MARTIN v FRASER

22CV46236

PLAINTIFF'S MOTION FOR TERMINATING SANCTIONS

On August 12, 2022, Dylan Martin ("Plaintiff") filed a verified complaint for partition against Taylor Fraser ("Defendant").

Now before the Court is Plaintiff's motion for terminating sanctions against Defendant based on her failure to comply with court-ordered discovery. The Court grants Plaintiff's request for judicial notice of earlier rulings.

On March 18, 2024, the Court ordered Defendant to serve verified answers to Plaintiff's written discovery by April 21, 2024. Plaintiff's served the Notice of Entry on March 26, 2024. (Declaration of Brian Chavez-Ochoa ("Chavez-Ochoa Decl.") ¶ 2). As of the filing of the motion, Defendant has failed to provide any responses. (*Id*. ¶ 3.)

A motion for terminating sanctions is governed by the Civil Discovery Act. (Code of Civil Procedure §2023.030(d).) Termination may be imposed as a sanction under the Discovery Act only after (1) a court order has been issued, compelling the party to comply with a discovery request; (2) the party has disobeyed the order; and (3) the party has been given an opportunity to be heard regarding the order. (*J.W. v. Watchtower Bible & Tract Society of New York, Inc.* (2018) 29 Cal. App. 5th 1142, 1167.) A terminating sanction is appropriate only when a party's failure to obey a court order prejudiced the opposing party. (*Morgan v. Ransom* (1979) 95 Cal. App. 3rd 664, 669.)

Failure to respond to discovery and to comply with a judge's court orders compelling discovery are sufficient to impose a terminating sanction. (*Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal. App. 4th, 1058, 1069.) Further, if the party has committed severe discovery abuses, a judge's denial of terminating sanctions may be an abuse of discretion. (*Doppes v. Bentley Motors, Inc.* (2009) 174 Cal. App. 4th 967, 992.)

This court ordered verified answers, without objection, to plaintiff's discovery requests. Defendant has disobeyed the order. Defendant did not request a hearing on the tentative ruling granting the motion to compel. Defendant has neither provided any responses nor sought any kind of extension. Defendant has had ample time to respond to the requests and this Court's order. Defendant's willful failure to respond and to comply with this Court's order has prejudiced Plaintiff who is unable to move forward with this case without Defendant's participation.

In light of the above, the Court **GRANTS** Plaintiff's motion. The Court orders that the Answer filed on or about September 21, 2022 is stricken, and enters judgment by default in Plaintiff's favor. Plaintiff is directed to contact the clerk's office to schedule a prove up hearing on Department 2's Friday 9:00 a.m. calendar.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff shall submit a formal Order in compliance with this Ruling.

CONNOLLY v DE LA CRUZ

23CV46549

PLAINTIFF'S MOTIONS TO COMPEL FURTHER RESPONSES TO DISCOVERY

This civil action stems from a dispute over easement rights between Mark V. Connolly ("Plaintiff") and Francisco de la Cruz ("Defendant"). Before the Court are Plaintiff's three separate motions to compel further responses to: 1) form interrogatories, 2) special interrogatories, and 3) requests for production. The motions are similar in form and substance and accordingly, the court addresses the motions in tandem.

For the reasons set forth below, Plaintiff's motions are granted.

I. Factual and Procedural Background

A. Background Facts

Plaintiff owns APN parcels 048-025-034 and 050-002-120, commonly and collectively referred to as Cain Ranch (and hereinafter referred to as "the Ranch"). The Ranch was previously burdened by a 16.5 foot prescriptive easement belonging to Linkletter Properties for ingress and egress to adjacent property (with the right to erect a fence with a gate), but Plaintiff maintained a co-equal easement over a similar strip for cattle grazing and herding. According to Plaintiff, the dueling co-equal easements were unburdened by judgment, merger and eventual extinguishment. Despite the loss of said easement, Defendant accessed the strip and removed a portion of the perimeter fence restraining cattle from roaming free.

Defendant owns APN 048-051-034 and is the elected road manager at Valley Hills Estates. According to Defendant. the aforementioned easement overlaps a 60-foot right of way in the referenced subdivision parcel map. Defendant filed a cross-complaint to allow for the removal of naturally occurring obstructions due to a tree falling and man-made obstruction of a gate and post within the easement.

B. Discovery and Responses

On December 29, 2023, Plaintiff propounded form and special Interrogatories and request for production of documents. After some delay, on February 16, 2024 Defendant eventually responded without objection via email. (Declaration of Mark V. Connolly ("Connolly Decl.") attached to each motion, ¶ 6.) Thereafter counsel engaged in a meet and confer and, on March 12, 2024, entered into a stipulation that: 1) Defendant would serve supplemental or amended responses to the all discovery by

April 19, 2024, and 2) Plaintiff would have until June 3, 2024 to file this motion to compel. (Connolly Decl. ¶ 8, Ex. B.)

Defendant served some supplemental responses on April 23, 2024. Plaintiff, however, contends that the responses remained inadequate.

As to Form Interrogatories Nos. 15.1 and 17.1, Plaintiff complains that the responses are not code compliant because they are not full and complete and refer to other discovery provided elsewhere. For example, Defendant's response includes, "All relevant documents are matters of public record and are known to and in the possession of Plaintiff, see also responses to Special Interrogatories."

As to Special Interrogatories Nos. 2-11, 13-22, 24 to 26, 28-34, 36, 37, 42, 43, 45, 46, 49-51, 55, 61 and 64, Plaintiff complains the responses are not code compliant and are confusing, evasive, or incomplete. For example, Plaintiff complains that many responses refer to prior responses or categories of documents without specification, or simply state that the information is in the public record and Plaintiff can therefore access them himself.

As to Requests for Production of Documents Nos. 4, 15, 18, 22-24, and 31, Plaintiff complains that Defendant's response agreeing to provide "any photographs not already provided to Plaintiff," is inadequate and vague. Plaintiff asserts that Defendant never provided any photographs and has never identified what photographs are purported to already be in Plaintiff's possession. As to RPD Nos. 8, 10-14 and 28, Plaintiff complains that Defendant's response that such documents are already in Plaintiff's possession are inadequate because there is no indication as to what these purported documents would be. Finally, as to RPD Nos. 20, 21, 26, 27, 29, and 30, Plaintiff complains that the responses which refers to unidentified emails and correspondence "already in Plaintiff's control" are evasive and vague.

Defendant has not filed any opposition to the motions to compel. Rather, Defendant has submitted a declaration that includes its prior responses as exhibits.

II. Legal Standard

Where responses to interrogatories have been served but the requesting party believes that they are deficient because the answers are evasive or incomplete, or, because an objection is without merit, that party may move for an order compelling a further response. (Code Civ. Proc. § 2030.300(a).) The "burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220–221.)

The burden on the propounding party is higher in compelling responses to production of documents than in compelling responses to interrogatories. On receipt of a response to a Request for Production of Documents, the demanding party may move for an order

compelling further responses to the demand if the demanding party deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general. (CCP § 2031.310(a).) The motion to compel must "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc. §2031.310 (b)(1).)

Both motions must be accompanied by a meet and confer declaration in compliance with Code Civil Procedure section 2016.040. (Code Civ. Proc. § 2030.300(b); 2031.310(b)(2).)

Counsel for the Plaintiff did attempt to meet and confer but the parties were unable to informally resolve the dispute. Thus, the Court finds that Plaintiff's meet and confer efforts were sufficient and this requirement is satisfied.

III. Analysis

The Civil Discovery Act provides litigants with the right to broad discovery. (*Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants*) (2007), 148 Cal.App.4th 390, 402.) In general, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc. § 2017.010.)

Most of Plaintiff's discovery requests seek information related to Defendant's contention that it is a successor to the owners of interest of the 16.5 easement, the location of the easement, and Defendant's position that it is responsible for the care of the easement. While there is arguably repetition in Plaintiff's discovery requests, the requests are nonetheless reasonable and calculated to lead to the discovery of admissible evidence. Further, Defendant has not set forth any reason why Plaintiff is not entitled to this information.

Defendant's responses, while perhaps well intentioned, are inadequate. For instance, many responses require Plaintiff to look to other discovery for the answers he seeks. Such type of response is not code compliant as Code Civil Procedure section 2030(c)(5) states that "each interrogatory shall be full and complete in and of itself." An "interrogatory is not 'full and complete in and of itself' when resort must necessarily be made to other materials in order to complete the question." (*Catanese v. Superior Court* (1996), 46 Cal.App.4th 1159, 1164.)

Accordingly, Plaintiff's motions to compel further responses to form interrogatories, special interrogatories, and requests for production of documents are **GRANTED**.

Plaintiff does not seek sanctions at this time as he is representing himself pro se. However, while sanctions are not imposed at this time, sanctions may be reconsidered in the event there are any future motions regarding the same discovery sets.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

JOHNSON v CITY OF ANGELS, et al.

24CV47321

INDIVIDUAL DEFENDANTS' DEMURRER AND MOTION TO STRIKE

On or about April 16, 2024, Plaintiff filed a Complaint alleging "Intentional Tort: building of fence in curtilage making curtilage inaccessible and car garages inaccessible" and "Intentional Tort: Libel, slander telling public that there are dangerous people, perverts, drug dealers, addicts, sex offenders, criminals, persons dangerous to minors, living at plaintiffs house, as well as other accusations." (Plaintiff's Complaint). Individual defendants are Scott McNurlin ("McNurlin"), Diane Bateman ("Bateman"), Christy Miro ("Miro"), Jenny Eltringham ("Eltringham"), Timothy Randall ("Randall", and Alvin Broglio ("Broglio") (collectively "Individual Defendants.")[1]

The Complaint was served on McNurlin and Bateman on May 8, 2024, on Miro, Eltringham, and Randall on May 21, 2024 and finally on Broglio on May 24, 2024.

Individual defendants now demur and move to strike portions of the complaint. Defendants' request for judicial notice is granted but the demurrer is overruled and the motion to strike is denied.

First, neither the demurrer nor the motion comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

> 3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and

[1] Mark Twain Elementary Middle School is not a legal entity and is not named in the Complaint but was served on May 8, 2024. (RJN 3). Named Defendants Paula Wyant and Mark Twain Union Elementary School District were not served in this action (RJN 2) and, although will be represented by the same Counsel, are not bringing the instant Motion, nor is served defendant City of Angels.

evidence Is limited pursuant to Local Rule 3 3. All matters noticed for the Law & Motion calendar shall Include the following language in the notice:

Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]

Failure to include this language In the notice may be a basis for the Court to deny the motion.

Additionally, Plaintiff filed an amended complaint after the motion to strike and demurrer were filed. Accordingly defendants' demurrer and motions are moot.

Based on the foregoing, the demurrer is **OVERRULED** and the motion to strike is **DENIED**, both without prejudice, to renew as to the first amended complaint, with proper notice.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.