

CAUSE NO. DC-13-09969

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

**DEFENDANTS LAURA S. WASSMER’S AND STEPHEN B. HOPPER’S
MOTION TO QUASH DEPOSITION NOTICES**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW LAURA S. WASSMER and STEPHEN B. HOPPER (“Defendants”), defendants in the above referenced lawsuit, and ask the Court to protect them from compliance with Plaintiff Jo N. Hopper’s (“Plaintiff”) deposition notices.

A. INTRODUCTION

1. Plaintiff is Jo N. Hopper. Defendants are Laura S. Wassmer and Stephen B. Hopper.

2. Plaintiff has sued Defendants seeking partition or, in the alternative, sale of certain personal property located in Dallas County. Defendants have asserted a counterclaim against Plaintiff seeking partition or, in the alternative, sale of certain additional personal property located in Dallas County. Plaintiff has also alleged a breach of contract claim against Defendants relating to storage fees for certain of such personal property.

3. Discovery in this suit is governed by an Agreed Amended Scheduling Order entered by the Court on September 30, 2015. By prior agreement of the parties, the discovery period is currently set to close on January 29, 2016, and the deadline to file dispositive motions is currently set at February 8, 2016.

4. Pursuant to the Agreed Amended Scheduling Order, this case is set for non-jury trial on March 28, 2016.

5. On November 18, 2015, Plaintiff served Defendants (through the undersigned counsel) with oral deposition notices for Laura S. Wassmer to occur on December 10, 2015 and for Stephen B. Hopper to occur on December 11, 2015. Copies of these notices are attached to this motion as Exhibit A.

B. FACTS

6. This case is an offshoot from a dispute between the parties to this lawsuit and JPMorgan Chase Bank, N.A., in its capacity as independent administrator, regarding the estate of Max D. Hopper that has been pending before the Dallas County Probate Court No. 3 for five years or more. Plaintiff is Max D. Hopper's surviving spouse, and the Defendants are Max D. Hopper's only children from a prior marriage.

7. The independent administrator distributed a portion of the personal property at issue in this lawsuit (the golf club and wine collections) to the parties in undivided interests in 2013. The remainder of the personal property at issue in this lawsuit (the household furnishings and items) was distributed by the independent administrator to the parties in undivided interests in February 2015. The facts at issue in this case are inexplicably intertwined with those at issue in the probate proceedings. For example, one issue at controversy in the probate proceedings is the parties' respective responsibility for the storage costs for the golf club and wine collections *prior to* their distribution in undivided interests by the independent administrator; similarly, one issue at controversy in this case is the parties' respective responsibility for the storage costs for the golf club and wine collections *after* their distribution in undivided interests by the independent administrator.

8. To say that the probate proceedings have been extremely litigious is unfortunately a gross understatement. While the parties have on multiple occasions discussed an amicable division of the personal property subject to this case, like ships circling each other in the night they have come close on more than one occasion but have as of yet have been unable to reach any agreement.

9. Plaintiff's unilateral selection of the deposition dates for the Defendants is but another example of the unnecessary confrontation that has been inherent in the probate proceedings and now, in this case. On November 13, 2015 (just five days prior to serving the deposition notices), Plaintiff's counsel emailed the undersigned and Defendants' co-counsel in the probate proceedings, inquiring about deposition dates in January 2016 and whether the parties' depositions in this case should be combined with the depositions in the probate proceedings. Counsel had already mutually scheduled a conference call for November 18, 2015 to discuss the scheduling of depositions in the probate proceedings. Later on November 13, 2015, counsel for Plaintiff emailed the undersigned demanding deposition dates for the Defendants in December 2015, to which the undersigned replied that the respective parties should be produced for deposition once for both this case and the probate proceedings combined, and that further discussion could be had on the call already scheduled for November 18, 2015. Mere hours before that call, Plaintiff noticed the Defendants' depositions for December 10 and 11, 2015. Copies of the email correspondence referenced above are attached hereto as Exhibit B.

10. Defendant Laura S. Wassmer lives in Kansas and serves as the mayor of her town. Defendant Stephen B. Hopper lives in Oklahoma and has a busy psychiatric practice. The undersigned is also set before the 14th Judicial District Court for a temporary injunction hearing on December 10, 2015.

11. In the probate proceedings, the parties have agreed that Defendant Laura S. Wassmer's deposition will occur on February 12, 2016 (with carry over to February 13, 2016 if necessary), and that Defendant Stephen B. Hopper's deposition will occur on February 5, 2016 (with carry over to February 6, 2016 if necessary).

C. ARGUMENT AND AUTHORITIES

12. Defendants object to the dates and times of the depositions sought by the deposition notices served by Plaintiff. While the Defendants will make themselves available for deposition in this case, Plaintiff's attempt to require Defendants to travel from out of state to Dallas twice for depositions on issues that will largely overlap is both inefficient and harassing. The factual matters at issue in this case are minimal, and in all likelihood should take less than an hour to address at deposition in the context of related factual matters in the probate proceedings. While Defendants appreciate that the discovery period closes in this case on January 29, 2016 and the deadline for filing dispositive motions in this case is February 8, 2016, given the fact that the trial is not set until March 28, 2016, it would be extremely more efficient and convenient for all parties involved to extend those deadlines by two weeks each so that the Defendants may be deposed regarding the limited issues at controversy in this case on the dates already agreed to in the probate proceedings during the first two weeks of February 2016.

13. Plaintiff served the deposition notices on November 18, 2015. Because this motion is filed within three business days of the date the notices were served, this motion objecting to the dates and times of the depositions stays the depositions until this motion can be determined by this Court. TEX.R.CIV.P. 199.4.

D. PRAYER

14. For these reasons, the Defendants asks the Court to set this motion to quash for hearing and, after the hearing, to quash Plaintiff's deposition notices.

Respectfully submitted,

BLOCK & GARDEN, LLP

CHRISTOPHER M. MCNEILL, SBN 24032852

5949 Sherry Lane, Suite 900

Dallas, Texas 75225

Telephone: 214.866.0990

Facsimile: 214.866.0991

mneill@bgvllp.com

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record in this matter in accordance with the Texas Rules of Civil Procedure on this the 19th day of November 2015.

/s/ Christopher M. McNeill

CHRISTOPHER M. MCNEILL

CERTIFICATE OF CONFERENCE

Counsel for movant and counsel for respondent have personally conducted a conference at which there was a substantive discussion of every item presented to the Court in this motion and despite best efforts the counsel have not been able to revolve those matters presented.

Certified to the 19th day of November 2015 by

/s/ Christopher M. McNeill

CHRISTOPHER M. MCNEILL

EXHIBIT A
Deposition Notices

CAUSE NO. DC-13-09969

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

**JO N. HOPPER'S NOTICE OF INTENT
TO TAKE ORAL DEPOSITION OF LAURA WASSMER**

TO: Laura S. Wassmer, by and through her attorneys of record, Christopher M. McNeill, of Block & Garden, LLP, 5949 Sherry Lane, Suite 900, Dallas, TX 75225.

Please take notice that pursuant to Rule 199 of the Texas Rules of Civil Procedure, Jo N. Hopper will take the oral deposition of Laura Wassmer. The deposition will be taken at the office of Christopher M. McNeill, 5949 Sherry Lane, Suite 900, Dallas, TX 75225 beginning at **9:30 a.m. on December 10, 2015**. The deposition will continue from day to day until completed and will be stenographically recorded and will be taken before a person authorized to administer oaths in the place where the deposition is taken. Pursuant to Rule 199.1(c) of the Texas Rules of Civil Procedure this is notice that the deposition will be recorded by other than stenographic means in addition to a stenographic recording which will also be made. The method of recording other than stenographic means will be videotape, as well as through such means as to provide the instant display of testimony.

Dated November 18, 2015.

Respectfully submitted;

LOEWINSOHN FLEGLE DEARY, LLP

By: /s/ Alan S. Loewinsohn

Alan S. Loewinsohn

State Bar No. 12481600

Jim L. Flegle

State Bar No. 07118600

Kerry Schonwald

State Bar No. 24051301

12377 Merit Drive, Suite 900

Dallas, Texas 75251

(214)572-1700

FAX: (214)572-1717

COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record this 18th day of November, 2015 via e-service.

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

/s/ Alan S. Loewinsohn

ALAN S. LOEWINSOHN

CAUSE NO. DC-13-09969

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

JO N. HOPPER'S NOTICE OF INTENT
TO TAKE ORAL DEPOSITION OF STEPHEN B. HOPPER

TO: Stephen B. Hopper, by and through his attorneys of record, Christopher M. McNeill, of Block & Garden, LLP, 5949 Sherry Lane, Suite 900, Dallas, TX 75225.

Please take notice that pursuant to Rule 199 of the Texas Rules of Civil Procedure, Jo N. Hopper will take the oral deposition of Stephen B. Hopper. The deposition will be taken at the office of Christopher M. McNeill, 5949 Sherry Lane, Suite 900, Dallas, TX 75225 beginning at **9:30 a.m. on December 11, 2015**. The deposition will continue from day to day until completed and will be stenographically recorded and will be taken before a person authorized to administer oaths in the place where the deposition is taken. Pursuant to Rule 199.1(c) of the Texas Rules of Civil Procedure this is notice that the deposition will be recorded by other than stenographic means in addition to a stenographic recording which will also be made. The method of recording other than stenographic means will be videotape, as well as through such means as to provide the instant display of testimony.

Dated November 18, 2015.

Respectfully submitted;

LOEWINSOHN FLEGLE DEARY, LLP

By: /s/ Alan S. Loewinsohn

Alan S. Loewinsohn

State Bar No. 12481600

Jim L. Flegle

State Bar No. 07118600

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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served upon the following counsel of record this 18th day of November, 2015 via e-service.

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

/s/ Alan S. Loewinsohn

ALAN S. LOEWINSOHN

EXHIBIT B

Email Correspondence

Christopher McNeill

From: Alan Loewinsohn <alanl@lfdlaw.com>
Sent: Friday, November 13, 2015 8:55 AM
To: Anthony Lenny Vitullo
Cc: Betsy Anderson; Debbie Harris; Christopher McNeill; 'Eichman, John'
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

What is your clients availability for depositions the week of January 11. By the way chris we cannot wait until February because there's a discovery cut off in the state court case. I do not know if you want to combine the depositions in the two cases are deal with them separately

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

214-572-1700
www.lfdlaw.com

Alanl@lfdlaw.com

On Nov 13, 2015 8:49 AM, Anthony Lenny Vitullo <lvitullo@feesmith.com> wrote:

I am available the week of January 11th. I am unavailable due to trial on the weeks of January 18th and 25th. I will get dates for my clients depositions for February. Thanks alv

Anthony "Lenny" Vitullo
Partner



Fee, Smith, Sharp & Vitullo LLP

Three Galleria Tower
13155 Noel Road
Suite 1000
Dallas, Texas 75240
P 972-980-3254
F 972-934-9200
www.feesmith.com

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Thank you for your cooperation.

From: Alan Loewinsohn [mailto:alanl@lfdlaw.com]
Sent: Friday, November 13, 2015 8:47 AM
To: 'Eichman, John'; Anthony "Lenny" Vitullo; Christopher McNeill; Betsy Anderson
Cc: Debbie Harris
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

Lenny and Chris I need to hear from you on dates.

As for the call next week, I am happy to have it, but I can tell you my position which I do not intend to vary from. Under no stretch of the imagination is my client on the same "side" as the heirs. The fact that we both may be suing the Bank does not make us the same "side". If anything prior positions taken in the litigation make the Bank the same "side" as the heirs and if the Bank persists in fighting this issue, that will be our position. I remind all of you that this is not just an issue for the Bank's corp rep. This will be an issue for all the depositions, including my clients.

So bottom line, my position is that I get a full 6 hours for any witness I depose. If the Bank or the heirs oppose that position, please let me know so that I know I need to file a motion with the court.

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

214-572-1700
www.lfdlaw.com

Alanl@lfdlaw.com

From: Eichman, John [mailto:jeichman@hunton.com]
Sent: Thursday, November 12, 2015 6:17 PM
To: Alan Loewinsohn <alanl@lfdlaw.com>; Anthony "Lenny" Vitullo <lvitullo@feesmith.com>; Christopher McNeill <McNeill@bgvllp.com>; Betsy Anderson <betsya@lfdlaw.com>
Cc: Debbie Harris <debbieh@lfdlaw.com>
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

Wendy Bessette as corporate representative—Is not available January 4-8, or 28-29. I propose that we schedule her deposition early the week of January 11.

Susan Novak –Is available the weeks of January 25 and February 1, other than February 3 . I can make her available after the depositions of the JPMorgan corporate rep, Jo Hopper, Stephen Hopper and Laura Wassmer.

I am available on the dates mentioned above that my clients are available and would like to depose Jo, Stephen and Laura during the weeks of January 11, 18 and/or 25.

Also, I intend to depose Gary Stolbach during February. I will communicate directly with him about scheduling that deposition unless Lenny tells me to coordinate through him.

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321

(214) 740-7118 (fax)

From: Eichman, John
Sent: Wednesday, November 11, 2015 9:29 AM
To: 'Alan Loewinsohn'; Anthony "Lenny" Vitullo; Christopher McNeill; Betsy Anderson
Cc: Debbie Harris
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

Moving the call to next Wednesday is fine with me. How about at 9:30 am or 1:30 pm?

I will check on blackout dates for my side.

John C. Eichman
Hunton & Williams LLP

1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321

(214) 740-7118 (fax)

From: Alan Loewinsohn [<mailto:alanl@lfdlaw.com>]
Sent: Wednesday, November 11, 2015 9:23 AM
To: Eichman, John; Anthony "Lenny" Vitullo; Christopher McNeill; Betsy Anderson
Cc: Debbie Harris
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

I am tied up this week. Can we do next wed?

Also I will put together a proposed depo schedule for everyone to look at, but since there are so many moving parts I think it makes sense to get everyone's unavailable dates and then I can see how that shakes out on a calendar. Otherwise we will go back and forth with a ton of emails.

Please let me know what dates in January the following persons CANNOT be deposed or any attorney who will be at a depo CANNOT be available:

- 1) Whoever from Hunton will be defending or attending depositions
- 2) Whoever for the Heirs will be defending or attending depositions
- 3) Susan Novak
- 4) The corp rep for the Bank, which I think John said would be Wendy
- 5) Dr. Hopper
- 6) Laura Wassmer.

Of course I will be checking on the same for my firm and Mrs. Hopper.

Alan Loewinsohn

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

214-572-1700
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Alanl@lfdlaw.com

From: Eichman, John [<mailto:jeichman@hunton.com>]
Sent: Wednesday, November 11, 2015 9:22 AM
To: Anthony "Lenny" Vitullo <lvitullo@feesmith.com>; Christopher McNeill <McNeill@bgvllp.com>; Betsy Anderson <betsya@lfdlaw.com>; Alan Loewinsohn <alanl@lfdlaw.com>
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

Rather than Thursday, could we shoot for Friday morning, say 10:00 am? If that works I will circulate a call in number.

John C. Eichman
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
(214) 468-3321

(214) 740-7118 (fax)

From: Anthony "Lenny" Vitullo [<mailto:lvitullo@feesmith.com>]
Sent: Wednesday, November 11, 2015 8:28 AM
To: Eichman, John; Christopher McNeill; Betsy Anderson
Subject: RE: MESSAGE FROM ALAN LOEWINSOHN

John, can you set up a telephone conference to discuss these issues for tomorrow with you and I and Alan? I am agreeable to moving the deposition as we discussed so we are off for December 9th. I am wide open on Thursday. Thanks alv<

Christopher McNeill

From: Alan Loewinsohn <alanl@lfdlaw.com>
Sent: Friday, November 13, 2015 1:35 PM
To: Christopher McNeill
Cc: Debbie Harris
Subject: RE:

The problem Chris is I can't wait to depose your clients in the probate case until January, which is the earliest anyone is talking about depositions and I am not putting off the state court case any further. So I don't intend to talk about this next wed unless we are talking about taking probate depositions in December. Your clients had a chance to resolve the state court case and have chosen by their actions not to. So my request to you stands.

Alan

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: Friday, November 13, 2015 1:32 PM
To: Alan Loewinsohn <alanl@lfdlaw.com>
Cc: Debbie Harris <debbieh@lfdlaw.com>
Subject: RE:

Alan,

We should only produce our respective clients once for both the district court and probate court actions. We can discuss further on our call next week.

Best regards,

Christopher M. McNeill

Block & Garden, LLP
Sterling Plaza
5949 Sherry Lane, Suite 900
Dallas, TX 75225
Direct: 214-866-0994
Main: 214-866-0990
Facsimile: 214-866-0991

Website: <http://www.bgvllp.com>

Email: mcneill@bgvllp.com

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From: Alan Loewinsohn [<mailto:alanl@lfdlaw.com>]

Sent: Friday, November 13, 2015 12:42 PM

To: Christopher McNeill

Cc: Debbie Harris

Subject:

Chris

I am writing you and not Lenny since I understand you are lead counsel in the state court case for the defendants and that Lenny has not entered an appearance. If I am wrong please let me know.

I need to depose your clients in the state court lawsuit in advance of the agreed upon discovery deadline and far enough in advance to know if I need any other depositions and in advance of the expert witness designation deadline. Please provide me no later than close of business next Tuesday dates in December for both of your clients. I will hold off sending notices until then in hopes we can work out dates.

Alan

Alan Loewinsohn
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Alanl@lfdlaw.com