

CAUSE NO. DC-13-09969

JO N. HOPPER,

Plaintiff,

v.

LAURA S. WASSMER AND
STEPHEN B. HOPPER,

Defendants.

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IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

44th JUDICIAL DISTRICT

PLAINTIFF’S MOTION TO COMPEL DEPOSITION OF CHRISTOPHER MCNEILL

Plaintiff Jo N. Hopper (“Plaintiff”) files this *Motion to Compel Deposition of Christopher McNeill* (“Motion”). In support thereof, Plaintiff would respectfully show this Court as follows:

1. On August 30, 2013, Plaintiff filed the instant litigation asserting claims for breach of contract, or in the alternative, for partition of property or proceeds from sale. The essence of the breach of contract claim was that the parties, through their respective attorneys, had reached an agreement, which Defendants breached, as to the division of certain wine and golf clubs (some of the property at issue in this case) in which Plaintiff owns a 50% undivided interest and Defendants collectively own a 50% undivided interest (the “Agreement”). The attorney for Defendants who reached the Agreement on their behalves was Mr. McNeill.

2. On January 28, 2016, Defendants filed a Motion for Partial Summary Judgment on Plaintiff’s Causes of Action for Breach of Contract and Specific Performance (“MPSJ”). The MPSJ also put front and center the issue of whether the parties had reached an Agreement.

3. As evidenced in Plaintiff’s Response to Defendants’ MPSJ (the “Response”), filed on February 19, 2016, Defendants’ counsel, Christopher McNeill (“Mr. McNeill”), has material, non-privileged knowledge regarding whether the Agreement was, in fact, reached and the terms thereof. Plaintiff fully incorporates herein by reference the Response.

4. Further, Defendant Laura Hopper was deposed on February 5, 2016. At her deposition, Ms. Hopper testified that, in connection with the Agreement, Mr. McNeill made statements on her behalf to Plaintiff's prior counsel, Mr. Jennings, that Mr. McNeill was not authorized to make. A true and correct copy of excerpts from Ms. Hopper's deposition are attached hereto as **Exhibit A** and fully incorporated herein by reference. Plaintiff is entitled to depose Mr. McNeill regarding his authority to make these statements and any other non-privileged communications regarding the Agreement.

5. Additionally, Mr. McNeill is listed on Plaintiff's Responses to Defendants' Request for Disclosure as a person with knowledge of relevant facts.

6. On February 17, 2016, Plaintiff's counsel presented Mr. McNeill with a choice, either agree to be deposed or, in an effort to avoid the need to depose Mr. McNeill, Plaintiff's counsel proposed entering into a Rule 11 Agreement (the "February 17 Rule 11 Agreement") which provided that (1) Mr. McNeill would agree that he would not be called as a witness at trial by Defendants or their counsel, other than for the sole purpose of testifying as an expert on the issue of attorney's fees, and (2) Defendants and their counsel would not object at trial in the above-referenced case to the admissibility or authenticity of the affidavit (previously provided by Mr. McNeill on October 3, 2013). That affidavit from Mr. McNeill confirmed that he had authority to send an email acceptance of an offer that was part of the Agreement. In consideration of that agreement, Plaintiff would agree not to depose Mr. McNeill in this case. A true and correct copy of the February 17 Rule 11 Agreement is attached hereto as **Exhibit B** and fully incorporated herein by reference.

7. Mr. McNeill responded later on February 17, 2016, that he could not agree to the February 17 Rule 11 Agreement (the "February 17 McNeill Email"), but would also not agree to

be deposed. A true and correct copy of the February 17 McNeill Email is attached hereto as **Exhibit C** and fully incorporated herein by reference.

8. As a result of this refusal, on February 17, 2016, Plaintiff served Defendants, through Mr. McNeill, with a notice of deposition for Mr. McNeill to be deposed on February 20, 2016 (the “McNeill Deposition Notice”).

9. On February 18, 2016, Mr. McNeill filed a Motion to Quash the McNeill Deposition Notice (the “Motion to Quash”).

10. Mr. McNeill offers no explanation for why he would not agree either to be deposed or agree that he would not be called as a witness on any matter other than attorney’s fees, as set out in the February 17 Rule 11 Agreement, and yet Mr. McNeill claims in the Motion to Quash that any deposition of him would be “largely if not entirely irrelevant as to any admissible evidence regarding this dispute.” Motion to Quash at 2. Either Mr. McNeill has relevant admissible evidence, in which case he should be deposed, or he does not, in which case he should not be able to testify at trial.

11. Given that Mr. McNeill clearly has non-privileged information concerning a central issue in this case, Plaintiff is entitled to depose him in this matter unless Mr. McNeill will commit that he will not be called as a fact witness at the trial on any issue other than attorneys’ fees.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

- (a) This Court grant this Motion; and
- (b) Grant Plaintiff such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Dated: February 18, 2016.

Respectfully submitted,

LOEWINSOHN FLEGLE DEARY, L.L.P.

By: /s/ Alan S. Loewinsohn

ALAN S. LOEWINSOHN

State Bar No. 12481600

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JIM L. FLEGLE

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12377 Merit Drive, Suite 900

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(214) 572-1717 - Facsimile

COUNSEL FOR PLAINTIFF

CERTIFICATE OF CONFERENCE

I certify that I have conferred with opposing counsel regarding the relief sought in this Motion but an agreement could not be reached.

/s/ Alan S. Loewinsohn

Alan S. Loewinsohn

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record via e-filing this 18th day of February, 2016:

Christopher M. McNeill
BLOCK & GARDEN, LLP
Sterling Plaza
5949 Sherry Lane, Suite 900
Dallas, Texas 75225

Anthony L. Vitullo
Fee, Smith, Sharp & Vitullo, LLP
13155 Noel Road, Suite 1000
Dallas, Texas 75240

/s/ Kerry Schonwald

Kerry Schonwald

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CAUSE NO. DC-13-09969

JO N. HOPPER,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	44TH JUDICIAL DISTRICT
	§	
LAURA S. WASSMER and	§	
STEPHEN B. HOPPER,	§	
	§	
Defendants.	§	DALLAS COUNTY, TEXAS

ORAL & VIDEOTAPED DEPOSITION OF
LAURA S. WASSMER
FEBRUARY 5, 2016

ORAL & VIDEOTAPED DEPOSITION OF LAURA S. WASSMER,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on February 5, 2016, from 12:40 p.m. to
2:11 p.m., before James M. Shaw, RMR, Certified Shorthand
Reporter No. 1694, in and for the State of Texas,
reported by computerized stenotype machine at the Law
Offices of Fee, Smith, Sharp & Vitullo, LLP, Three
Galleria Tower, 13155 Noel Road, Suite 1000, Dallas,
Texas 75240, pursuant to the Texas Rules of Civil
Procedure and the provisions stated on the record or
attached hereto.

EXHIBIT

A

1 Q. Well, be more specific, please.

2 A. So with regard to the Rule 11 agreement, the
3 amount of time that it would take to divide, pick up,
4 transfer assets for wine, golf clubs, household
5 furnishings, anything that was discussed, I was not
6 necessarily in agreement with the time frames that were
7 being discussed.

8 Q. What specifically did Mr. McNeill say orally or
9 in writing on your behalf that you now claim he was not
10 authorized to say?

11 A. I -- I don't have it in front of me.

12 Q. Well, are you saying this is some -- a
13 document --

14 A. Yes.

15 Q. -- that he was not authorized to say?

16 A. It was discussions between he and Mr. Jennings,
17 and I did not necessarily agree with some of the
18 discussions that they were having.

19 Q. Well, what specifically do you claim
20 Mr. McNeill said that he was not authorized to say?

21 A. I would have to look at the specific document
22 to tell you. I don't -- I don't know if it's in front of
23 me or not.

24 Q. Well, why don't you look and see, please.

25 MR. LOEWINSOHN: Chris, I guess I'm going

1 to have to depose you before the summary judgment in
2 light of her testimony.

3 MR. McNEILL: We can talk about that later.

4 A. I did not agree with this --

5 Q. (BY MR. LOEWINSOHN) Excuse me. If you're
6 looking at a document, tell me which one.

7 A. I'm looking at Exhibit 20 where it says,
8 Mr. Jennings, Since JP Morgan has unilaterally taken it
9 upon itself to distribute such assets in undivided
10 interests, my clients are agreeable to dividing the wine
11 and golf club collections per your proposal.

12 I'm not sure what that proposal included, but
13 if that proposal included the statements that the wine
14 and the golf clubs would be picked up within five days or
15 three days or within ten days or whatever it seemed like
16 all the strings attached were, I was not agreeable to
17 that at any point in time because logistically that did
18 not work for me living in Kansas City.

19 Q. Anything else?

20 A. No.

21 Q. Did anyone ever communicate, to your knowledge,
22 orally or in writing to Mrs. Hopper or her attorney that
23 to any extent any statement being made by Mr. McNeill
24 that he was not authorized to make?

25 A. I believe that this -- those conversations were

★ ★ ★
LOEWINSOHN FLEGLE DEARY
L · L · P

February 17, 2016

VIA EMAIL

Christopher M. McNeill
BLOCK & GARDEN, LLP
Sterling Plaza
5949 Sherry Lane, Suite 900
Dallas, Texas 75225

Re: *Jo N. Hopper v. Laura S. Wassmer and Stephen B. Hopper*; Cause No.
DC-13-09969 pending in the 44th District Court, Dallas County, Texas

Dear Chris:

Pursuant to Texas Rule of Civil Procedure 11, Plaintiff Jo Hopper (“Hopper”) and Stephen Hopper and Laura Wassmer (collectively, the “Heirs”) through their undersigned counsel, who represent by their signing below they have express authority from their clients to enter into this Rule 11 Agreement, agree as follows:

- (1) Christopher McNeill will not be called as a witness at trial by their Heirs or their counsel, other than for the sole purpose of testifying as an expert on the issue of attorneys’ fees.
- (2) Laura Wassmer and Stephen B. Hopper and their counsel will not object at trial in the above-referenced case to the admissibility or authenticity of the affidavit, a true and correct copy of which is attached hereto as Exhibit A.
- (3) In consideration of this agreement, Plaintiff will not depose Christopher McNeill.

If this agreement is acceptable, please sign below and return this document to me for filing with the Court.

Christopher McNeill
Counsel for Stephen B. Hopper and
Laura S. Wassmer

Alan S. Loewinsohn
Counsel for Plaintiff Jo Hopper

EXHIBIT

B

CAUSE NO. DC-13-09969

JO N. HOPPER,
Plaintiff,

v.

LAURA S. WASSMER and
STEPHEN B. HOPPER,
Defendants.

STATE OF TEXAS

DALLAS COUNTY

§ IN THE DISTRICT COURT
§
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§ 44TH JUDICIAL DISTRICT
§
§
§ DALLAS COUNTY, TEXAS

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AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Christopher M. McNeill, known to me to be the person whose signature appears below, and upon his oath duly deposed and said:

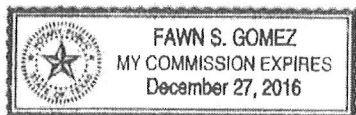
"I, Christopher M. McNeill, am over twenty-one (21) years of age and competent to give this declaration and do hereby make the following statements to be true to my knowledge and belief under penalty of perjury in accordance with the laws of the State of Texas:

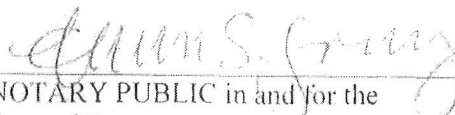
1. Attached hereto is a true and correct copy of the email communication that I sent to Mr. Jim Jennings and others on August 13, 2013. At the time I sent such email communication, I had been authorized by my law firm's clients, Dr. Stephen B. Hopper and Ms. Laura S. Wassmer, to convey the information set forth in such email communication to Mr. Jennings and the other recipients of such email communication."

Further affiant sayeth naught.


Christopher M. McNeill

This instrument was personally acknowledged before me on the 3rd day of October 2013, by Christopher M. McNeill.




NOTARY PUBLIC in and for the
State of Texas

My Commission Expires: 12-27-2016

Alan Loewinsohn

From: Christopher McNeill <McNeill@bgvllp.com>
Sent: Wednesday, February 17, 2016 5:01 PM
To: Alan Loewinsohn
Subject: RE: Hopper - Rule 11

And I said at the time we can discuss it later, and you waited 11 days (and three days before your MSJ response is due) to revisit the issue. I cannot agree to your proposed Rule 11 agreement. I also am not willing to voluntarily present myself for deposition in the partition lawsuit, on Monday or otherwise. If you desire to proceed down this path, we will respectfully have to take it up with the court.

With regard to the issue regarding Dr. Hopper's notes, as I stated at his deposition those were prepared for counsel the week of his deposition. They are privileged and I cannot voluntarily produce them. You may put me down as opposed if you file a motion to compel.

Christopher M. McNeill

Block Garden & McNeill, LLP
Sterling Plaza
5949 Sherry Lane, Suite 900
Dallas, TX 75225
Direct: 214-866-0994
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Website: <http://www.bgvllp.com>
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From: Alan Loewinsohn [mailto:alanl@lfdlaw.com]
Sent: Wednesday, February 17, 2016 4:40 PM
To: Christopher McNeill <McNeill@bgvllp.com>
Subject: RE: Hopper - Rule 11

Also

I told you at the depo of your clients I needed to depose you.

Alan Loewinsohn



Loewinsohn Flegle Deary LLP
12377 Merit Dr Suite 900
Dallas Texas 75251

214-572-1700
www.lfdlaw.com

Alanl@lfdlaw.com

From: Christopher McNeill [<mailto:McNeill@bgvllp.com>]
Sent: Wednesday, February 17, 2016 4:35 PM
To: Alan Loewinsohn <alanl@lfdlaw.com>
Cc: Debbie Harris <debbieh@lfdlaw.com>
Subject: RE: Hopper - Rule 11

Alan,

We can discuss this matter at Mrs. Hopper's deposition on Friday. There is no need to set an arbitrary deadline requiring me to evaluate and respond to your demand on barely two hours' notice.

Christopher M. McNeill

Block Garden & McNeill, LLP
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From: Alan Loewinsohn [<mailto:alanl@lfdlaw.com>]
Sent: Wednesday, February 17, 2016 2:41 PM
To: Christopher McNeill <McNeill@bgvllp.com>
Cc: Debbie Harris <debbieh@lfdlaw.com>
Subject: FW: Hopper - Rule 11

Chris

If we are going to avoid the need to depose you I need the attached rule 11 signed by 5 pm today.

Thank you

Alan Loewinsohn
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Alanl@lfdlaw.com

From: Debbie Harris
Sent: Wednesday, February 17, 2016 2:40 PM
To: Alan Loewinsohn <alanl@lfdlaw.com>
Subject: Hopper - Rule 11

Debbie Harris

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