



SO ORDERED

Katharine M. Samson

Judge Katharine M. Samson
United States Bankruptcy Judge
Date Signed: July 29, 2015

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE: DOUGLAS G. BROOME

CASE NO. 11-50528-KMS

DEBTOR

CHAPTER 7

**DEREK A. HENDERSON, TRUSTEE FOR
THE BANKRUPTCY ESTATE OF
DOUGLAS G. BROOME**

PLAINTIFF

V.

ADV PROC. NO. 13-05013-KMS

**F. DOUGLAS MONTAGUE, III,
FRANK D. MONTAGUE, JR. and
MONTAGUE, PITTMAN & VARNADO, P.A.**

DEFENDANTS

ORDER

THIS MATTER is before the Court on the Defendants' Motion to Compel Discovery Responses of Plaintiff, Derek A. Henderson (the "Motion") (Adv. Dkt. No. 135) filed by F. Douglas Montague, III and Montague, Pittman & Varnado, P.A. and the Response to Motion to Compel (Adv. Dkt. No. 146) filed by Derek Henderson, Trustee for the Bankruptcy Estate of Douglas G. Broome (the "Trustee"). A hearing (the "Hearing") on the matter was held on April

2, 2015. (Adv. Dkt. No. 147, 149). Robert C. Galloway appeared on behalf of Defendants and John G. Holaday appeared on behalf of the Trustee. At the Hearing, the parties represented that they were attempting to work out their dispute regarding the requests for production addressed in the Motion, and the Court took the issue of the disputed interrogatories under advisement. For the reasons stated below, the Motion is denied.

I. BACKGROUND

A. The Amended Complaint

According to the Amended Complaint, this case arises out of an attorney-client relationship between Defendants and Douglas G. Broome, the Debtor in the underlying bankruptcy case, and Matthew Pellerin, also a debtor in bankruptcy. (Adv. Dkt. No. 23). The Amended Complaint is fifty pages in length and contains 79 separate paragraphs setting forth the facts that are the basis for the various causes of action asserted including breach of fiduciary duty, negligence/malpractice, gross negligence/malpractice, breach of contract, tortious breach of contract, breach of the implied duty of good faith and fair dealing, fraudulent misrepresentation, fraudulent omission and/or concealment, negligent misrepresentation, negligent nondisclosure and/or omission, promissory fraud, constructive fraud, civil conspiracy, vicarious liability, intentional infliction of emotional distress, unjust enrichment, promissory estoppel, accounting and conversion. (*Id.*). The Amended Complaint seeks compensatory and punitive damages among other things. (*Id.*).

B. The Motion to Compel

Defendants served interrogatories and requests for production of documents on the Trustee. (Adv. Dkt. Nos. 28, 29, 37, 93). The interrogatories seek to discover the following information regarding each cause of action alleged in the Amended Complaint:

Separately for each act or failure to act identified in response to [the preceding interrogatory], identify all persons who have knowledge or information about the act or failure to act, all documents that contain information about the alleged act or failure to act and all facts, circumstances and other information tending either to support or refute the fact that such act or failure to act constituted [the basis for an identified cause of action].

(Adv. Dkt. No. 135, Ex. B at Int. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26). Interrogatory number 28 is similar, but uses slightly different language. It states:

For each item of loss or damage that Plaintiff contends he is entitled to recover from Defendant F. Douglas Montague, III, please describe fully the item of loss or damage, the amount thereof, provide a detailed description of how the claimed amount was calculated or otherwise arrived at, and describe all documents that contain information relevant to that particular item of claimed damage.

(*Id.* at Int. 28). The Trustee responded to the various discovery requests, asserting objections to each interrogatory on the grounds that it is overly broad, unduly burdensome and seeks legal conclusions. (Adv. Dkt. No. 135, Ex. B). In response to Interrogatory No. 1, the Trustee reiterated all of the facts set forth in the Amended Complaint and also set forth approximately 39 specific acts that the Trustee asserts constitute wrongdoing on the part of F. Douglas Montague, III.¹(Adv. Dkt. No. 135, Ex. B at 3–18). In response to Interrogatory No. 2, the Trustee identified numerous individuals with knowledge of the alleged acts of wrongdoing and a general description of that person’s involvement. (*Id.* at 19–21). Later responses refer back to the detailed responses to Interrogatories 1 and 2. (*Id.* at 21–34).The responses to the interrogatories at issue also refer the Defendants to the hundreds of documents produced by the Trustee. (*Id.* at 3–34).

Generally, Defendants assert that the responses to the interrogatories are incomplete because the Trustee has not set forth which of the specific facts apply to each interrogatory and

¹ Interrogatory No. 1 states: “For each act or failure to act that you contend constituted negligence on the part of F. Douglas Montague, III, please identify such act or failure to act and describe it fully, including the date of its occurrence. (Adv. Dkt. No. 135, Ex. B).

which documents are responsive to each interrogatory. (*See, e.g. Id.* at Exh. C, Int. 4) (“As requested in the above Interrogatory, please ‘...identify...all documents that contain information about the alleged act or failure to act, and all facts, circumstances and other information tending either to support or refute the fact’”). The Trustee responds asserting that the interrogatory responses are appropriate, the documents are self-explanatory as to the subject matters to which they relate, it is unduly burdensome to require the Trustee to identify which documents relate to which claim, and that requiring the Trustee to specify which documents support a given breach of duty requires a legal conclusion not within the scope of Fed. R. Bankr. P. 7026. (Adv. Dkt. No. 146).

II. DISCUSSION

Rule 26(b)(1) of the Federal Rules of Civil Procedure (“Rule”) provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1). And the Supreme Court has mandated a broad and liberal treatment of the discovery rules. *Herbert v. Lando*, 441 U.S. 153, 177 (1979); *Hickman v. Taylor*, 329 U.S. 495, 507 (1947), *superseded by statute*, Fed. R. Civ. P. 26(b)(3). But, discovery is not without limits. Rule 26(b)(2)(C) provides that the court may limit discovery if it determines that the discovery sought is overly broad or unduly burdensome. Fed. R. Civ. P. 26(b)(2)(C)(i), (iii). And the party seeking to compel discovery bears the burden “of demonstrating clearly that the information sought is relevant to the case and would lead to admissible evidence.” *See* Fed. R. Civ. P. 37(3)(B); *see also Jane Does 1-, 6 & 7 v. Rust College*, 2015 WL 3514368, at *1 (N.D. Miss. June 4, 2015) (citing *Baptist Health v. BancorpSouth Ins. Servs, Inc.*, 270 F.R.D. 268, 272 (N.D. Miss. 2010)). “[T]he party resisting discovery must articulate specifically how each discovery request is not relevant or is overly broad, unduly

burdensome, or oppressive.” *Id.* (citing *Export Worldwide Ltd. v. Knight*, 241 F.R.D. 259, 263 (W.D. Tex. 2006)).

Rule 33 contemplates the use of broad interrogatories. *See* Fed. R. Civ. P. 33(a)(2) (“An interrogatory may relate to any matter that may be inquired into under Rule 26(b).”). Contention interrogatories are those interrogatories that are “designed to discover the factual basis of the allegations in a complaint . . . , or to determine the theory of the opposing party’s case.” Black’s Law Dictionary (10th ed. 2014). Rule 33 permits the use of contention interrogatories under certain conditions. *See* Fed. R. Civil P. 33(a)(2) (“An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.”).

While contention interrogatories are often permissible, courts have held that unnecessarily broad interrogatories, which require a party to state every fact supporting all of its allegations, as well as identify each person with knowledge of each fact and all documents supporting each count, are impermissible. *See Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186–87 (D. Kansas 1997) (finding interrogatories unduly burdensome that required the party to identify all facts supporting its position, all witnesses with knowledge of those facts, and all documents supporting the position); *Grynberg v. Total S.A.*, No. 03-CV-01280, 2006 WL 1186836, at *7 (D. Colo. May 3, 2006) (same); *Nieman v. Hale*, No. 3:12-cv-2433-L-BN, 2013 WL 6814789, at *11 (N.D. Tex. Dec. 26, 2013) (adopting the reasoning in *Grynberg* to deny a motion to compel with respect to an interrogatory); *Brassell v. Turner*, No. 3:05CV476LS, 2006 WL 1806465, at *2 (S.D. Miss. June 29, 2006) (finding interrogatories overly broad and unduly burdensome where they sought an open-ended narrative that was not tailored in any way); *Clean Earth Remediation*

and Const. Servs, Inc. v. Am. Int'l Group, Inc., 245 F.R.D. 137, 141 (S.D.N.Y. 2007) (denying the motion to compel with respect to interrogatories seeking the identification of all facts supporting specific allegations).

These courts refer to such impermissible contention interrogatories as “blockbuster interrogatories.” *E.g. Grynberg*, 2006 WL 1186836, at * 6 (“Interrogatory No. 2 is an impermissible ‘blockbuster’ interrogatory of a nature repeatedly condemned by trial courts.”). These blockbuster interrogatories are considered overly broad and unduly burdensome, not simply because they require a narrative response, but rather because of the extent of the narrative response required. *Bassell*, 2006 WL 1806465, at *2. While the federal rules generally allow for and encourage the broad use of discovery, “a party cannot ordinarily be forced to prepare its opponent’s case.” *Nieman*, 2013 WL 6814789, at *11 (*quoting* 8B Wright, Miller, & Marcus, Fed. Prac. & Proc. § 2174 (3d ed. 2013)). And “there comes at some point a reasonable limit against indiscriminately hurling interrogatories at every conceivable detail and fact which may relate to a case.” *Hilt*, 170 F.R.D. at 186–87. But, the availability of the information through deposition is not grounds for refusal to answer, unless the answer cannot be made without imposing an undue burden on the responding party. *Bassell*, 2006 WL 1806465, at *2. Where, however, the interrogatories seek “all facts, circumstances and other information” supporting the allegations, rather than the material or principal facts, they are necessarily unduly burdensome because they “require plaintiff to provide the equivalent of a narrative or otherwise detailed account of [his] entire case in chief, together with identification of virtually all supporting evidence of each fact.” *Hilt*, 170 F.R.D. at 186.

Nearly all of the contested interrogatories in this case ask the Trustee to: 1) “identify *all* persons who have knowledge or information about the act or failure to act”; 2) identify “*all*

documents that contain information about the alleged act or failure to act”; and 3) identify “*all* facts, circumstances and other information tending either to support or refute the fact that such act or failure to act constituted [the basis for an identified cause of action].” (Adv. Dkt. No. 135, Ex. B at Int. 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26) (emphasis added). And Interrogatory No. 28 seeks a description of “*all* documents that contain information relevant to [each] particular item of claimed damage.” (*Id.* at Int. 28). These interrogatories are of the type disallowed by courts as blockbuster interrogatories. They exceed the scope of Rule 33 and ask the Trustee to essentially outline his case against the Defendants in narrative form, thereby preparing the Defendants’ case for them. The Court therefore finds that Interrogatories 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, and 28 constitute impermissible blockbuster interrogatories, which are overly broad and unduly burdensome. Accordingly, the Trustee’s responses to these interrogatories are sufficient and the Defendants’ Motion to Compel Discovery Responses should be denied.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendants’ Motion to Compel Discovery Responses is **DENIED**.

##END OF ORDER##