IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN
****

RAYMOND FINN, as the personal representative of the survivors of SAVANNAH FINN, Deceased,	**CASE NO. ST-16-CV-752**
Plaintiff,	**ACTION FOR WRONGFUL DEATH AND SURVIVAL DAMAGES**
v.	
PETER ADAMS and ADAMS RIB, LLC,	**JURY TRIAL DEMANDED**
Defendants.	

MEMORANDUM OPINION AND ORDER

Before the Court is Plaintiff's Motion to Compel Discovery From Peter Adams and Adams Rib, LLC and Memorandum in Support Thereof, which was filed on June 12, 2017. Defendants filed an Opposition on June 12, 2017, and Plaintiff filed a Reply on June 23, 2017. Plaintiff requests that the Court order Defendants to produce the tax returns of Peter Adams, and the tax returns and financials of Adams Rib, LLC. Plaintiff also seeks answers to Interrogatory 18(b), 18(d), and 19, and supplementation to Interrogatory Response 8. Defendants assert that the tax returns and financials are confidential, proprietary, and ultimately non-discoverable; regarding the interrogatory responses, Defendants claim that they informed Plaintiff of the inability to provide those answers until early July 2017 due to Adams being out of the country. The Court will grant Plaintiff's Motion to Compel.

I. BACKGROUND

Defendant Adams Rib, LLC ("ARLLC") owns a parcel of real property located at 9-2-30, 9-2-15, and 9-2-16 Estate Peterborg, St. Thomas, V.I., with Defendant Peter Adams, in some capacity, overseeing activities on the premises.[1] According to Plaintiff Raymond Finn, Savannah Finn, the deceased in this case, was unexpectedly swept away by rough waves while located on ARLLC's premises.[2] She was declared officially dead on August 16, 2016.[3] On December 20, 2016, Plaintiff, as representative of Savannah,[4] initiated this suit and allege premise liability on the part of ARLLC and negligence on the part of Adams.[5]

[1] First Am. Compl. ¶¶ 6-7; Answer ¶ 7.
[2] First Am. Compl. ¶ 8.
[3] First Am. Compl. ¶ 9.
[4] Because Plaintiff Raymond Finn and the deceased have the same last name, their first names are used to avoid confusion.
[5] First Am. Compl. ¶¶ 20, 29.

A. Rule 34 Document Requests

In the Motion to Compel, Plaintiff specifies three specific Rule 34 document requests that have yet to be answered:

> 12. Please produce all tax returns for Adams Rib LLC.
>
> 13. Please produce all personal tax returns for Peter Adams since 2004 through the current date.
>
> 14. Please produce all accounting records for Adams Rib LLC generated since 2004.[6]

Plaintiff requests these documents for the purpose of examining the expenses of ARLLC and Adams incurred on maintenance and improvements to the property, as well as to examine any potential write-offs by Adams for expenses related to his property, such as travel to and from the Virgin Islands.[7]

Regarding these requests, Defendants argue that the tax returns are simply non-discoverable and provided the same answer for all three requests:

> "Objection. The information sought is not reasonably calculated to lead to the discovery of any admissible evidence. Defendant further objects on the grounds of relevancy and confidentiality."[8]

Alternatively, Defendants provided Plaintiff with a letter written by Defendants' accountant and believes that this letter answers any questions that Plaintiff may have.[9]

B. Rule 33 Interrogatory Answers and Supplementation

In his Motion, Plaintiff also seeks answers and supplementation to certain Interrogatory questions. Specifically, Plaintiff seeks supplementation to Defendants' answer to the following:

> 8. Please state your factual basis for your belief that the death of Savannah Finn as alleged in the First Amended Complaint was caused by the acts or omissions of third parties over which you have no control as alleged in your second affirmative defense. For each party please state the name and address of the third party, as well as why you think said party may be liable for the incident.[10]

---

[6] Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC and Mem. in Support Thereof at 2-3.
[7] *Id.*
[8] *Id.* Ex. 1; Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC at 1-2.
[9] Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC Ex. A.
[10] Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC and Mem. in Support Thereof at 3, Ex. 2.

Although Defendants provided a small list of persons, they failed to completely answer the question, according to Plaintiff. Defendants' Response to the question was that the information sought was "created in anticipation" and is "the work product and mental impressions of defense counsel," thereby making the information privileged, and that the information sought is "impeachment information," which is not required by the rules of discovery.[11]

Lastly, Plaintiff requests an answer to the following three Interrogatory questions:

> 18. Regarding Adams Rib, LLC, please state the following:
> ***
>
> b. List all of its members at any time since it was formed, giving the year each person or entity was a member.
> ***
>
> d. Please state the name of all employees of Adams Rib, LLC since 2004.
>
> ------
>
> 19. Please state all dates that any member of Adams Rib LLC, or family members of the LLC members have visited the Peterborg property owned by the LLC of the incident since the property was first purchased [sic] by the LLC.[12]

Defendants argue that they informed Plaintiff that Adams was out of the country until early July 2017, and that answers or supplements to those questions could not be provided prior to that date.[13]

II. STANDARD

Virgin Islands Rule of Civil Procedure 26(b) provides that a party may obtain discovery regarding any nonprivileged matter that is relevant to a party's claim or defense. Virgin Islands Rule 26(b) specifies that information does not need to be admissible as evidence to be discoverable.

A. Scope of Virgin Islands Rule of Civil Procedure 26(b).

On April 3, 2017, the Supreme Court of the Virgin Islands adopted the Virgin Islands Rules of Civil Procedure, which went into effect on March 31, 2017.[14] Addressing the scope of discovery, Virgin Islands Rule 26(b)(1) states the following:

> **(1)** ***Scope in General.*** Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's

---

[11] *Id.* Ex. 2; Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC at 1.
[12] Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC and Mem. in Support Thereof at 3, Ex. 2.
[13] Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC at 2.
[14] *See In re Adoption of the VI Rules of Civil Procedure*, Promulgation No. 2017-001, 2017 V.I. Supreme LEXIS 22 (V.I. Apr. 3, 2017).

> claim or defense. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Previously, when a Superior Court rule was not applicable, the Superior Court operated under the Federal Rules of Civil Procedure, pursuant to the now-amended Superior Court Rule 7. Pursuant to *Vanterpool v. Government of the Virgin Islands*,[15] the Court used the 2010 edition of Federal Rule of Civil Procedure 26. While providing that the relevant information does not need to be admissible as evidence to be discoverable, Federal Rule 26(b) (2010) limits the scope of discovery by requiring that requested information must at least appear to be "reasonably calculated to lead to the discovery of admissible evidence." However, the newly adopted Virgin Islands Rule 26(b) does not include this limitation. Therefore, the Court determines that Virgin Island Rule 26(b)(1) further expands the broad scope of discovery than that allowed by Federal Rule 26(b)(1) (2010). Under a plain meaning reading of Virgin Islands Rule 26(b)(1), the singular factor for determining whether information is discoverable is its relevance.

The Court also notes that the Virgin Islands Rules of Civil Procedure closely mirror the Federal Rules of Civil Procedure. The latest version of Federal Rule 26(b)(1), promulgated on April 15, 2015 and effective December 1, 2015, also does not include the "reasonably calculated to lead to the discovery of admissible information" requirement but includes other considerations such as that discovery be "proportional to the needs of the case" and "the parties' resources." Considering that the Virgin Islands Rules were adopted after the latest Federal Rules were promulgated, the Court presumes the Advisory Committee was aware of the 2015 Federal Rules when the Virgin Islands Rules were drafted. Because the Advisory Committee decided to similarly exclude the "reasonably calculated to lead to discovery" phrase while also not including conditions as to the proportional needs of a case, the Court is further convinced that Virgin Islands Rule 26(b)(1) intends to significantly enlarge the scope of permissible discovery than that of its predecessor, Federal Rule 26(b)(1) (2010).

B. Determining Relevance.

Virgin Islands Rule of Evidence 401 defines relevant evidence as evidence tending to make a fact more or less probable than it would be without the evidence and of consequence in determining the action. "The test for relevance is whether proffered evidence has 'any tendency' to make the existence of any fact that is 'of consequence' to the determination of the action 'more probable or less probable than it would be without the evidence.'"[16] The "any tendency" language makes the standard for Rule 401 relevance very easy to satisfy.[17] "Rule 401 does not require the evidence to be dispositive of a fact in issue: the bar is much lower and simply requires that the existence (or non-existence) of such fact it make it more or less likely."[18]

---

[15] 63 V.I. 563, 583 n.10 (V.I. 2015) (requiring that the Superior Court apply the edition of the federal rules as they were adopted by Virgin Islands Supreme Court decisions).

[16] *Thomas v. People of the V.I.*, 60 V.I. 183, 196 (V.I. 2013) (citing Fed. R. Evid. 401). While the V.I. Supreme Court cites to Federal Rule of Evidence 401, the Court finds that the analysis provided by *Thomas* to be convincing because Federal Rule of Evidence 401 and Virgin Islands Rule of Evidence 401 has identical text.

[17] *Id.*

[18] *Ostalaza v. People of the V.I.*, 58 V.I. 531, 564 (V.I. 2013).

III. DISCUSSION

A. The Parties satisfied the Meet and Confer requirement.

Rule 37(a)(1) of the Virgin Islands Rules requires that a motion to compel discovery contain a "certificate that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Pursuant to Rule 37-1(b) and (c), it is the responsibility of the requesting party to provide a letter to opposing counsel detailing the discovery issues in dispute, to make any necessary arrangements for a conference, and to meet in person, if practicable.

The meet and confer requirement is met here. Plaintiff provided a Rule 37(a)(1) certificate in the Motion to Compel.[19] Further, Plaintiff explained that he sent two separate letters to Defendants (attaching them as Exhibits 3, 4, and 5) detailing the deficiencies in Defendants' responses, as well as had several calls with and exchanged several emails with Defendants, to remedy the remaining discovery issues.[20] Plaintiff also states that several discovery issues were solved through these communications, but discovery issues still remain, which resulted in the current matter before the Court.[21] In their Opposition, Defendants' do not contest any of the above assertions made by Plaintiff but rather mistakenly state that Plaintiff failed to insert a Rule 37(a)(1) certificate in his Motion to Compel.[22]

Based on the purported communications between the parties, the Court concludes that Plaintiff, as the moving party, as satisfied his responsibility under Rules 37(a)(1) and 37-1(b)-(c).

B. Plaintiff is entitled to receive Defendants' tax returns and financials.

The tax returns of Adams and ARLLC, as well as the financials of ARLLC, are relevant to Plaintiff's claim. Plaintiff asserts a claim of premises liability on behalf of ARLLC; in other words, Plaintiff claims that ARLLC had a duty to ensure that the premises here were "reasonably safe" and did not have "unreasonable risks of harm or unsafe conditions."[23] Regarding Adams, Plaintiff asserts a claim of negligence and argues that Adams, "by undertaking the responsibility for being in charge of the property . . . had a duty to inspect the [p]remises to make sure it was safe . . . and to warn of any unreasonable risks of harm he knew about."[24] Knowing the amount of expenses incurred for maintenance and repairs to the premises on behalf of ARLLC and Adams is relevant to both the claim of premise liability and negligence. Whether or not the property was maintained and improved upon in a safe and appropriate manner has "any tendency" to make Defendants' potential negligence "more probable or less probable." The Court concludes that the requested documents are relevant under Rule 26(b)(1) of the Virgin Islands Rules.

---

[19] Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC and Mem. in Support Thereof at 4.
[20] *Id.* at 1-2.
[21] *Id.* at 2.
[22] Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC at 1.
[23] First Am. Compl. ¶ 20.
[24] First Am. Compl. ¶ 30-31.

Further, as the rule states, the tax returns and financials do not necessarily need to be admissible to be discoverable; rather, the documents need be nonprivileged and relevant. Defendant claims no legal privilege to these documents, and, as noted earlier, the documents are relevant. However, the Court determines, and Plaintiff in his Motion agrees, that the income sections of the tax returns should be redacted. Therefore, a redacted version of Defendants' tax returns and financials are discoverable under Rule 26(b)(1).

C. Defendants must answer and supplement the Interrogatories in question.

The information sought by Interrogatory 18(b), 18(d), and 19 is relevant and these three interrogatories must be supplemented. The answers sought by Plaintiff are nonprivileged and relevant to Plaintiff's claims of premise liability and negligence. Further, Defendants have not specifically opposed providing supplementation to these questions; in their Opposition, Defendants merely stated that the supplemental responses could not be completed or notarized prior to early July.[25] Therefore, these Responses need to be completed by Defendants.

Interrogatory 8 also must be supplemented by Defendants. Specifically, Defendants failed to provide why they believe the third parties that they listed in the original Interrogatory Response "may be liable for the incident."[26] The answer to this Interrogatory is relevant to Plaintiff's claim for both premise liability and negligence. Though Defendants objected to the question, they did list a few third parties in their Response while claiming the work product privilege as a justification to their objection.[27] However, other than stating that Plaintiff sought "information and/or documents gathered and/or created in anticipation of litigation," Defendants made no argument as to why the information should be considered work product. A party asserting the work product privilege bears the burden of showing why such information should be protected,[28] and the conclusory statements made by Defendants are not enough. Consequently, because the information requested is relevant and nonprivileged, Defendants must answer the Interrogatory requests in full.

IV. CONCLUSION

Rule 26(b)(1) broadly allows for "discovery regarding any nonprivileged matter that is relevant to any party's claim or defense," whether or not that discovery is admissible as evidence. The information requested by Plaintiff falls within this delineation. Therefore, Plaintiff's Motion to Compel will be granted, and Defendants will provide the documents and responses by no later than March 1, 2018. Accordingly, it is hereby:

---

[25] Defs.' Opp'n to Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC at 2.
[26] Pl.'s Mot. to Compel Disc. from Peter Adams and Adams Rib, LLC and Mem. in Support Thereof at 3, Ex. 2.
[27] *Id.* Ex. 2.
[28] *See Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 138 (3d Cir. 2000) ("A party claiming work-product immunity bears the burden of showing that the materials in question were prepared in the course of preparation for possible litigation") (internal quotations omitted); *People of the Virgin Islands v. Carty*, 2010 V.I. LEXIS 5, at *4 (Super. Ct. Feb. 16, 2010) (stating that party asserting the privilege must bear the burden of showing that the material was prepared in anticipation of litigation).

ORDERED that Plaintiff's Motion to Compel Discovery From Peter Adams and Adams Rib, LLC and Memorandum in Support Thereof is **GRANTED**; it is further

ORDERED that, **on or before February 1, 2018**, Defendant Peter Adams **SHALL** provide to Plaintiff, his personal income tax returns from 2004 to date with all references to income redacted; and it is further

ORDERED that, **on or before February 1, 2018**, Defendant Adams Rib, LLC **SHALL** provide to Plaintiff, its tax returns and financials, with all references to income redacted; and it is further

ORDERED that **on or before February 1, 2018**, Defendants shall respond fully and completely to Interrogatory 18(b), 18(d), and 19, and shall supplement their response to Interrogatory 8; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to Attorney Joel H. Holt and Attorney Douglas Capdeville.

Dated: November 28, 2017

Denise M. Francois
DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Clerk of the Court

BY: _______________
LORI BOYNES-TYSON
Chief Deputy Clerk 11/29/2017