

1 STATE OF ILLINOIS)
2 COUNTY OF McHENRY) SS.

3 IN THE TWENTY-SECOND JUDICIAL DISTRICT
4 McHENRY COUNTY, ILLINOIS

5
6 PAUL DULBERG,

7 Plaintiff,

8 vs.

No. 17 LA 377

9 THE LAW OFFICES OF THOMAS
10 J. POPOVICH, P.C. and
HANS MAST,

11 Defendants.

12 ELECTRONICALLY RECORDED Report of
13 Proceedings in the above-entitled cause before the
14 Honorable THOMAS A. MEYER, Judge of said Court of
15 McHenry County, Illinois, on the 19th day of July,
16 2021, in the McHenry County Government Center,
17 Woodstock, Illinois.

18 APPEARANCES:

19 LAW OFFICE OF ALPHONSE A. TALARICO, by
20 MR. ALPHONSE A. TALARICO (via Zoom)

21 On behalf of the Plaintiff;

22 KARBAL COHEN ECONOMOU SILK DUNNE, LLC, by
23 MR. GEORGE K. FLYNN

24 On behalf of the Defendants.

1 THE COURT: Counsel?

2 MR. FLYNN: No. 10, your Honor. I see
3 Mr. Talarico. George Flynn on behalf of
4 defendant/movant.

5 THE COURT: Dulberg versus Mast?

6 MR. FLYNN: Yes.

7 THE COURT: Okay. I saw Mr. Talarico. All
8 right. Mr. Talarico?

9 MR. TALARICO: Yes, Judge. Good morning.

10 THE COURT: All right. Counselor here in court,
11 what's going on?

12 MR. FLYNN: Good morning, your Honor. We
13 brought a motion to supplement our motion to compel.
14 The Court ruled on April 6th and granted defendant's
15 motion to compel and set a June 14 compliance date.

16 THE COURT: Okay.

17 MR. FLYNN: I'm sorry. June 1st compliance date
18 with a June 14 hearing. Somehow I don't believe we
19 got a copy of the file stamped order and it didn't
20 get diaried, so I believe the case was called on
21 June 14 --

22 THE COURT: Okay.

23 MR. FLYNN: -- and a continue date August 19th.

24 THE COURT: You got inadequate compliance, is

1 that ultimately --

2 MR. FLYNN: That's our position, yes.

3 THE COURT: All right. I'm going to pass this.
4 We'll come back to it. And let me see if I can take
5 a look at the compliance at issue.

6 Mr. Talarico, just hang in there. I'll be
7 back at the end of the call.

8 MR. FLYNN: Thank you, your Honor.

9 (Whereupon the afore-captioned
10 cause was recalled.)

11 THE COURT: Let's go to Dulberg. All right.
12 Plaintiff's counsel for the record, if you could
13 identify yourself.

14 MR. TALARICO: Good morning, your Honor. My
15 name is Alphonse Talarico. I represent Paul
16 Dulberg.

17 MR. FLYNN: And good morning again, your Honor.
18 George Flynn on behalf of Popovich and Mast.

19 THE COURT: All right. So tell me what the
20 issue is.

21 MR. FLYNN: Again, your Honor, the Court ruled
22 on April 6th that the plaintiff was directed to
23 provide the specific answers and responses to each
24 interrogatory and production request. So we did

1 receive supplemental production responses and a
2 supplemental interrogatory answer. With respect to
3 the supplemental production, there is one document
4 that I consider to be responsive and that is new.

5 THE COURT: I'm sorry?

6 MR. FLYNN: There is one document that was
7 produced and I consider it to be responsive and a
8 new production. The rest of the documents that were
9 produced, it's unusual. There are actual pleadings
10 from this case that were attached as responsive
11 documents to my discovery requests. I don't see how
12 those -- which basically just set forth the
13 plaintiff's position in this case in response to the
14 various arguments we've made in motions.

15 THE COURT: Well, what is it you're looking for?
16 What didn't you get?

17 MR. FLYNN: I'm looking to strike any of those
18 documents --

19 THE COURT: Okay.

20 MR. FLYNN: -- that are not responsive.

21 THE COURT: Is it -- I mean, really is it
22 necessary to go to the trouble of striking them if
23 they're -- I mean, ultimately they're not going to
24 be relevant as a discovery response.

1 MR. FLYNN: Only -- I just want to make sure
2 there aren't any additional documents that were --

3 THE COURT: Are there any additional documents,
4 Mr. Talarico?

5 MR. TALARICO: Judge, I have no idea if -- it's
6 our position we complied completely. We filed our
7 answers on June 1st. If the Court had -- I don't
8 know if the Court remembers, you had ordered us,
9 plaintiff and defendant, to talk up through
10 June 14th to see if there were any issues. The only
11 response I got from the defendants was an e-mail
12 with one word. As I told you on June 14th, the only
13 word was, Thank you. Now I am totally surprised,
14 73 days later, Judge, and I don't know what else --
15 I want time to respond in writing, Judge. This
16 is --

17 THE COURT: I don't -- I don't want to do that.

18 MR. TALARICO: This has been difficult.

19 THE COURT: This is --

20 MR. FLYNN: Yes, it has, Judge.

21 THE COURT: So what is it you -- what is it you
22 are looking for? Because I have a representation on
23 the record -- and I'm assuming there's an affidavit
24 of compliance.

1 MR. TALARICO: There is.

2 THE COURT: Okay. Then -- and he says, I've
3 given you everything.

4 MR. FLYNN: That's fine with respect to the
5 production response. Now there's the interrogatory
6 answer.

7 THE COURT: All right. Tell me -- we're moving
8 on to the interrogatory.

9 MR. FLYNN: And again, this goes to the statute
10 of limitations on a legal malpractice case. The
11 plaintiff is claiming that he didn't discover it
12 until after the 2 years --

13 THE COURT: Could you keep your voice up a
14 little?

15 MR. FLYNN: Sure. Plaintiff is arguing for a
16 tolling of the statute of limitations on a legal
17 malpractice case. He was asked in Interrogatory
18 No. 1, Identify and describe each and every way that
19 Popovich or Mast breached any duty of care to you,
20 the date of the breach, and when and how you became
21 aware of the breach.

22 His response -- his amended additional
23 response discusses his pecuniary injury, that only
24 addresses damages. With respect to the breach of

1 the standard of care and how he discovered it, he
2 simply says he knew that the defendants breached the
3 standard of care due him based upon a verbal
4 discussion with Attorney Tom Gooch on December 16,
5 2016.

6 THE COURT: Okay.

7 MR. FLYNN: That describes the date. It doesn't
8 describe how he became aware of it, what Gooch told
9 him. Now, again, I know your Honor is aware of the
10 deposition testimony in this case regarding that
11 December 16 time period. If the answer is that
12 Dulberg doesn't remember what Mr. Gooch told him, if
13 Gooch said simply, You have a case, that's fine.
14 That's what they should say. But I've already taken
15 his deposition. There are no specifics that explain
16 to me why Mr. Gooch crystallized this breach of the
17 standard of care on December 16. But if this is all
18 they have, then that's what he should say, is that I
19 don't remember what Mr. Gooch told me.

20 THE COURT: I mean, he's -- I think he's
21 complied. I'm not sure --

22 MR. FLYNN: What is the breach of the standard
23 of care?

24 THE COURT: I'm sorry?

1 MR. FLYNN: And what is the breach of the
2 standard of care? That's what I've asked in the
3 interrogatory. They don't say.

4 THE COURT: Well, I think that -- all right. I
5 guess that is -- my reading on it, it's implied it's
6 a statute of limitations. But --

7 MR. FLYNN: No, the statute of limitations is
8 the issue in this case.

9 THE COURT: All right. What is the --

10 MR. FLYNN: The underlying personal injury
11 case --

12 THE COURT: What is the breach? Did Mr. Gooch
13 advise him what the breach was?

14 MR. TALARICO: Judge, all that Mr. Dulberg
15 recalls was relayed in the responses. There were no
16 recordings that were going on. Nothing was done in
17 writing. I'm not sure how I can possibly respond
18 anymore, to give anymore.

19 THE COURT: I have a representation that this is
20 all there is.

21 MR. FLYNN: That's satisfactory to me. As long
22 as when I file my summary judgment motion there's
23 not some new discovery discussion as to --

24 MR. TALARICO: Judge --

1 MR. FLYNN: -- what the breach was and what --

2 MR. TALARICO: I'm sorry. I hate to interrupt.
3 Judge?

4 THE COURT: Yeah.

5 MR. TALARICO: We -- again, we were -- our
6 response, I believe is in total compliance with the
7 Court order of June 6th and your instructions on
8 that day from the court record. And I'd like to
9 respond in writing to establish that we did that.

10 THE COURT: No. No. I mean, you're -- you only
11 need to respond in writing if we're going to have a
12 hearing. If you want to file a brief that -- just
13 in the file, that's fine, but I think we have a
14 resolution today and I don't want to spend more time
15 reading briefs resolving an issue that's moot. So I
16 think this is resolved. What else is outstanding?

17 MR. FLYNN: I think that does resolve -- the
18 representation resolves both issues, so --

19 THE COURT: I have -- you have advised -- well,
20 you've advised that's all there is, so I'm finding
21 you in compliance.

22 MR. TALARICO: Thank you, your Honor.

23 THE COURT: Okay. Is there anything else we
24 need to do?

1 MR. FLYNN: I suppose with respect to the
2 summary judgment motion that I anticipate, Judge,
3 there was one document that was produced in order to
4 avoid a second deposition of Mr. Dulberg to
5 authenticate this document, which is a letter from
6 Attorney Thompson -- I'm sorry -- Attorney Ferris --
7 that goes to the issue of the statute of
8 limitations. If Mr. Talarico would stipulate to the
9 authenticity of this March 4, 2015 letter on the
10 record, I don't need to send a request to admit
11 for --

12 THE COURT: Can you hear all that?

13 MR. TALARICO: I heard it, Judge, but I'm not
14 familiar with that document. A request to admit
15 would be welcome.

16 MR. FLYNN: Fair enough.

17 MR. TALARICO: Just so I can see what it is.

18 THE COURT: That's fine. We're back again on
19 August 19th. Do you want to delay that date in
20 light of the fact you may be issuing a request to
21 admit?

22 MR. FLYNN: I think that would make sense.

23 THE COURT: All right. So let's strike
24 August 19th and tell me when it makes sense to come

1 back.

2 MR. FLYNN: I'll need at least 30 days, so --

3 THE COURT: 60 days?

4 MR. FLYNN: A 60-day date would be great.

5 THE COURT: How's September 17th? That's a
6 Friday.

7 MR. TALARICO: Fine with me, Judge.

8 MR. FLYNN: That works for me.

9 THE COURT: All right. So that will be at 8:45
10 and then we'll see what you guys want to do when you
11 come back. And are you withdrawing your motion
12 or ...

13 MR. FLYNN: I think that --

14 THE COURT: Or do you want me expressly to find
15 compliance based on representations in open court?

16 MR. FLYNN: I'm not requesting a hearing any
17 longer. I think we resolved the matter. So yeah,
18 I'll withdraw it.

19 THE COURT: All right. Motion's withdrawn. The
20 record still stands. I did find that you were in
21 compliance and we'll deal with the next step
22 whenever it comes up. But I will see you
23 September 17th and if you could draft the order.

24 MR. FLYNN: I will. Thank you, your Honor.

1 THE COURT: All right. Thank you.

2 Mr. Talarico, anything else?

3 MR. TALARICO: No, Judge, thank you for your
4 time.

5 THE COURT: All right. Thank you.

6 (Which were all the proceedings
7 had in the above-entitled cause
8 this date.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 STATE OF ILLINOIS }
2 COUNTY OF McHENRY } SS:
3

4 I, CRISTIN M. KELLY, an official Court
5 Reporter for the Circuit Court of McHenry County,
6 Twenty-Second Judicial Circuit of Illinois,
7 transcribed the electronic recording of the
8 proceeding in the above-entitled cause to the best
9 of my ability and based on the quality of the
10 recording, and I hereby certify the foregoing to be
11 a true and accurate transcript of said electronic
12 recording.
13
14

15 *Cristin M. Kelly*
16 Certified Shorthand Reporter
17 License No. 084-004529
18 Date: August 24, 2021
19
20
21
22
23
24