EXHIBIT RR

Not Reported in F.Supp., 1987 WL 7563 (E.D.N.Y.)
(Cite as: 1987 WL 7563 (E.D.N.Y.))

United States District Court, E.D. New York.
RONALD PERRO, Plaintiff,
v.
SALVATORE ROMANO, et al., Defendants.
No. CV-85-4020 (ILG).

February 9, 1987.

Ronald Perro, Plaintiff Pro Se.

Martin Bradley Ashare, Suffolk County Attorney's Office, Legal Department, Hauppauge, New York.

MEMORANDUM AND ORDER

AMON, United States Magistrate.

*1 Defendants have moved for a protective order under Federal Rule of Civil Procedure 26(c) requesting that this court dismiss plaintiff's second set of interrogatories as burdensome and an abuse of the discovery process, claiming that there are interposed for purposes of delay, that they are duplicative of plaintiff's first set of interrogatories, and that they improperly call for concurrence in plaintiff's legal contentions.

The interrogatories at issue consist of two sets of eleven questions, one set addressed to Stephen Solomon, D.D.S., the other addressed to Salvatore Romano, the Warden of the Suffolk County Correctional Facility. Of the twenty-two interrogatories, this court finds for the reasons set forth below that three are improper and should be stricken, namely Interrogatories Nos. 9 and 11 addressed to Dr. Solomon and Interrogatory No. 4 addressed to Salvatore Romano. I further find, however, that defendants have failed to establish that they are entitled to a protective order with respect to the remaining interrogatories.

Rule 26(c) provides that the court, upon a showing of 'good cause' may, when justice requires, make any order to protect a party from whom discovery is sought 'from annoyance, embarrassment, oppression, or undue burden or expense'. This same rule also provides for discovery of 'any matter, not privileged, which is relevant to the subject matter involved in the pending action'. Fed. R. Civ. P. 26(b)(1). Accordingly if the material sought is not privileged and is relevant it is discoverable unless the movant can show 'good cause' for the court to grant a protective order.

The defendants, as the party objecting to the interrogatories, bear the burden of convincing 'the court that the interrogatories are improper and need not be answered.' Fonseca v. Regan, 98 F.R.D. 694, 700 (E.D.N.Y. 1983), Howard v. Galesi, 107 F.R.D. 348, 350 (S.D.N.Y. 1985); Compagnie Francaise D'Assurance v. Phillips Petroleum, 105 F.R.D. 16, 42 (S.D.N.Y. 1984). Defendants do not claim a privilege and have not demonstrated to this court that the interrogatories are burdensome, oppressive, irrelevant, or overly broad.[FN1]

Defendants' primary attack on the interrogatories-that they were interposed for purposes of forestalling a decision of defendants' summary judgment motion-is now moot, since the Honorable Leo I. Glasser denied defendants' summary judgment motion by order dated October 3, 1986.

Defendants' contention that the interrogatories are duplicative of information already requested and provided is not compelling. Defendants do not specify which interrogatories are duplicative or even provide an example of such duplication. A question by question comparison of the first and second sets of interrogatories does not support this claim. Furthermore, defendants' assertion that the exhibits attached to their summary judgment motion provide all the information sought by plaintiff's interrogatories is inadequate. Federal Rule of Civil Procedure 33(c) provides that where

*2 the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained. . . . A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

Defendants' general reference to the summary judgment exhibits does not meet the specification requirements of this rule. Moreover, as one court has observed, it is not the responsibility of the judge 'to sift the depositions or responses to determine whether the interrogatories are sufficiently answered therein; rather, the movant is obliged to indicate exactly where in the depositions or responses the answers to the interrogatories may be found.' Anderson v. United Air Lines, Inc., 49 F.R.D. 144, 147 (S.D.N.Y. 1969).

Finally, defendants claim plaintiff's interrogatories are improper because they simply request that defendants concur in or rebut plaintiff's legal theories. Defendants point to Interrogatory No. 4 to Salvatore Romano as a typical request for conjecture. This interrogatory asks: 'Isn't it a possibility that even though plaintiff was able to attend the facility law library, he was not called to the dental unit when requests were made?' This court finds that this interrogatory is improper since it does call for conjecture. In addition Interrogatories Nos. 9 and 11 to Dr. Solomon are improper since they are either argumentative or otherwise improperly posited. The balance of the interrogatories, however, are not, as defendants contend, similar to Interrogatory No. 4 above. They call either for factual assertions or for concurrence in factual statements. Although many may have been more properly posited as requests for admissions pursuant to Rule 36, no objection was interposed upon this ground, nor should the interrogatories be stricken on this basis in view of plaintiff's status as a pro se litigant. Haines v. Kerner, 404 U.S. 519, 520 (1972); Cook v. City of New York, 578 F. Sup. 179, 181 (S.D.N.Y. 1984).

Accordingly, it is hereby

ORDERED that defendants respond to plaintiff's second set of interrogatories with the exception of Interrogatories Nos. 4, 9 and 11 indicated herein, within ten days of the date of this order.

SO ORDERED.

FN1 Defendants' failure to make more than general objections to the interrogatories in and of itself constitutes grounds for denying their objections. Objections to interrogatories 'must be specific and supported by a detailed explanation why the interrogatories are improper'. In Re Folding Carton Antitrust Litigation, 83 F.R.D. 260, 264 (N.D. Illinois 1979); Roesberg v. Johns-Manville Corp., 85 F.R.D. 292 (D. Pa. 1980); White v. Belogi-nis, 53 F.R.D. 480 (S.D.N.Y. 1971).

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