

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

LEILA C. SINCLAIR	:	
	:	
v.	:	C.A. No. 16-0127-WES
	:	
CRAIG S. SAMPSON, et al.	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

By way of background, this litigation arises out of a family dispute. Plaintiff Leila Sinclair initiated this action by filing a pro se Complaint against her three siblings (Kathleen Ennen, William Jenkins and Theodore Jenkins, Jr.), a Newport estate planning attorney (Craig Sampson, Esquire) and American National Insurance Company. The Complaint concerns the administration of a Trust purportedly established by Plaintiff's late mother (Kathleen Ennis Jenkins) and the distribution of the proceeds of an Annuity held by the Trust. The dispute centers on competing versions of a Trust document and the authority of Defendant William Jenkins to remove Plaintiff as a Trustee in early 2016. The version relied upon by the sibling Defendants names William Jenkins as Appointor with the power to appoint and remove a Trustee. The version relied upon by Plaintiff names another individual as Appointor and provides that the Appointor has the power to appoint a Trustee but can only remove a Trustee with his or her consent.¹

The sibling Defendants dispute Plaintiff's claims as to the Trust. Additionally, they have filed several counterclaims against Plaintiff which "seek damages for what they allege to be

¹ On November 2, 2016, Plaintiff's Motion for Preliminary Injunctive Relief on her claim was denied, in part, because her position was not sufficiently supported by evidence at that time to meet her burden of establishing a likelihood of success on the merits. (See ECF Doc. Nos. 29 and 45).

Plaintiff's fraudulent conversion of assets belonging to [their late mother] and the Trust." (ECF Doc. No. 46-1 at p. 2).

Presently pending before the Court is the sibling Defendants' Motion for Sanctions against Plaintiff for Failure to Comply with Court Order for Discovery. (ECF Doc. No. 106). Plaintiff opposes the Motion. (ECF Doc. No. 110). After reviewing the Motion, it became apparent to the Court that it was driven by a factual dispute as to the disposition of certain files allegedly left by Plaintiff in her mother's former residence in Newport. Plaintiff has described this dispute as a "merry-go-round" and claims that the sibling Defendants "either still have [her files] or they destroyed them after this case was filed." (ECF Doc. No. 110 at pp. 5, 10). The sibling Defendants dispute possessing or destroying any of Plaintiff's personal files. This "ongoing argument" as Plaintiff describes it (ECF Doc. No. 112 at p. 2) comes to a head because Plaintiff has responded to the majority of the sibling Defendants' Document Requests by stating that she "does not have custody, possession, or control over responsive documents as they are in her or the Trust's files left in the family home." (See ECF Doc. No. 106-6). She claims to have "left a literal mountain of files there." Id. at p. 2.

In order to resolve this factual dispute, an evidentiary hearing was held on November 20, 2017. Plaintiff and two of the sibling Defendants (Kathleen Ennen and Theodore Jenkins) testified under oath at length about this dispute, including details about the contents and ultimate sale of their late mother's Newport home.

Discussion

On April 5, 2017, the sibling Defendants issued Document Requests to Plaintiff related to their counterclaims. Absent any responses, the sibling Defendants filed a Motion to Compel on June 29, 2017. (ECF Doc. No. 96). Plaintiff filed an Opposition to the Motion on July 13, 2017.

(ECF Doc. No. 97). In it, Plaintiff indicated that the Document Requests had not been “served as required by the FRCP” and that the First Request was not emailed until May 2, 2017. Id. at p. 1. She argued that the Motion to Compel was unnecessary and that she would “answer the request as soon as humanly possible.” Id. at p. 2. On July 18, 2017, the Court granted the sibling Defendants’ Motion to Compel and ORDERED Plaintiff to respond to the Document Requests within twenty-one days but denied their Request for Sanctions without prejudice. On August 7, 2017, Plaintiff responded to the sibling Defendants’ Document Requests. (ECF Doc. No. 106-6). It is undisputed that no documents were produced, and Plaintiff objected to each of the thirty-five Requests. She objected to every Request on the ground that the document was “never served” and, as to the great majority, responded with the “files left in the family home” explanation for non-production. Id. The sibling Defendants seek entry of default on their Counterclaims and other sanctions for Plaintiff’s failure to comply with the Court’s July 18, 2017 Order.

After considering the testimony² and Exhibits presented at the November 20, 2017 hearing, the relevant pleadings, and the respective arguments of the parties, the Court concludes that Plaintiff’s position as to her personal and financial files simply does not add up. Plaintiff’s original Complaint filed on March 16, 2016 states that “she discovered that almost all of her mother’s financial and her own personal files kept at the house had been removed without authority.” (ECF Doc. No. 1 at p. 6). She claims to have discovered this “once she got there” shortly after her mother’s death in November 2015. Id. In an Amended Complaint filed on

² Mr. Jenkins testified at the hearing that he had a strained relationship with Plaintiff “since her action and...her felony issues and her issues with the SEC.” (ECF Doc. No. 147 at p. 49). While this Court was, prior to this testimony, already aware from the Court’s docket that Plaintiff pled guilty to felony passport application fraud in 2011 in the Southern District of New York (USA v. Jenkins, Case 1:11-CR-00633-WHP) and that she is the subject of an adverse final judgment in this District finding securities fraud arising out of an SEC civil enforcement action (S.E.C. v. Jenkins, Case 1:09-cv-00100-WES), it has resolved the factual disputes presented by this Motion without regard to the credibility findings made in these unrelated proceedings.

November 29, 2016, Plaintiff added that, “[u]pon information and belief, the files were removed by [Defendant Theodore Jenkins] on November 19 or 20, 2015 and later more were removed by [Defendant Kathleen Ennen]...in December, 2015 and January, 2016.” (ECF Doc. No. 50 at pp. 6-7). These assertions are internally inconsistent since it makes no sense that Plaintiff discovered in November 2015 that “almost all” of her personal files had been removed from the house but that the removal took place partially in November and partially in December 2015 and January 2016. Further, it makes no sense that Plaintiff would discover that her files were missing upon her return but not mention that fact in subsequent emails sent to Defendants Theodore Jenkins and Kathleen Ennen on November 26, 2015 (Defs.’ Exh. A) and to Defendant Kathleen Ennen on January 8, 2016. (Defs.’ Exh. B). This is particularly so when both emails dealt in part with the clean-up/clean out of the Newport house.

Most telling, however, is Plaintiff’s contradictory testimony that she “had no reason to believe anything was removed” when she returned to Newport in November 2015. (ECF Doc. No. 147 at pp. 115-116). When confronted at the hearing with the inconsistent allegation contained in her Complaint, Plaintiff’s only explanation was that “I have no idea why I would have said that.” Id. at p. 116. Also, when asked when she “first” learned that her personal financial records had been removed from the Newport house, she testified that she “put the pieces together during the depositions this summer [2017].” Id. at p. 118. This testimony is plainly at odds with the allegations she unequivocally made in her pro se Complaint in 2016 that she discovered the missing files in November 2015. Finally, there was testimony presented that Plaintiff removed both personal and estate items from the house for “safekeeping” in early 2016 but claimed that she “didn’t have time” to also remove her financial records and important

documents. (ECF Doc. No. 147 at pp. 123-124). When asked to explain, she simply answered “because I didn’t have time.” Id.

The waters are further muddled by a detailed probate claim Plaintiff made as a “creditor” to her late mother’s estate. (Defs.’ Exh. I). The claim is dated July 26, 2016 and seeks payment of \$37,921.61 over and above Plaintiff’s claimed 25% share of the Estate. Id. Although Plaintiff accuses Defendant Theodore Jenkins in the claim of taking “all of mom’s and my financial records out of 92 RI Ave. without authority,” she had enough records in her possession at that time to prepare an accounting of her mother’s expenses that she “paid over the years.” Id. The claim is accompanied by pages of financial documents including bank and credit card account statements, invoices and canceled checks. Id. It appears that some of these documents date back more than a decade. Id. Plaintiff also indicates that she intends to provide “an accounting of the TLJ Trust” shortly. Id. She indicates that that Trust was “managed in about thirty different accounts during its existence over twenty-eight years.” Id. It strains credulity to accept that Plaintiff was able to submit a detailed probate claim on the Estate and prepare a trust accounting when “all” of her financial records had been taken.

When asked at the hearing to explain this apparent inconsistency, Plaintiff testified that “I didn’t say I didn’t have access to any of my files. I said I didn’t have access to the files left in my house.” (ECF Doc. No. 147 at p. 143). She testified that there were “thousands of pages of [her] paper and electronic files” at the house. Id. at p. 144. She stated that they were always there and she did not go through them on January 28, 2016 because she did not have much time and did not have any reason to believe they weren’t there. Id. at p. 145. However, when she initiated this lawsuit on March 16, 2016, she was clear that she “discovered” that her files were missing from the house “once she got there” shortly after her mother’s passing in November

2015. (ECF Doc. No. 1 at p. 6). And, as noted previously, she was asked on November 20, 2017 when she first learned that her files had been removed and responded that she “put the pieces together during the depositions this summer [2017].” (ECF Doc. No. 147 at p. 118). Her story is a moving target.

Furthermore, Plaintiff’s July 26, 2016 probate claim was accompanied by several 2014 invoices addressed to her mother from a company named CHR Inc. (See Def.’ Exh. I). Plaintiff testified that CHR is a company she set up and controlled. (ECF Doc. No. 147 at p. 82). Plaintiff’s untruthfulness and abuse of the discovery process is plainly evidenced by her discovery responses regarding CHR in this case. The sibling Defendants served a Document Request broadly seeking documents regarding CHR including communications between CHR and her late mother. (ECF Doc. No. 106-6 at p. 5). In response on August 7, 2017, Plaintiff stated as follows:

Plaintiff does not have custody, possession, or control over responsive documents as they are in her files left in the family home which included all the subcontractor bills for the multiple year renovation supervised by the Plaintiff of the family home. The only CHR records in the possession of the Plaintiff are the CHR incorporation documents which are publicly available and already in the possession of the Defendants.

Id. (emphasis added). Obviously, this discovery response does not jibe with Plaintiff’s ability in 2016 to support her estate claim with thousands of dollars of invoices from CHR to her late mother reflecting work purportedly done on an “ongoing rehab project.” (Defs. Exh. I). The CHR invoices are responsive to the sibling Defendants’ discovery request and were plainly in Plaintiff’s possession because she submitted them in support of her 2016 probate claim.

The Court concludes that Plaintiff’s testimony as to the claimed removal of her personal files from the Newport home by her siblings is simply not credible. The only reasonable

conclusions to draw from these facts is that either Plaintiff herself removed her personal files from the home or that the files were never there in the first place. In either event, Plaintiff's response to the sibling Defendants' Document Requests that she cannot produce documents because they were left in the Newport home and are not in her possession, custody or control is not believable. The Court finds that Plaintiff has made misrepresentations in her discovery responses and in pleadings filed with the Court. She has abused the discovery process and violated an Order of this Court to produce responsive documents. Her behavior is serious and warrants sanction.

The sibling Defendants seek sanctions against Plaintiff pursuant to Rule 37(b)(2), Fed. R. Civ. P., including a request that the Court enter default against Plaintiff on their counterclaims. While the First Circuit Court of Appeals has described default as a drastic sanction, it has held that "[a] district court need not consider or try lesser sanctions before imposing default." Companion Health Servs, Inc. v. Kurtz, 675 F.3d 75, 84 (1st Cir. 2012). Default is a "useful remedy when a litigant is confronted by an obstructionist adversary." Id. Here, Plaintiff has, in this Court's opinion, "engaged in a deliberate pattern of stonewalling with the aim of frustrating effective discovery and the progress of th[is] case." Id. at 85. Although the Court would not generally recommend default as a sanction for a single discovery violation, Plaintiff has perpetuated this myth about her lost or stolen files since she initiated this litigation in 2016. At the November 20, 2017 hearing, she testified directly at odds with the story presented in her original Complaint and could not explain the discrepancy. Her pattern of behavior has resulted in unnecessary and unproductive motion practice as well as delaying the disposition of this

case.³ On balance, the Court recommends that Plaintiff's obstructionist tactics and untruthfulness justify the entry of default against her as to the sibling Defendants' counterclaims to penalize such wrongful conduct and to deter similar conduct in the future by Plaintiff and other litigants. See Kurtz, 675 F.3d at 84. Further, the Court also recommends an award of reasonable expenses, including attorneys' fees, incurred by the sibling Defendants in bringing these Motions as required by Rule 37(b)(2)(C), Fed. R. Civ. P.

For the foregoing reasons, I recommend that the sibling Defendants' Motion for Sanctions (ECF Doc. No. 106) be GRANTED and that the Court enter default against Plaintiff on all of the sibling Defendants' Counterclaims. In addition, I recommend that the sibling Defendants be awarded their reasonable expenses, including attorneys' fees, in pursuing the instant Motion for Sanctions.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge

³ Although this is the first violation in this case, this Court previously imposed "second-tier" sanctions for Plaintiff's securities law violations because her "conduct spanned a number of years and reflects a great effort to piece together a fraudulent scheme, cover it up, and then continue to lie about it throughout this litigation." (ECF Doc. No. 79 at p. 33 in SEC v. Jenkins, Case 1:09-cv-00100-WES). In addition, as pointed out by Defendants' counsel, Plaintiff also made an unsupported stolen files argument in that case. Id. at pp. 11-12.

January 16, 2018