IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ALBERT A. CIARDI, III, et al.	:	DECEMBER TERM 2005
	:	
	:	NO. 2175
v.	:	
	:	COMMERCE PROGRAM
	:	
JANSSEN & KEENAN, P.C., et al.	:	801 EDA 2006
	:	

OPINION

Albert A. Ciardi, III, Albert A. Ciardi, Jr., and Ciardi & Ciardi, P.C. (collectively, "appellants") appeal from the Court's Order dated March 14, 2006, which granted Janssen & Keenan, P.C., Henry H. Janssen, and Paul D. Keenan's (collectively, "appellees") Motion to Compel and struck appellants' objections to appellees' discovery requests.

Procedural History

This Opinion corrects a typographical error made in the Opinion of June 27, 2006. Appellees served requests for production of documents and interrogatories upon appellants on January 6, 2006. Having received no response from appellants, appellees served a Motion to Compel Answers to Interrogatories and Production of Documents ("Motion to Compel") upon appellants on February 16, 2006. Appellees' Motion to Compel was given an argument date of March 7, 2006. When the parties appeared in Discovery Court on March 7, 2006, counsel for appellants informed the Court that appellants had filed and served their response to appellees' discovery requests earlier that day, i.e. on March 7, 2006. In their response, appellants raised objections on the basis of, *inter alia*, attorney-client privilege. Since appellees had not had the chance to study

appellants' response given the fact that appellees were just served with it, the Court continued the argument to the following week. The Court ordered that the parties could file a supplemental motion and response if disputes on the Motion to Compel remained.

The parties appeared in Discovery Court on March 14, 2006 for an argument on appellees' original Motion to Compel. When counsel for appellants was specifically asked by the Court the nature of the attorney-client communications which would be disclosed by the discovery sought, no response was forthcoming. The Court repeated the question and again, no response was forthcoming. Appellants did not produce a privilege log for appellees' review nor submit any documents or written responses for which privilege was claimed to the Court for *in camera* review.

At the conclusion of the argument, the Court issued an Order granting appellees' Motion to Compel and striking appellants' objections. Appellants thereafter filed the present appeal.[1]

Discussion

As an initial matter, the March 14, 2006 argument was not placed on the record. Appellants' failure to follow the procedures set forth in Pa.R.A.P. 1923 (Statement in Absence of Transcript) and Pa.R.A.P. 1924 (Agreed Statement of Record) result in there being no record upon which to base a claim of error. A baseless claim of error is waived. It is suggested that this appeal be quashed pursuant to Pa.R.A.P. 1911(d) (Request for Transcript, Effect of Failure to Comply).

In any event, appellants' objections to appellees' discovery requests were made beyond the thirty-day period mandated by the rules of civil procedure. Pursuant to Pa.R.C.P. 4006 (Answers to Written Interrogatories by a Party), "the answering party

[1] It should be noted that appellants did not file a motion for reconsideration of the March 14, 2006 Order.

shall serve a copy of the answers, and objections if any, within thirty days after the service of the interrogatories." In addition, Pa.R.C.P. 4009.12 (Answer to Request Upon a Party for Production of Documents and Things) states, "the party upon whom the request is served shall within thirty days after the service of the request…serve an answer including objections to each numbered paragraph in the request." Here, appellees served their discovery requests on January 6, 2006. In order to comply with the above-cited rules, appellants had to serve their answers and objections, if any, by February 6, 2006. Instead, appellants did not serve their answers and objections until March 7, 2006, twenty-nine (29) days after the applicable deadline. While it is true that the failure to file objections within the thirty-day time period does not automatically waive the right to object, the length of the delay and the reasons for the delay are factors to be considered by the court when a discovery rule has been violated. See McGovern v. Hospital Services Ass'n of Northeastern Pennsylvania, 2001 Pa. Super. 304, P19-21, 785 A.2d 1012, 1018-19 (2001).

Appellants' reason for their delay in filing their objections is without merit. Appellants stated in their Response to the Motion to Compel that they "did not initially respond to [appellees'] discovery requests because [appellants] believed it more appropriate to respond to [appellees'] discovery requests upon the Court's determination of [appellants'] preliminary objections to [appellees'] Counterclaim." Appellants, in effect, unilaterally awarded themselves a stay of discovery. It is well-established that the pendency of preliminary objections does not serve as a *de facto* or self-awarded stay of discovery. Therefore, appellants' reason for their delay in filing their objections is

unfounded.[2]

Further, at the argument on the Motion to Compel, appellants did not provide any offer of proof on the attorney-client privilege issue when queried by the Court. Nothing was given to the Court other than the objections themselves. Appellants did not provide appellees with a privilege log nor did they provide the Court with any documents for *in camera* review.[3] See McGovern, 2001 Pa. Super. at P21, 785 A.2d at 1018 ("While it remains to be seen if indeed the underlying materials fall under the protection of the attorney-client privilege, the trial court at the very least must conduct an *in camera* inspection of the documents to determine this contention").

In sum, the totality of the circumstances, including the length and the reason for appellants' delay in filing their objections and the total absence of *any* means for review, the information source of which can only be the appellants, constitutes a waiver.

For all the foregoing reasons, this Court respectfully suggests that its decision be upheld on appeal.

BY THE COURT:

Dated: February _____, 2007

_____
HOWLAND W. ABRAMSON, J.

[2] This is not a case where appellants were granted an extension to respond to discovery requests by the appellees.
[3] Nor did counsel for appellants provide responses to interrogatories with a claim of privilege for review.