

1 STATE OF ILLINOIS)

2)

3 COUNTY OF McHENRY)

4 IN THE TWENTY-SECOND JUDICIAL CIRCUIT

5 McHENRY COUNTY, ILLINOIS

6 PAUL DULBERG,)

7 Plaintiff,)

8 vs.) No. 17 LA 377

9 THE LAW OFFICES OF THOMAS J.)

10 POPOVICH, P.C., and HANS MAST,)

11 Defendants.)

12 ELECTRONICALLY RECORDED REPORT OF

13 PROCEEDINGS had in the above-entitled cause before
14 the Honorable THOMAS A. MEYER, Judge of said Court
15 of McHenry County, Illinois, on the 5th day of
16 December, 2022, at the McHenry County Government
17 Center, 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 (Via Zoom),

24 On behalf of the Defendant.

1 THE COURT: All right. In the meantime, do we
2 have everybody on Dulberg?

3 MR. FLYNN: I believe so, your Honor.

4 THE COURT: Mr. Dulberg has, I think you can see
5 it, I tested my speakers. They work. I believe the
6 Court has my audio muted. I do not. I have done
7 nothing. So I don't know what the problem is. In
8 any event, although, I might think about it -- might
9 have thought about doing that, but in any event --
10 and that's because of the prior issues regarding the
11 recording of these proceedings.

12 In any event, Mr. Talarico, do you have the
13 records from the former attorneys? Do you have
14 everything?

15 MR. TALARICO: I have -- I have a response
16 from -- yes. I have response from Williams and
17 Clinton.

18 THE COURT: Okay. Are you satisfied they are
19 complete?

20 MR. TALARICO: I am.

21 THE COURT: Okay. Mr. Flynn, do you have a
22 motion?

23 MR. FLYNN: Yes, I do. And this relates to that
24 production. Judge, after we were on the record,

1 after the parties went back and forth on the
2 language of your order from November 9, Ms. Williams
3 and Mr. Clinton forwarded by email the records that
4 were at issue that had previously been tendered to
5 the Court and had been identified as responsive to
6 Mr. Talarico, Mr. Dulberg's subpoena. And what I
7 received were redacted copies, even though the
8 understanding was that unredacted copies would be
9 sent to me and to Mr. Talarico.

10 So they sent me a redacted copy. They sent
11 an unredacted and a redacted copy to Mr. Talarico.
12 So I emailed Ms. Williams and asked what was going
13 on, and she said, well, we have now determined that
14 those withheld documents are not responsive to the
15 subpoena, even though, as I indicated in my motion,
16 they identified them as being responsive before.

17 So -- so we filed a motion to enforce your
18 order from November 9. I've got the motion. I
19 don't know what to say other than that there was an
20 agreement. There were plenty of representations on
21 the record, and we should have these records.

22 THE COURT: Okay. Forgive me, but I'm confused.
23 So let me explain or tell you what I'm drawing from
24 this. After the fact, Clinton and company decided

1 that certain of their records were nonresponsive and
2 withheld them or redacted them or both?

3 MR. FLYNN: They were redacted.

4 THE COURT: All right. So -- but as far as the
5 documents are concerned, you guys have everything
6 you think you are entitled to.

7 MR. FLYNN: I think we had those in the first
8 place, Judge. The whole purpose of that hearing
9 was -- was relative to those documents. So I don't
10 know what the whole point of the November 9 hearing
11 was because we already had those -- your Honor had
12 copies of those for an in camera inspection which
13 never occurred. And then they decided, okay, well,
14 we are not going to produce the unredacted copies to
15 defense counsel, only to plaintiff's counsel
16 pursuant to a subpoena.

17 THE COURT: If -- if -- all right.
18 Mr. Talarico, what comment, if any, do you have?

19 MR. TALARICO: May I start, Judge, with happy
20 holidays --

21 THE COURT: Thank you.

22 MR. TALARICO: -- to you and Mr. Dulberg and
23 Mr. Flynn. And I'm sorry to hear that things are
24 going to be changing there as far as what kind of

1 cases you'll be hearing. I think -- well, I won't
2 tell you what I think, but -- okay.

3 Now, as far as -- first thing is there is a
4 motion that's just up. I want time to respond. I
5 mean -- but if you want me to tell you what I'm
6 thinking, that's easy. But I would like time to
7 respond to the motion so I have -- so I have it of
8 record.

9 THE COURT: Well, here is my -- let me walk
10 through a little of this.

11 The prior order says attorney-client and
12 work-product privileges are waived. Therefore, any
13 redactions based upon attorney-client privilege or
14 work product are inappropriate based on my order. I
15 think that's pretty black and white, and I covered
16 it, I think, extensively because I was concerned
17 about this issue. And I was concerned that Clintons
18 would be afraid of disclosing documents for fear of
19 a malpractice claim.

20 So I'm at a loss to see what -- what
21 remains at issue because my order is straightforward
22 and we addressed this. But Mr. Talarico, I'll let
23 you respond.

24 MR. TALARICO: Your Honor, what Ms. Clinton

1 redacted was nonresponsive answers. There were --
2 there were a time frame and a subject matter and
3 your order was -- and we waived all attorney-client
4 privilege and work product in response to the
5 subpoena. And Mr. -- Mr. Flynn received those.

6 THE COURT: But then she decided that -- all
7 right. So you are saying that the redactions
8 contain irrelevant information.

9 MR. TALARICO: Correct.

10 THE COURT: All right. And the -- if that's the
11 basis of your position, I don't think it's a valid
12 one because you don't make the determination of
13 relevance at this stage. Relevance is determined at
14 trial. And certainly, it may not be permitted at
15 trial, but --

16 MR. TALARICO: I'm sorry.

17 THE COURT: It's not a -- relevance is not an
18 objection I put a lot of weight on in the course of
19 written discovery.

20 MR. TALARICO: Judge, the word relevant -- I'm
21 not saying relevant.

22 THE COURT: Okay.

23 MR. TALARICO: Responsive. Responsive. That's
24 what we waived, what was responsive to the subpoena.

1 Anything and everything she had that was responsive,
2 and Mr. Flynn has received that.

3 THE COURT: But you got them too.

4 MR. TALARICO: Of course.

5 THE COURT: So he is being denied possession of
6 documents that you were given, and the contention is
7 that they -- what you were given isn't responsive.
8 I guess I'm having a hard time reconciling this
9 argument with the discussion we had, and I've also
10 reviewed those documents, although, I don't have
11 them in front of me right now. And that wasn't an
12 issue that jumped out at me as I read them.

13 So I really don't know where we are going
14 because responsive is kind of an odd objection. I
15 think that really is something that rests with the
16 defendant in this case, not you, on behalf of
17 Clinton.

18 MR. TALARICO: Well, Judge, I'm not objecting.
19 This is what Ms. Williams decided was responsive to
20 the subpoena, and she sent it to Mr. Flynn. Now,
21 what we are talking about as what's responsive and
22 not responsive is documents that are outside the
23 date range, outside the subject range, anything and
24 anything -- anything and everything that are not

1 responsive, we didn't waive. We waived everything
2 that's responsive. Anything that's from a year ago
3 that's in those documents is not responsive, and
4 she -- and she -- she struck that.

5 And I -- I (indiscernible) Mr. Flynn if he
6 has an issue, it's with her, not with me. I'm not
7 going to turn over documents that I wasn't ordered
8 to turn over. But we are only talking about things
9 that were stricken that were not responsive, dates
10 and subject matter. If they are talking about -- or
11 if their documents are in reference to something
12 other than what the subpoena called for which was
13 the deposition of Hans Mast on June, I believe 25,
14 2020, that's not -- that's not what we waived.

15 THE COURT: Okay. But then, if you have waived
16 your attorney-client and work-product privilege,
17 then there really doesn't seem to be a basis on
18 which you can withhold the documents, and I --

19 MR. TALARICO: Judge, we didn't waive -- I'm
20 sorry. I apologize.

21 THE COURT: Well, that's where I'm having a
22 problem.

23 MR. TALARICO: Judge, we didn't waive all
24 attorney-client. It was a limited waiver, if you

1 remember. It was limited to the responses to the
2 subpoena.

3 THE COURT: Those documents. No. No. I'm not
4 buying this. Mr. Flynn, what do you got?

5 MR. FLYNN: Same argument, your Honor. I mean,
6 these documents were tendered to the Court as being
7 responsive to that subpoena. There was a subpoena
8 response that Williams and Clinton served, and they
9 served an amended response.

10 THE COURT: Okay.

11 MR. FLYNN: We had a lengthy discussion on the
12 record. I have attached the transcript and the
13 order to my motion this morning. Now, they -- to
14 turn around in their third -- third swoop here and
15 saying, well, they are not responsive. Well, I
16 don't buy it either. Of course, I can't read the
17 documents because I -- they are redacted as far as
18 the version I got. But they can't have it both
19 ways.

20 THE COURT: All right. So Mr. Flynn, what's the
21 relief you're asking for?

22 MR. FLYNN: I didn't notice Ms. Clinton and
23 Mr. Williams -- I'm sorry, Mr. Clinton and
24 Ms. Williams on this motion because plaintiff has

1 copies of these records. They are pursuant to this
2 subpoena. I'm just asking that the Court order the
3 plaintiff to turn these over unredacted.

4 THE COURT: Okay. I'm going to grant that
5 request. I'm going to direct plaintiff to turn them
6 over to you in seven days, and -- because I -- we
7 have been through this and we have been through this
8 extensively, and I don't think nonresponsive is a
9 valid objection at this stage, particularly in light
10 of the fact that I have previously reviewed the
11 documents.

12 And responsiveness, I don't think that
13 that's an objection that the plaintiff is able to
14 make when we are talking about documents that were
15 produced by a third party. So they can't be
16 withheld, and since plaintiff has them, defendant
17 gets them. And the only bases under which I would
18 allow plaintiff to withhold them is if they breached
19 attorney-client or work-product privilege, but as we
20 have disclosed, that's been waived.

21 So plaintiff has seven days to turn them
22 over, and let's come back in ten days for status of
23 compliance. Ten days would take us to
24 December 15th, that's a Thursday. Does that day

1 work for both of you? 16th is fine too.

2 MR. FLYNN: The 15th is better for me, your
3 Honor, if that's okay.

4 MR. TALARICO: 16th is better for me.

5 THE COURT: All right. Let's check 16th. How
6 about 9:15 on the 16th?

7 MR. FLYNN: I have a 9:00 o'clock. Can we make
8 it say 9:30 or 9:45?

9 THE COURT: 9:30.

10 MR. FLYNN: Okay.

11 THE COURT: Sorry. I can't give you 10:00.

12 MR. FLYNN: And then there is the other matter,
13 Judge, the motion to exclude the Hans Mast
14 deposition. Plaintiff filed his --

15 THE COURT: All right. Let me switch gears for
16 a moment because Ms. Vernagallo and Ms. Polo are
17 waiting, and they have -- want something really
18 simple.

19 (Whereupon the afore-captioned
20 cause was recalled.)

21 THE COURT: All right. Now, we will go back to
22 Dulberg. Mr. Flynn, what were you saying?

23 MR. FLYNN: Yes, your Honor. The Court granted
24 the plaintiff leave to file a second amended motion

1 to exclude the Hans Mast deposition. We had some
2 extensive argument about the motion at the last
3 hearing. At the time, I didn't expect to file a
4 response, but after having received the second
5 amended motion that was filed after the hearing, and
6 despite my knee replacement, I decided -- I thought
7 I'd get something on record. So I did file a
8 response on November 30.

9 THE COURT: Okay. So Mr. Talarico?

10 MR. TALARICO: Judge, I'd like to -- I want to
11 file a reply.

12 THE COURT: All right.

13 MR. TALARICO: I'd like 14 days.

14 THE COURT: Sure. I'll give you 14 days. All
15 right. 14 days will give you until the 19th, and I
16 think one way or another, even if I'm gone, this is
17 more appropriately brought back in front of me. So
18 I can do the hearing at 9:30 on December 21, that is
19 a Wednesday. Does that work for you guys?

20 MR. FLYNN: That day works, Judge. May I just
21 address the request for the reply, though?

22 THE COURT: Yeah.

23 MR. FLYNN: Given that this is the second
24 amended motion, I mean, this -- I did file a

1 response, you know, not even pursuant to the
2 briefing schedule. I got it on file quickly.

3 We have a summary judgment motion pending.
4 The last thing that I want is for the dates to be
5 affected by any of these motions.

6 THE COURT: What's the date of your summary
7 judgment?

8 MR. FLYNN: It's -- the plaintiff's response is
9 due on December 28. The motion was originally filed
10 way back on September 15. So it's -- we have had an
11 extensive amount of time.

12 THE COURT: I won't be hearing the summary
13 judgment. So --

14 MR. FLYNN: Yeah. I understood there was some
15 comments being made before I left about your Honor's
16 handling the case or --

17 THE COURT: Well, after 13 years, they have
18 decided this is the worst place for me. So I'm
19 being moved to traffic, and then, Judge Berg is
20 taking over January 1. So it's -- I don't know
21 what's going to happen with the scheduling of your
22 summary judgment because he's going to be combining
23 his small claims call with a law division jury, and
24 I -- I question the practicality of that but that's

1 not my -- that's not my call.

2 MR. FLYNN: Well, then, I would request from the
3 chief judge that your Honor hear this motion through
4 since it's -- because of your familiarity with the
5 case over these many years.

6 THE COURT: Yeah, but I don't make the rules.
7 So --

8 MR. FLYNN: Sure. I understand.

9 THE COURT: Mr. Talarico, what did you want to
10 say?

11 MR. TALARICO: Yes, Judge. I was allowed to
12 file an amended motion, and Mr. Flynn has filed two
13 responses. The first one was before you, an oral
14 response, if you remember --

15 THE COURT: Yes.

16 MR. TALARICO: -- the transcript. And you said
17 to him, if you decide to do a written one -- he
18 called it a sur-response, I want to sur-reply.

19 THE COURT: Okay.

20 MR. TALARICO: He's had two shots at this
21 already.

22 THE COURT: You got it. You got it.

23 MR. TALARICO: But he's -- yes. Thank you.

24 THE COURT: So can we do the hearing on the Hans

1 Mast deposition on the 21st?

2 MR. TALARICO: Judge, that's -- can we do it the
3 9th? It's going to affect my time no matter what.
4 Can it be done closer to Christmas, like the 23rd
5 or -- the 23rd I can do.

6 THE COURT: Nope. Nope.

7 MR. FLYNN: The 21st works for me.

8 THE COURT: The 21st is my last day before
9 vacation. And as much as I love you guys, I'm not
10 coming back for you. It will -- yeah, we got to get
11 it done on the 21st, and -- because, frankly, given
12 the status of this motion, I can't imagine Judge
13 Berg not sending it back to me to complete it.

14 So I think for -- it's all in our best
15 interests to get this done in front of me before the
16 21st. So that's why I'm picking 9:30 on the 21st.
17 Can we do that?

18 MR. FLYNN: That works for me, Judge.

19 MR. TALARICO: Judge, I'll move things around.

20 THE COURT: Okay. I mean, is there a time that
21 day that works better?

22 MR. TALARICO: I have to move things around no
23 matter what.

24 THE COURT: You know what, I can do -- I can do

1 it later. I've got -- I could do it at 10:00
2 o'clock or -- also.

3 MR. FLYNN: What is the other date that we are
4 coming back, Judge?

5 THE COURT: I don't know.

6 THE CLERK: December 16.

7 THE COURT: The 15th?

8 THE CLERK: 16th.

9 THE COURT: 16th we are coming back.

10 MR. FLYNN: I mean, could this be done by then?
11 I mean, I've got my response on file, given the knee
12 replacement and Thanksgiving holiday, a couple of
13 days. So --

14 THE COURT: We can --

15 MR. TALARICO: I'm sorry.

16 THE COURT: Why don't we do both hearings at the
17 same time rather than come back on the 16th. I --
18 that makes sense since it's only four days -- five
19 days. Can we do them both on the 21st?

20 MR. FLYNN: Sure.

21 MR. TALARICO: Yeah. Yes, Judge.

22 THE COURT: What time do you want because I'm
23 free from 10:00 o'clock on?

24 MR. TALARICO: Like I said, whatever is more

1 convenient for Mr. Flynn. I have to move things
2 around one way or the other. Morning or afternoon.

3 MR. FLYNN: I'm wide open on the 21st.

4 THE COURT: All right. Why don't we say at
5 10:00 o'clock. And Mr. Flynn, I would ask that you
6 prepare the order --

7 MR. FLYNN: I will.

8 THE COURT: -- and send that in. As soon as I
9 see it, I'll sign it.

10 MR. FLYNN: Okay.

11 THE COURT: All right.

12 MR. FLYNN: Thank you, your Honor.

13 THE COURT: Okay. Thank you. Anything else?

14 MR. TALARICO: No. Just happy holidays to
15 everyone.

16 THE COURT: Thanks.

17 MR. FLYNN: Happy holidays.

18 THE COURT: Thank you. All right. We will see
19 you the 21st.

20 MR. TALARICO: All right. Thank you.

21 (Which were all the proceedings
22 had in the above-entitled cause
23 this date.)
24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF McHENRY)
4

5 I, JUDY CARLSON, an official Court Reporter
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7 Twenty-Second Judicial Circuit of Illinois,
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