussen,* 467 So.2d 798 (Fla. 3rd DCA 1985).

14. Rule 1.280(c) provides that if good cause is shown, the trial court can prohibit or limit discovery in **order** to protect a person or party from *annoyance, embarrassment, oppression, or undue burden or expense.* (Emphasis added).

15. The **length of depositions** are governed by the general provisions of Florida Rule of Civil Procedure 1.310(d) which allows relief on the grounds of *bad faith, unreasonable annoyance, embarrassment or oppression.* (Emphasis added). Although the Florida Rules of Civil Procedure do not specifically state a time limit for the length of a deposition, the rules are modeled after the Federal Rules of Civil Procedure. Federal Rule of Civil Procedure 30(d)(2) provides that a deposition "is limited to one day of seven hours" in the absence of a court **order**. Under these guidelines, Movant's sworn statement has already been subjected to unreasonably lengthy inquisition by the Plaintiff. Despite this, the Plaintiff now is attempting to subject Movant to yet another day long deposition.

16. Requiring Movant to a full day's deposition is not reasonable, is not judicially economical, and is not a reasonable or economical use of the parties' resources and time. There is no indication that any further deposition of Movant can result in any new information. Rather, it appears that any deposition by Plaintiff of Movant will result in duplicative discovery, and will prejudice the Movant by requiring the expenditure of unnecessary time and resources. Plaintiff knows that Movant has limited resources and imposing any further burden is another act of Plaintiff's attempted coercion to force Movant to change his testimony. The Court should not condone such action.

17. Finally, Plaintiff has refused to provide Movant with a copy of his sworn statement as is its obligation.

WHEREFORE, MICHAEL D. SULLIVAN moves this Court for an **order** that the continued deposition set for December 17, 2015 not take place, or in the alternative, if the currently noticed deposition is allowed, that said deposition be limited in time and to only questions not asked in the sworn statement and requests this Court to order the delivery of Movant's sworn statement immediately.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above was filed with this Court's E-Filing System and all registered parties were selected for service this December 2, 2013.

___/s/ Harry Winderman__________________

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