

RICHARD L. BURSTEIN, ESQ.
TUCZINSKI, CAVALIER, BURSTEIN & COLLURA
90 State Street, Suite 1011
Albany, NY 12207

JUSTIN A. HELLER, ESQ.
NOLAN & HELLER
39 North Pearl Street
Albany, NY 12207

RE: A.W. LAWRENCE & CO., INC.
CASE NO. 97-91313
ADV. PRO. NO. 97-11300
A.W. Lawrence & Company, Inc., vs.
Sharon A. Burstein, Gleason Dunn, Walsh & O'Shea,
Lawrence Insurance Group Inc., Lawrence Group, Inc.,
and Albert Lawrence

LETTER DECISION AND ORDER

At the hearing on October 28, 2003, the Court granted in part the cross-motion of Sharon A. Burstein ("Burstein"), the defendant in the above-referenced adversary proceeding, concluding that she was entitled to further limited discovery following the Memorandum-Decision and Order of the Hon. David Hurd, United States District Judge for the Northern District of New York, on January 31, 2003, which vacated the judgment of the Bankruptcy Court, dated March 5, 2001, as amended by the Order and Judgment of September 2, 2001, and remanded the adversary proceeding to this Court for trial on the issue of whether the Debtor/Plaintiff A. W. Lawrence & Company, Inc. ("AWL") had an interest in a certain \$50,000 payment made to Burstein on February 10, 1997, by check drawn by Barbara C. Lawrence, the wife of Albert W. Lawrence.

At the hearing on October 28, 2003, the Court declined to grant Burstein's cross-motion to the extent that it sought a determination that her Request for Admission served on AWL in April 2003 be deemed admitted for purposes of the trial. Having concluded that Burstein is entitled to limited discovery, the Court finds it appropriate that AWL respond to the Request for Admission within thirty (30) days from the date of this Order.

AWL in its motion for a protective order also asked that the Court consider the appropriateness of the document request served on it by Burstein on or about April 14, 2003. The Court has reviewed the document request, noting that the documents relate to the alleged sale of the vessel the "Escapade" in February 1997. The Court has reviewed the transcript of the hearing before the Hon. John J. Connelly, United States Bankruptcy Judge, on October 1, 1999, during which Burstein's counsel stated that "The proof will show the title didn't change." (Tr. at p. 8). So too Burstein's counsel states that "what I'm saying is based on just the documentary evidence that is here it's clear that this is a sham." (Tr. at 9). Thus, it would appear that Burstein was in possession of certain documents that she was prepared to offer into evidence until Judge Connelly declined to address the ownership of the "Escapade." Accordingly, the Court will grant Burstein's request that certain documents be produced by AWL if Burstein is able to establish to the satisfaction of the Court that they were not previously requested and made available to Burstein prior to the hearing before Judge Connelly on October 1, 1999.

The Court was also asked by Burstein's counsel to direct AWL's counsel to produce Barbara Lawrence for a deposition as a former officer of AWL and as a party to a certain Settlement Agreement, dated August 9, 1999. It has been represented to the Court by AWL that at the time of service of the Notice to Take Deposition, Barbara Lawrence was not a party to this proceeding and was not an officer, director or employee of AWL and was not represented by AWL's counsel.

Based on those representations, she cannot be compelled to attend a deposition as an agent of AWL. *See Mason v. Texaco, Inc.*, 741 F.Supp. 1472, 1504 (D. Kan. 1990), *aff'd and remanded on other grounds*, 948 F.2d 1546 (10th Cir. 1991). The Court has found no support for Burstein's argument that because Barbara Lawrence was a party to the Settlement Agreement reached with AWL in 1999, that service on AWL's counsel is sufficient to require her production. Accordingly, she will have to be located and personally served with a subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure, as incorporated by Rule 9016 of the Federal Rules of Bankruptcy Procedure, should Burstein wish to depose her. Service of a subpoena on AWL's counsel is insufficient under those circumstances.

IT IS SO ORDERED.

Dated at Utica, New York

this 4th day of December 2003

STEPHEN D. GERLING
Chief U.S. Bankruptcy Judge