2013 WL 4813428 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.

Loren LORENZETTI, Plaintiff,

v.

Dorothea FARRELL, aka Hodges, Tamara Hodges, Michael Bagley, Zack Hodges, Defendants.

No. 7385-VCG.
September 6, 2013.

Motion for Review and Reconsideration of Decisions

Loren Lorenzetti, pro se, 67 Vt. Route 106, Perkinsville, VT 05151, (802) 263-5582.

NOW COMES the Plaintiff, pro se, (hereinafter Lorenzetti) and moves for a court review and reconsideration of Plaintiffs request Chancellor Glasscock recuse himself and overrule the denials of discovery requests. Exhibits 1, 2 and 3.

DISCOVERY

Lorenzetti has demanded his Fiduciary Agent, Dorothea Hodges (hereinafter Hodges), to provide full discovery, with documentation, of all the financial and other matters Hodges handled and/or mishandled for the time period 1997 to the present. Del C. Title 12, 49A-114. Agent's duties. (g): Except as otherwise provided in the personal power of attorney and by § 49A-108(b) of this title [court appointed agent], an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principle unless ordered by a court OR requested by the principal... If so requested the agent *shall comply* with the request within a reasonable period of time." [emphasis added] *See also: U.S.v. Ritchie*, 15 F3d 592 (1994). "No constitutionally protected liberty interest in spending large amounts of money without having to account for it." Lorenzetti is taking this action by exercising the emphasized "or" language of the Delaware Code. *Exhibit 4.* 3 AmJur, Agency, § 357.

However, the Chancery Court must revisit its own recent rulings as found in *Glassman v. Crossfit*, Memo Opinion, Civ. Action No. 7717-VCG, Oct. 12, 2012: "In Delaware, the scope of discovery is broad. 'Parties may obtain discovery *regarding any matter*, not privileged, which is *relevant to the subject matter* involved in the pending action. FN 6. Ct. Ch. R. 26(b)(1).' " Lorenzetti is not requesting any privileged information and the discovery requested is relevant to the subject matter, i.e., Breach of Fiduciary Duty. Crossfit FN 7 *Moyer v. Mover*, 602 A.2d 68, 72(Del. 1992). *U.S. v. Ritchie*, 15 F3d 592 (1994).

Per Superior Court's writings (Stokes) and determinations, aspects regarding any Breach of Fiduciary Duty are to *heard* by Chancery Court. Both Lorenzetti and Defendants' unpaid attorney, Tarburton, had *only* this point in common agreement. *Exhibit 5.*

Reader should revisit the 27 June 2013 "office meeting," which actually was slated as a hearing, not by transcript, but by listening to the attitude projected by Glasscock on the audio tape at the proceeding.

(1) Brazenly apologetic and biased behavior toward Defendants in both tone and content.

(2) Blatant confrontational and demeaning prejudicial speech, both content and attitude, toward Lorenzetti.

The matter of Hodges' relationship with her "apparent and unknown lawyer," Jeffrey Marcalus, was, and is not, privileged as Mr. Marcalus represents he was acting in *my* stead as well. Exhibit 6. However, any attorney-client privilege does not apply

to communications between an attorney and a client that are made in furtherance of a *fraud* or crime. The Federal Rules of Evidence have adopted this stance as have the Delaware Rule of Evidence at "502(d) Exceptions: There is no privilege under this rule: (1) Furtherance of crime of fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to *commit or plan to commit* what the client *knew* or *reasonably should have known* to be a crime or fraud." [emphasis added] In this instance, Hodges had hired Mr. Marcalus in concealment of her true aims and the 24 hour Will. The Superior Court has accepted the 8 years at $25,000 a year as truth. [1] If the support is valid, then his Fiduciary Agent should have no qualms about submitting her proof which the Courts have enabled her to deny *since May of 2010!*

Delaware Rules of Evidence 502(d)(6) states: "Joint clients. As to a communication relevant to a matter of *common interest* between or *among 2 or more clients* [Jeffrey Marcalus identifies the Plaintiff as his client in *Exhibit 3* and Plaintiff reimbursed his Fiduciary Agent for his $500.00 fee] if the communication was made by *any of them* [in this case Dorothea Hodges] to a lawyer *retained or consulted in common,* when offered in an action between or among any of the clients." It is so evident that Mr. Marcalus was considered as LL's attorney, that even DH's daughter, Beth, wrote that Mr. Marcalus was Plaintiffs lawyer. *Exhibit 4.*

Chan. Glasscock has ruled the 24 Feb. 2005 mortgage against Lorenzetti's Dagsboro, DE, house is of no concern to Lorenzetti. Lorenzetti strenuously argues otherwise - again citing Hodges' own admission in her Supreme Court brief that she used the mortgage money pay for Lorenzetti's divorce lawyer, Michael Spinnato Lorenzetti was explicit in instructing his Fiduciary Agent *not pay* that bill. However, Hodges paid the bill thus denying counterclaim in impending New Jersey suit via the Feb. 2005 mortgage using the equity in the house Lorenzetti retained a beneficial ownership and then accepted $8,500.00 in the form of a LeBaron automobile and cash from her Principal as "repayment.". This acceptance of the repayment, the "widget" story, in a Request to Admit asking Lorenzetti to admit he was repaying a loan of $8,500 from Hodges, resulted in Hodges using money borrowed against the house *plus* $8,500 directly from Lorenzetti for a total loss to Lorenzetti of $17,000 - a fact that no Court has allowed LL, the Principal, to broach on the basis that his Fiduciary Agent was an defrauder in this scheme. 3 AmJur 2d, Agency, §231. *Greenly v. Greenly,* 29 Del.Ch. 297, 49 A.2d 126; *Adams v. Jankouskas,* 452 A.2d 148; *LaBelle v. DiStefano,* 85 R.I. 359, 131 A.2d 814.. *Exhibit 7.*

RECUSAL

FN 5. on Page 3 of Glasscock's letter, Date Decided July 12, 2013 states: "Claims that have been previously adjudicated are barred by *res judicata.* Though Mr. Lorenzetti is entitled to an impartial adjudication of his claims, he is not entitled to assert the same claims *twice.* Any matter which the Superior Court has already ruled on may not be re-litigated." Glasscock wrongly limits what will and will not be heard in his Court, thus, *not allowing* the facts regarding the *aspect that DH was LL's fiduciary agent since 1998.* This testimony was jurisdictionally banned by Superior Court and the decisions made by the Superior Court within their jurisdictionally mandated restriction. Therefore, the Fiduciary Agent breach has *never* been heard. Del C. Title 10, Ch. 3 and Ch. 5 clearly delineates the jurisdiction of the Chancery Court and the Superior Court, respectively, and *only* the Chancery Court can determine *equitable* relief in a neutral environment regarding breaches of fiduciary duty.

The Plaintiffs inability to inform the Superior Court about *any* matter regarding the Fiduciary Agent status of Dorothea Hodges was properly barred and awaited Chancery Court trial. The Breach of Fiduciary Duty was transferred into Chancery Court *before* the April 2012 trial started on 8 March 2012. Exhibit 8. Any "matter" which the Superior Court has already ruled on was made *without* the Fiduciary Agent/Principal relationship considered.

Glasscock claimed he read the Superior and Supreme Courts opinions. Since he is willing to accept what Stokes has to say on the subject, he should also be willing to accept the 27 Jan. 2012 Decision by Stokes, regarding both *res judicata* and collateral estoppel because of the 2 Jan. 2009 hearing before Chancery Court (which *did not* result in the dismissal of Plaintiffs case) and JP Court (found to be null in this same decision). Stokes, under the subheading, "*The Action Is Not Barred by Res Judicata or Collateral Estoppel,"* concluded on Page 14: "I previously determined that the transfer from Chancery to Superior Court was sufficient and that a *res judicata* and collateral estoppel *objection could not be made* on that basis. That decision stands." Exhibit

9. In other words, Stokes transferred the Breach of Fiduciary Duty matter *prior to* the Superior Court trial commencement. Therefore, Glasscock has no support for any *res judicata* or collateral estoppel stance if Lorenzetti can produce the evidence at Chancery Court that the Superior Court Decision was made without consideration of the *Breach of Fiduciary Duty*. Lorenzetti filed a Complaint with the Chancery Court before the 30 day time limit; thus, matters transferred *to* Chancery Court were matters which were *not* to be heard in Superior Court. Del. C. Title 10, Ch 3 and Ch 5.

Glasscock cannot impose now either res judicata or collateral estoppel during the upcoming Chancery Court trial because:

(1) Superior Court's written and oral trial admonishments that *all* fiduciary duty matters would take place in Chancery Court. Del. C. Title 10, Ch. 3 and Ch. 5

(2) The *only* issue of agreement between Tarburton and Plaintiff was the bulk of this lawsuit *belongs in a court of equity*. Exhibit 5

(3) The matter of the *Draft Deed* dated 1998 (Exhibit 10) (which preceded any *supposed* or incorrectly termed “in fee simple” deed) was *never* broached in Superior Court and therefore was *not* considered (as were none of Fiduciary Duty matters) since: (a) Its *existence was unknown* until 13 Mar. 2012, dated 8 Mar. 2012, (pretrial stipulation by Tarburton) and defendants. Exhibit 11.

(b) *Failure* of Defendants *to include Draft Deed in trial exhibit listing* and *failure of its physical appearance* as a trial document. Exhibit 12

(c) Its *importance* in delineating *Plaintiff's intent* in the gifting and deeding of his Dagsboro property to Hodges defined in 1998 by Bill Purnell, Esq. However, its existence *was known* by Plaintiffs Fiduciary Agent and used by her in 2005 to obtain an appraisal of the Dagsboro property. Exhibit 13. 3 AmJur 2d, Agency §§ 231, 259, 335; *Green Tree Financial Corp v. Stone*, 2000 WL 1610637 (Del. Super.”

(d) *The Draft Deed* document was *not* made available to Plaintiff (obviously within the 9 boxes of Plaintiffs personal, confidential, papers which were knowingly sequestered by Defendants). *FMC v. ABC*, 915 F.2d, 300

(e) Tenets of *any* deed adjudicated by Superior Court were prepared by either D.H. (her heading) (Exhibit 14) or Jeffrey Marcalus, not Bill Purnell, (Exhibit 15) and if ambiguity is present, I.E., “Tenants in Common” it is the writer and her attorney's error and problem (i.e., tenants-in-common)and is overruled by *Grantor's intent* as evidenced by the Draft Deed. Exhibit 10. 23 *AmJur* 2d, XI. CONSTRUCTION, A. In General, § 221; *Adams v. Jankouskas*, 453 A2d 148.

(4) Evidence can be shown that claims of N.J. criminal actions were known by Hodges to be false and that Hodges had found and duplicated documents she knew were misleading. Exhibit 16 In this matter, Hodges, Tamara Hodges, Zack Hodges and, with his recent Answer to the Amended Complaint, Michael Bagley. have professed fear/terror of Lorenzetti when Lorenzetti's Fiduciary Agent knows it is unfounded. This information, as well as confidential aspects of Lorenzetti's employment, were to have been imparted [to protect innocent parties and National Security] to Glasscock had he not denied in camera meeting. 3 AmJur 2d, Agency, §233.

On 27 June 2012, Glasscock was very emphatic that he did not know what “in camera” means. Perhaps he may want to review Court of Chancery Rule 5(g)(2) which states: “Documents shall not be filed under seal unless and except to the extent that the person seeking and filing under seal shall have first obtained, for good cause shown, an Order of this Court specifying those documents or categories of documents which should be filed under seal; provided, *however, the Court may, in its discretion, receive and review any document in camers without public disclosure thereof and in connection with any such review, may*

determine whether good cause exists for the filing of such document under seal." [emphasis added] The Plaintiff made a request for In Camera together with a proposed Order.

Instead of being on the defensive that Glasscock did not know what "in camera" means (not the Plaintiffs problem), he should have discreetly called a brief recess and acquainted himself with the term. *Then Glasscock could have made an informed decision as to whether or not Plaintiff had shown good cause and whether or not he should review any document in camera.* Instead, Glasscock made an offhand remark *to Defendants* to the effect that you can't mention "that," is not satisfactory to the Plaintiff and he will not tolerate being maligned in the Chancery Court for actions that were *both adjudicated more than 10 years ago and, therefore, banned under the Delaware Rule of Evidence 609(b) [time limit of 10 years] and 609(c) [the N.J. Court found Plaintiff not guilty* on 2 charges and guilty of 1 charge for which the Court later deemed Plaintiff had complied with the punishment], i.e. *Plaintiff had been properly disciplined by the N.J. Court and was pardoned of further compliance on 27 Set. 1999* and Hodges was aware of the "pocket pardon." Exhibit 17. 3 AmJur 2d, Agency, §§ 231, 233.

OTHER "IRREGULARITIES"

Chancery Court should explain the 17 month delay in matter's original transfer from its domain to Superior Court and Kenneth Lagowski's undiplomatic dismissal of Plaintiff's inquiry which allowed the Defendants in this period to complete in total their takeover plan. Exhibit 18.

Superior Court and Judge Stokes should explain and define exactly how why *Wirth,* bad law since its inception and disused since 1978, was used to support the so-called "abandonment" of Lorenzetti's chattel - which was never abandoned. Exhibit 19. *Boehne,* 82 B.R. 525. If anything Wirth clarifies that Lorenzetti's course, with use of the Courts and non- use of self-help, was correct and it is incredulous to Lorenzetti that by relying on both a Delaware attorney, Enterline, and the Delaware courts up to the present time, he has lost his house, his chattel, #27 and now, via a lawsuit filed by his Fiduciary Agent, faces a threat against his Vermont house as her grand finale. *Bloomquist v. First National Bank of Elk River,* 378 N.W.2d 81.

The 15 Oct. 2008 demand/threat (Exhibit 20) was derelict as *NOTICED* as Hodges on 1 Sept. 2008 had once again breached her Fiduciary Duty by stoppage of her rental payment of the furnished house rented to her by Lorenzetti at a modest $300.00 a month. *Hudson v. D&V Mason,* 252 A.2d 166; *Modern Auto Finance Corp. v. Preston,* 2 Conn.Cir.Ct. 493, 202 A.2d 845.. Thus, upon receipt of the 15 Oct. 2008 demand/threat, the landlord (Lorenzetti) had already been hurt by his tenant (Fiduciary Agent) now being 2 months in arrears. Since Hodges had breached her duty, Lorenzetti, a landlord since 1957, was under *NO* compulsion to accede to *any* demands of tenant, agent under a Power of Attorney and traitor, Hodges. *Hudson v. D&V Mason.*, 3AmJur 2d, Agency, § 335. (Loren Lorenzetti v. Harry Helmsy, Hackensack, NJ 1980. Lorenzetti paid rent to Helmsy *after* his purchase of a unit in Horizen House.)

Reader will note that there is no MENTION of Defendants' payment of *any costs* associated with any of the demands made in the 15 Oct. 2008 letter - not that it would have made any difference to Lorenzetti's reaction, but, in that it was yet another error in Stokes' findings of 27 Apr, 12. 3 AmJur 2d, Agency, § 231

The Superior Court should explain why it *did not complete* its Writ of Certiorai investigation, admonish the JP Court for its errors, arrange for compensation to the Plaintiff for his loss occurring there and explain why the chattel and intangibles awarded to Hodges by JP Court, on 27 Jan. 2012 were not immediately ordered returned to Plaintiff with full restitution for items "thrown on the dump" by Defendants. Exhibit 21; *Lingo v. Lingo,* No. 713, 2009.

Failure of Det. Lester Johnson and the Attorney General to thoroughly investigate the *criminal* aspect of Hodges' actions? Plaintiff went to the AG's office and had a private meeting of 45 min. duration with Det. Johnson at his office (at which time exculpating evidence found and generated by DH was presented) and has written to him several times. (Denied by the Defendants re: a supposed 15 Apr. 2012 inquiry.) Johnson was reticent to employ the **Elder Abuse** laws which are *his primary*

duty to enforce. Via letter, he informed Plaintiff that Plaintiff would need to show D.H. had plans to defraud Plaintiff from *outset*. *Grunstein v. Silva*, 2009 WL 4698541 (Dec. 8, 2009, Del Ch.) Exhibit 22.

Plaintiff is now able to show, "Mustang evidence" as the *start* of her criminal violation of her fiduciary duties, on or about 25 April 2000, approximately 2 months *after she moved into Plaintiffs house* with a tale of woe and disrupted Plaintiffs social life. Since writing to Johnson and this Court, further damning evidence has been found (27 June 2013) and will be offered as evidence at trial. Detective Johnson has still refused to perform his duty and the Chancery Court is jurisdictionally bound to hear Plaintiff's case as a Court of Equity.

D.H. *did agree* (via a single a.m. phone call of late July/early August 2006) when, by chance, Plaintiff discovered he did *not* have that pre-agreed document (her Will due Dec. 04) on hand. The call was short and cordial, D.H. knowing immediately what was asked for, and complied very quickly via mail. On signature page, D.H. *denies any duress* in the signing of the document, but *knew* she was about to *rescind it immediately*. Exhibit 23. Any fiduciary breach of this magnitude was to be made *only with proper divulgence to Principal* and/or *consultation with attorney for guidance* whether the breach could or would hurt Principal and if the Will deletion was known by the Plaintiff in Aug. 2006, he *would have* initiated immediate Court proceeding 3 years earlier and his Fiduciary Agent would be evicted and Plaintiff would regain full *ownership* of the Dagsboro house, with his furnishings and # 27, intact.

CONCLUSION

THEREFORE, Plaintiff renews his request that Glasscock recuse himself or some other Court Officer arranges for the recusal. In addition, if a person reads and comprehends the magnitude of The Breach of Fiduciary Duty set forth in this Motion as well as Plaintiff's Amended Complaint and Amendment to the Amended Complaint, it is easily discernible that the issues to be heard in Chancery Court will take more than 3 and /2 hours to present. Just the review of the 9 boxes the Defendants are ordered to bring to Court will take at least a day as LL insists he go through the 9 boxes to determine if the materials therein are complete and nothing is missing. It is not anyone's decision *but his* to decide what is an intangible or the proof of intangibles. Del. C., Title 25, Ch. 40, § 4001(b)(6).

Plaintiff has exercised his right to demand of his Fiduciary Agent to produce an accounting as allowed by Delaware Law. Dorothea Hodges, with the willing and able assistance of her daughter, Tamara Hodges, son, Zack Hodges, and "member of the family", have all performed their roles, in varying degree, in aiding and abetting Dorothea Hodges to Breach her Fiduciary Duties and Lorenzetti again demands 4 days of trial time in order to complete the presentation of her Breaches -- an impossibility in 3 and /2 hours.

DATED at Rockingham, Vermont on August 14, 2013.

<<signature>>

Loren Lorenzetti, pro se

67 Vt. Route 106

Perkinsville, VT 05151

(802) 263-5582

Footnotes

1 8 x $25,000 ≠ $150,000

End of Document