

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

-----  
IN RE:

SUZANNE M. SULLIVAN

Debtor

CASE NO. 03-64858

Chapter 7

-----  
JOHN B. DUBIEL

Plaintiff

vs.

ADV. PRO. NO. 04-80014

SUZANNE M. SULLIVAN

Defendant

-----  
APPEARANCES:

JOHN B. DUBIEL  
Pro Se Plaintiff  
4739 New Hope North  
Liverpool, New York 13090

HARRIS LAW OFFICE, PLLC  
Attorney for Defendant  
4199 East Genesee St.  
Syracuse, NY 13214

STEWART L. WEISMAN, ESQ.  
Of Counsel

Hon. Stephen D. Gerling, Chief U.S. Bankruptcy Judge

**MEMORANDUM-DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

The Plaintiff herein, acting pro se, having filed a motion on August 30, 2004, in this Adversary Proceeding entitled "Motion to Grant Plaintiff's Adversary Petition," ("Plaintiff's motion) and that motion actually having sought "summary judgement , without a trial proceeding due to lack of evidence supporting Defendant's objections, Defendant's concealment of evidence

in the case that precludes the Plaintiff from properly presenting his case, and a refusal by Defendant to furnish the requested discovery evidence pursuant to Bankruptcy Rule 7033.”

The Plaintiff’s motion initially appeared on this Court’s calendar in Syracuse, N.Y. on November 2, 2004, and after hearing argument from the Plaintiff in support of the motion and argument from the Defendant’s counsel, Stewart Weisman, Esq., in opposition to the motion, the Court adjourned the motion to its December 7, 2004 calendar in Syracuse for further consideration. On December 7th, the Court denied as much of the Plaintiff’s motion as sought summary judgment. An Order denying summary judgment to the Plaintiff was executed on December 13, 2004. At the December 7th calendar, the Court indicated that it would give further consideration to that portion of the Plaintiff’s motion which sought additional discovery from the Defendant and issue a written decision in that regard.

In response to the Plaintiff’s motion, Defendant filed a Memorandum of Law in Opposition dated September 28, 2004, in which she generally objected to Plaintiff’s discovery demands, as well as responding specifically to Plaintiff’s First Set of Interrogatories and Plaintiff’s First Demand for Production of Documents. In her general objection, the Defendant asserts the attorney-client privilege, work product doctrine, Constitutional right of privacy and relevance. While each of the objections may be valid they must be asserted with regard to a specific discovery demand not en masse. *See Koresko v. Bleiweis*, No. Civ. A. 04-00769, 2004 WL 2203713 at \*3 (E.D. Pa. Sept. 27, 2004) (noting that neither the defendant nor the court should have to guess which objection applies to a specific discovery request); *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 293 (N.D.W.Va. 2004) citing to *White v. Belogonis*, 53 F.R.D. 480, 481 (S.D.N.Y. 1971) for the proposition that “case law clearly holds that general objections,

not accompanied by specific explanations, are ineffective and result in a waiver”). *Greer v. Baca*, 219 F.R.D. 485, 491 (C.D. Calif. 2003) (stating that blanket assertions of privilege are inadequate).

In considering Defendant’s objection to specific discovery demands, the Court will initially focus on the Plaintiff’s First Set of Interrogatories. Defendant objects to Interrogatory #4 in that she refuses to provide the amount of child support she receives for the support of her minor child. Defendant contends that since child support is payable for the benefit of the minor child, not the Defendant, the amount of the support is not relevant. The Court does not agree. Plaintiff’s complaint asserts a cause of action grounded upon § 523(a)(15) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (“Code”) which prohibits a debtor from receiving a discharge as to a debt arising in a matrimonial action which is neither alimony, support or maintenance unless the debtor can establish one of two defenses: 1) the debtor has no disposable income or 2) a discharge of the debt results in a benefit to the debtor which outweighs the detriment to the non-debtor spouse to whom or whose behalf the obligation is owed. Under either subsection of Code § 523(a)(15), the debtor’s complete financial status is at the heart of the bankruptcy court’s inquiry and while the non-debtor spouse does not bear the burden of proof on that issue, he or she certainly has the right to discover any and all sources of income which the debtor receives, whether directly or indirectly, in order to prepare an adequate defense. *See In re Williams*, 271 B.R. 499, 453 (Bankr. N.D.N.Y. 2001).

The Defendant has objected to Plaintiff’s Interrogatory #12 which requests the name of the Defendant’s current landlord or owner of the residence where she resides. The Defendant objects on the basis of relevancy and harassment. She has provided a copy of her current lease

with presumably the name of the landlord redacted. The Court agrees with the Defendant that the additional information sought is irrelevant and could lead to a form of harassment.

The Defendant likewise objected to Plaintiff's Interrogatory #13 which again sought discovery of the amount of monthly child support Defendant received from the child's father. The Defendant expands her opposition to answering this interrogatory asserting relevance and harassment, as well as the assertion made with regard to Interrogatory # 4. For the same reasons set out in its discussions of Interrogatory #4, the Court again disagrees with the Defendant and directs the Defendant to respond to Interrogatory #13.

The Defendant objects to Interrogatory#15 and correctly so. The Interrogatory requests that the Defendant set forth any evidence that would establish a defense pursuant to Code § 523(a)(15)(B). What facts might establish a defense is for the Court to determine after hearing the evidence.

Interrogatories #16 and 17 seek to elicit from the Defendant the source of funds she utilized to pay her legal fees and why those funds were not used to pay creditors. While #16 has relevance to the Defendant's overall financial picture, Interrogatory #17 is clearly irrelevant and not an appropriate interrogatory. Thus, the Court will direct the Defendant to respond to Interrogatory #16 but not Interrogatory #17.

Turning to Plaintiff's First Demand for Production of Documents, Defendant again asserts the same general objections as she did with regard to the Plaintiff's Interrogatories without specifying which documents the objection pertains to. Such an objection is inappropriate. Specifically, the Defendant objects to Demand #4 which requires the production of "Any and all documents which relate to or constitute defendant's Statement of Net Worth in the divorce

proceeding.” Defendant opposes the production of the requested documents, “because plaintiff refused to ‘answer on the grounds of privilege.’” Apparently, Defendant is referring to Plaintiff’s refusal to produce similar documents with regard to his net worth. While such an objection is clearly inappropriate, the Court believes that Defendant’s Demand #4 is overly broad, and absent reference to specific items of Defendant’s Statement of Net Worth, need not be complied with. Demand #5 is objected to for a similar reason, i.e. Plaintiff’s refusal to produce his own comparable documents on the grounds of “confidentiality.” The requested documents are Defendant’s 2002 and 2003 federal and state income tax returns. Again, while the initial burden of proof regarding Code § 523(a)(15)(A) or (B) does not fall on the Plaintiff, information contained in recent tax returns is very relevant to ones overall financial condition and is discoverable. Therefore, the Defendant must comply with Plaintiff’s Demand # 4 notwithstanding Plaintiff’s refusal to produce his own tax returns, but such production shall be limited to Defendant’s 2003 tax returns and to the extent they have been prepared, Defendant’s 2004 tax returns.

Defendant opposes Demand#6 relating to the production of documentation in the form of “checks or remittances” evidencing the receipt of child support from January 2002 to the present. Defendant resists on the grounds of relevancy, harassment and the assertion that child support is not income to her. The Court disagrees for the same reasons noted with regard to Interrogatory#4 and directs the Defendant to produce such checks and remittances but limited to the period January 2004 through the present.<sup>1</sup> The Court applies the same rationale to Demand

---

<sup>1</sup>The case law suggests that for purposes of establishing compliance with § 523(a)(15)(A) or (B), a Court will focus on the financial circumstances of the parties at or near the time of the trial of the adversary proceeding. Therefore, ones financial status at a remote point in time is

#7 and directs the Defendant to supply the bank statements for the period January 1, 2004 thru the present. With regard to Demand #9, the Court believes that the Defendant's response is adequate and she need not produce any documentation.

Finally, the Plaintiff in Demand #11 seeks production of all "legal bills relating to the defense and opposition to Plaintiff's adversary proceeding." Defendant resists, once again, on the basis of relevance and harassment. It is the Court's conclusion that while current "legal bills" may be marginally relevant, they do reflect the incurrence of post petition debt which impacts on the Defendant's overall financial picture as of the date of trial and must be produced.

The Court directs that the Defendant comply with the terms of this Memorandum Decision and Order within 30 days of its date, and failing to comply in whole or in part, the Plaintiff shall be entitled to one or more of the remedies set out in Federal Rule of Bankruptcy Procedure 7037 which incorporates by reference Federal Rule of Civil Procedure 37 on appropriate motion.

IT IS SO ORDERED

Dated at Utica, New York

this 12th day of January 2005

---

STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge

---

irrelevant. *See In re Erd*, 282 B.R. 620, 625 (Bankr. N.D. Ohio 2002); *In re Smither*, 194 B.R. 102, 108-109 (Bankr. W.D. Ky. 1996).