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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
corporation,

Plaintiff,

v.

Clark Hill PLC, a Michigan limited
liability company; David G. Beauchamp
and Jane Doe Beauchamp, husband and
wife,

Defendants.

No. CV2017-013832

**PLAINTIFF'S AMENDED
OBJECTIONS AND RESPONSES TO
DEFENDANTS' SECOND SET OF
NON-UNIFORM
INTERROGATORIES**

Plaintiff Peter S. Davis, as the court-appointed receiver of DenSco Investment Corporation (the "Receiver"), responded to Defendants' Second Set of Non-Uniform Interrogatories on October 16, 2019. Through an exchange of letters, Defendants' counsel has asked Plaintiff to supplement his responses to those Interrogatories. In the interest of efficiently resolving disagreements over the matter, the Receiver now does so.

OBJECTIONS TO INSTRUCTIONS

1. Plaintiff objects to Defendants' Instructions to the extent they seek to impose obligations broader than or inconsistent with the Arizona Rules of Civil Procedure.

2. Plaintiff objects specifically to Instruction E, which states: “If You object to an Interrogatory as overbroad, respond to that request as if narrowed in such a way as to render it not overbroad in Your opinion and state the extent to which You have narrowed the request.” It is not Plaintiff’s obligation to fix overbroad interrogatories. Rather, it is Defendants’ obligation to draft sufficiently narrow interrogatories in the first instance. Plaintiff will disregard this instruction.

OBJECTIONS TO DEFINITIONS

1. Plaintiff objects to Defendants’ Definitions to the extent they seek to impose obligations broader than or inconsistent with the Arizona Rules of Civil Procedure.

2. Plaintiff objects specifically to Definition A, which purports to define “You” to include, inter alia, the Receiver’s attorneys. This definition is impermissibly broad and unduly burdensome in that it calls for the Receiver to answer for both himself and his counsel and to disclose information protected by the attorney-client privilege and/or the work-product doctrine. The Receiver will disregard this definition and answer in accordance with Rule 33(b)(2), which requires only that a party answer an interrogatory, disclosing such information as may be available to the party.

GENERAL OBJECTIONS

1. Rule 33(a)(2) limits the number of interrogatories, which includes “[a]ny discrete subpart to a non-uniform interrogatory,” to 40. Defendants’ First Set of Non-Uniform Interrogatories, served January 26, 2018, contained 65 interrogatories, including discrete subparts. Plaintiff objected to those interrogatories on the grounds that they exceeded the maximum number of interrogatories established by Rule 33(a)(2) and, without waiving that objection, answered those interrogatories. Defendants’ Second Set of Non-Uniform Interrogatories states six additional interrogatories, bringing to 71 the total number of interrogatories Defendants have served in this case (assuming Interrogatory No. 25 is not deemed to have subparts), well beyond the maximum number of interrogatories permitted by Rule 33(a)(2). Because these additional interrogatories are not permitted by Rule 33(a)(2), Plaintiff need not answer them.

INTERROGATORY NO. 25

Objections to Interrogatory No. 25 and its Subparts

3. Many of the requests in the interrogatory are also unduly burdensome because at least some of the responsive information is in Defendants' possession, inasmuch as the actions at issue were taken by or involve Defendant David Beauchamp and/or persons at Bryan Cave or Clark Hill acting at his direction and would have been memorialized in records maintained by Bryan Cave or Clark Hill. This is true for at least Requests for Admission Nos. 1, 2, 4, 5, 7, 10, 11, 12, and 20.

All of the reasons and factual bases for the denial or failure to admit are set forth in Plaintiff's several Rule 26.1 statements, the motion papers that have been filed in the

1 case with supporting or accompanying statements of fact, and the expert reports in the
2 case. All documents supporting the denial or failure to admit have been produced in
3 Plaintiff's several Rule 26.1 statements.

4 In additional Response to Request for Admission No. 2, Plaintiff refers
5 Defendants to his Seventh Supplemental Disclosure Statement (including, but not
6 limited to, ¶¶ 112-121) and the expert report of Neil Wertlieb (pp. 9-10 & notes 29-38).
7 Mr. Beauchamp was aware of the *Freo* lawsuit in the summer of 2013, and the double
8 lending on the property. Plaintiff's expert describes this as a red flag.

9 In additional Response to Request for Admission No. 9, based on the facts set
10 forth in his Seventh Supplemental Disclosure Statement (including, but not limited to, ¶¶
11 112-119, 126-127, 174(a), 212-213, 218-223, 246-249), DenSco's corporate journals for
12 2013 and 2014, the Rule 2004 Examination of Scott Menaged, and the deposition of
13 Scott Menaged, among other evidence, Plaintiff has no reason to agree with the
14 conclusion Clark Hill wants to reach that the statement at issue is false.

15 In additional Response to Request of Admission No. 10, Plaintiff refers
16 Defendants to his Seventh Supplemental Disclosure Statement (including, but not
17 limited to, ¶¶ 281-325), the expert report of Neil Wertlieb (pp. 15-20 & notes 61-82),
18 and the deposition of Scott Menaged and exhibits marked therein, which contain
19 numerous references to documents evidencing "new borrowings by Menaged under the
20 plan Chittick and Menaged communicated to Beauchamp."

21 In additional Response to Request for Admission No. 11 and 12, Plaintiff refers
22 Defendants to his Seventh Supplemental Disclosure Statement (including, but not
23 limited to, ¶¶ 340-351, 365-366, 455). Those facts establish that Beauchamp continued
24 to work on the Forbearance Agreement after June 1, 2014, which was part and parcel of
25 the securities advice that Beauchamp provided. Beauchamp never terminated his
26 representation of DenSco and represented DenSco until a Receiver was appointed in the
27 case. Beauchamp's written request to Chittick in March 2015 to schedule a lunch
28 meeting is evidence of ongoing securities advice. Beauchamp also submitted a

1 declaration under oath which stated that he was representing DenSco in 2015 (when he
2 had lunch with Chittick) and the only matter on which he could have advised DenSco at
3 that time was securities law and the status of the updated POM, which DenSco had still
4 not issued. Plaintiff also notes that it has filed a motion for sanctions against Clark Hill
5 for late disclosure of evidence as to an email that Beauchamp wrote to general counsel
6 upon Chittick's death which refutes the claim that Clark Hill terminated the
7 representation.

8 In additional response to Request for Admission No. 20, Plaintiff refers
9 Defendants to his Seventh Supplemental Disclosure Statement (including, but not
10 limited to, ¶¶ 203-333) and the expert report of Neil Wertlieb (p. 51, note 206, p. 55 &
11 notes 219-222, p. 66). Those facts establish that Clark Hill had a duty to investigate
12 whether DenSco was insolvent or in the zone of insolvency, that it had adequate
13 information and means to do so, that it failed to conduct an investigation, and that if it
14 had taken even minimal steps, it would have learned as early as September 2013 that
15 DenSco was insolvent or in the zone of insolvency.

16 In additional response to Request for Admission No. 25, Plaintiff refers
17 Defendants to his Seventh Supplemental Disclosure Statement and the expert report of
18 Neil Wertlieb, in their entirety, which set forth facts demonstrating that if Clark Hill had
19 abided by the standard of care, properly advised Chittick, and not engaged in aiding and
20 abetting Chittick's breaches of fiduciary duty, DenSco would have shut down and been
21 liquidated. Losses that occurred by reason of Clark Hill's conduct should never have
22 taken place and are not attributable to the conduct of anyone other than Defendants.

23 **INTERROGATORY NO. 26**

24 Are you aware of any document that contains evidence that Mr. Beauchamp or
25 anyone else at Clark Hill knew that Mr. Chittick was not making oral disclosures to
26 DenSco accredited investors regarding the "First Fraud," as that term is used in the
27 expert report submitted by David Weekly of Fenix Financial Forensics, LLC, between
28 January 7, 2014 and June 1, 2014?

1 **Objections to Interrogatory No. 26**

2 1. This interrogatory exceeds the maximum number of interrogatories
3 established by Rule 33(a)(2).

4 2. The phrase “contains evidence of” is overly broad and unduly
5 burdensome. Evidence can vary widely in type, directness, and degree.

6 3. Evidence of what a person “knew” is especially broad and unduly
7 burdensome. Evidence of knowledge can vary especially widely in type, directness, and
8 degree.

9 **Response to Interrogatory No. 26**

10 Without waiving these objections, Plaintiff answers in the affirmative.

11 **INTERROGATORY NO. 27**

12 If you answered “yes” to Interrogatory No. 26, please list and identify each such
13 document.

14 **Objections to Interrogatory No. 27**

15 1. This interrogatory exceeds the maximum number of interrogatories
16 established by Rule 33(a)(2).

17 2. Plaintiff incorporates here the objections to Interrogatory No. 26.

18 3. The requests that Plaintiff identify “each” document that “contains
19 evidence of” the proposition in Interrogatory No. 26 is overly broad and unduly
20 burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
21 2000) (contention interrogatories which sought “every fact and document” upon which
22 plaintiff based a contention was overly broad and unduly burdensome and should be
23 limited to identification of the material or principal facts and documents supporting
24 plaintiff’s factual contentions).

25 **Response to Interrogatory No. 27**

26 Without waiving these objections, Plaintiff refers Defendants to his Seventh
27 Supplemental Disclosure Statement, and references therein to Beauchamp’s handwritten
28 notes, email correspondence with Chittick, DenSco’s corporate journals, and other

documents which contain direct and circumstantial evidence that Mr. Beauchamp was aware that Mr. Chittick was not making oral disclosures. Clark Hill ignores that one theory of the case advanced by Plaintiff is that Clark Hill advised Chittick he could continue taking monies without disclosure.

INTERROGATORY NO. 28

Explain how the fact that Mr. Menaged signed and recorded loan documents (such as a mortgage or deed of trust) from DenSco and from another hard money lender, as set forth in Your Sixth Disclosure Statement (at ¶¶ 233-234), would have proven Mr. Menaged's "cousin" story false.

Objections to Interrogatory No. 28

1. This interrogatory exceeds the maximum number of interrogatories established by Rule 33(a)(2).

2. This Interrogatory misconstrues Paragraphs 233-234 of Plaintiff's Sixth Disclosure Statement, which state as follows:

233. A few brief searches would have confirmed Chittick's claim that DenSco was the first to record: DenSco's Mortgage was recorded on September 18, 2013 as instrument number 2013-0837513, while Geared Equity's deed of trust was recorded on September 19, 2013 as instrument number 2013-0842640.

234. But those two documents would also have shown that Menaged signed each document before a notary on September 17, 2013, making clear that Menaged, not his "cousin," had secured both loans.

Response to Interrogatory No. 28

Without waiving these objections, Plaintiff states as follows: Plaintiff refers Defendants to his Seventh Supplemental Disclosure Statement, (including, but not limited to, ¶¶ 237-243) and the expert report of Neil Wertlieb (p. 58). The publicly recorded documents referenced therein, the sheer number of them, Chittick's disclosures to Beauchamp in early January 2014 about his lax lending practices, and Beauchamp's

1 knowledge of the representations DenSco had made to its investors about its lending
2 practices, as well as the sheer implausibility of the “cousin story” should have put
3 Beauchamp on inquiry notice and caused him to ask Menaged to explain how he could
4 have signed both documents when he claimed his cousin had. As Menaged testified at
5 his deposition, Beauchamp we completely indifferent and asked no questions about the
6 “cousin story” or about the liens at issue.

7 **INTERROGATORY NO. 29**

8 Your expert, Neil Wertlieb, states in his report that Mr. Beauchamp’s “threat to
9 withdraw” from representing DenSco would have either caused DenSco to immediately:
10 (i) update and correct disclosure to all investors or (ii) stop soliciting investors. Are you
11 aware of any evidence that supports the conclusion that DenSco would have either made
12 full disclosures to its investors or stopped soliciting investors had Defendants threatened
13 to withdraw at any time?

14 **Objections to Interrogatory No. 29**

15 1. This interrogatory exceeds the maximum number of interrogatories
16 established by Rule 33(a)(2).

17 2. Plaintiff objects to this Request as an improper means of seeking
18 discovery relating to the opinions of Plaintiff’s disclosed standard-of-care expert, Neil
19 Wertlieb. As required by Rule 26.1, Plaintiff has disclosed an initial and rebuttal written
20 report authored by Mr. Wertlieb. Defendants have noticed Mr. Wertlieb’s deposition for
21 October 17, 2019 and will have the opportunity then to pose this question. That
22 deposition is the only means authorized by the Rules for Defendants to question Mr.
23 Wertlieb about his opinions. *See* Rule 26(4)(A).

24 3. The phrase “any evidence that supports the conclusion” is overly
25 broad and unduly burdensome. Evidence can vary widely in type, directness, and
26 degree.

27 **Response to Interrogatory No. 29**

28 Without waiving these objections, Plaintiff answers in the affirmative.

1 **INTERROGATORY NO. 30**

2 If you answered “yes” to Interrogatory No. 31, please list and identify each such
3 evidence.

4 **Objections to Interrogatory No. 30**

5 1. This interrogatory exceeds the maximum number of interrogatories
6 established by Rule 33(a)(2).

7 2. Plaintiff incorporates here the objections to Interrogatory No. 29.


8 3. The requests that Plaintiff identify “each” evidence that “supports
9 the conclusion” described in Interrogatory No. 29 is overly broad and unduly
10 burdensome. *See, e.g., Steil v. Humana Kansas City, Inc.*, 197 F.R.D. 445 (D. Kan.
11 2000) (contention interrogatories which sought “every fact and document” upon which
12 plaintiff based a contention was overly broad and unduly burdensome and should be
13 limited to identification of the material or principal facts and documents supporting
14 plaintiff’s factual contentions).

15 **Response to Interrogatory No. 30**

16 Without waiving these objections, Plaintiff refers Defendants to his Seventh
17 Supplemental Disclosure Statement, (including, but not limited to, ¶¶ 173-174, 255-
18 351). There is abundant evidence that Chittick consistently followed Beauchamp’s
19 advice with respect to, inter alia, (i) whether DenSco could sell new promissory notes
20 without first issuing a new POM; (ii) whether it could delay issuing a POM while
21 DenSco sought to “work out” the problems created by Menaged’s fraud; (iii) whether
22 DenSco should enter into a Forbearance Agreement; (iv) the terms of the Forbearance
23 Agreement; and (v) how DenSco should make and document loans to Menaged after
24 learning of the “cousin story.” In every instance, Chittick followed Beauchamp’s
25 advice. In fact, Defendants have not disclosed *any* instance in which Chittick did not
26 follow Beauchamp’s advice except for their false claim to have terminated their
27 representation of DenSco in May 2014 because Chittick allegedly failed to follow
28 Beauchamp’s advice to issue a new POM.

1 DATED this 13th day of January, 2020.

2 OSBORN MALEDON P.A.

3 By 
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12 COPY of the foregoing mailed and e-mailed
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