FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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Docket No. O-03570/02

ROY DEN HOLLANDER, Petitioner,

-against-

ALINA SHIPILINA, Respondent,

AFFIRMATION IN OPPOSITION TO RESPONDENT'S MOTION FOR DISCOVERY PROTECTIVE ORDER AND VACATING DISCOVERY REQUESTS

JUDGE: HELEN C. STRUM

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROY DEN HOLLANDER, ESQ., an attorney duly admitted to practice law before the courts of the state of New York affirms the following to be true:

1. That I am an attorney representing myself, Petitioner, in the above captioned matter and am fully familiar with all the facts and circumstances to which this affirmation pertains.

2. I submit this affirmation in opposition to Respondent's motion for a protective order regarding discovery requests and vacating of discovery requests.

Argument

3. Discovery proceedings of the CPLR are applicable to Family Court proceedings. Russo v. Hardy, 1972, 68 Misc.2d 1057, 328 N.Y.S.2d 425.

4. "CPLR 3101(a) broadly mandates full pre-trial disclosure by the parties of all matter or data that is material and necessary in the action…." New York Civil Practice, Weinstein Korn and Miller, Section 3101:03, page 31-14.

5. "The broad circumference of pretrial disclosure is enunciated in CPLR 3101 which in essence reflects legislative policy favoring the forthright exchange of information by parties in advance of trial in civil actions. That policy is implemented by the procedures set forth in CPLR 3102 pertaining to the disclosure menu and methodology embodied in CPLR 3102." Id. at Section 3102.01, page 31-255.
6. "CPLR 3102 does not specifically limit a party seeking disclosure to a choice of any one or more of the methods on its menu. There is no express limit on the number of times a device may be used." Id., page 256.
7. "The responding party no longer bears the burden of moving to strike interrogatories or demands for documents and things to which that party has an objection. Instead, under [CPLR 3103(a), 3122 and 3133], the responding party **must** within twenty days of service of the demand for production 'serve a response which shall state with reasonable particularity the reasons for each objection,' and within twenty days of the service of interrogatories, **must** serve 'a copy of the answer to each interrogatory except one to which the party objects, in which event the reasons for the objection shall be stated with reasonable particularity.'" Id. Section 3103.07, pages 31-309, 310 (emphasis added).
8. The first set of discovery papers were served by mail on Respondent's attorney, Nicholas J. Mundy, on May 17, 2002. See attached Exhibit 1, Affidavit of Service. This beginning "flood" of papers, as characterized by Mr. Mundy, weighing significantly less than a pound, consisted of interrogatories, a request for inspection and copying of documents and notice for admissions. Under the CPLR, Mr. Mundy had until June 17, 2002, to provide answers to the interrogatories or merely note his

objections—overly broad, burdensome, intrusive, etc.—next the questions he believed inappropriate under Section 165 of the Family Court Act or CPLR 3101 *et seq*. As to the request for inspection, Mr. Mundy had until June 21, 2002, to produce the documents or, as with the interrogatories, merely note his objections. With the request for admissions, all Mr. Mundy needed to do was note "not admitted." Mr. Mundy, however, chose to do nothing—not a telephone call, not a letter—nothing. He chose to ignore the rules of civil procedure and not even make an attempt to resolve the discovery issues without involving the Court.

9. The second, even lighter, set of discovery papers was served by mail on May 24 and due June 24, 2002. See attached Exhibit 2, Affidavit of Service. These papers consisted of eleven interrogatories on six sheets of paper. Once again Mr. Mundy did nothing and made no attempt to resolve the issues without motion practice.
10. Petitioner filed three motions to compel Mr. Mundy to play by the rules of discovery. Two other motions to compel discovery from non-parties were directed at the Federal Bureau of Investigation and Verizon in an effort to discover the identity of the man making the threatening telephone calls to Petitioner at the instigation of Respondent.
11. Had Petitioner not filed the motions to compel discovery from Respondent, Mr. Mundy would have most assuredly argued to the court that Petitioner's silence constituted relinquishment of his right to discovery. As witnessed at the July 2, 2002, proceeding, Mr. Mundy's arguments appear to carry great weight with the Court when before even providing the Petitioner a meaningful hearing on his motions to compel discovery, the Court decided Petitioner's discovery requests intrusive and instructed Mr. Mundy to file a motion for a protective order—no doubt the motion

will be granted. As such, the filing of the motion papers for a protective order appears more a matter of form than substance, since the Court in its own words has already made its decision.

12. The court's articulation of its discovery decision came at the beginning of the hearing when the court first addressed Mr. Mundy even though the issue involved the Petitioner's motions to compel discovery, which normally infers the court would have initiated the proceeding by questioning Petitioner. But of course, the court has wide discretion. Still the tenor, flow and length of the court's discussion with Mr. Mundy appeared to Petitioner as a continuation of previous ex parte talks. Before the hearing began, Mr. Mundy had been situated in the courtroom while Petitioner was instructed to wait in the hallway outside. The same situation occurred at the May 6, 2002, preliminary conference where Mr. Mundy also had free ingress and egress to the courtroom while the pro se Petitioner did not.
13. In any event, when a court considers a motion for a protective order, it will normally assume that the allegations of the pleadings are true. Green v. Sleznick, 220 A.D. 12, 221 N.Y.S. 63 (4th Dept. 1927); Balducci v. Zenner, 203 Misc. 40, 113 N.Y.S.2d 178 (Sup. Ct. Onondoga Co. 1951).
14. Mr. Mundy makes in his Notice of Motion and Affirmation a number of misrepresentations, dissemblances, half-truths and prevarications in a sophistic effort to obfuscate Petitioner's allegations and the facts in order to mislead the Court.
15. In the third paragraph of Respondent's Notice of Motion, Mr. Mundy says, "A good faith attempt has been made to resolve these issues without motion practices…" and in paragraph 3 of Respondent's Affirmation, Mr. Mundy says, "I have attempted in

good faith to resolve the issues in this motion without judicial intervention." Mr. Mundy's "good faith attempt" consisted of doing nothing in violation of the CPLR 3103(a), 3122 and 3133.

16. Paragraph 4 of Mr. Mundy's Affirmation dissembles by implying Petitioner received only one threatening and harassing telephone call when the Petition cited by Mr. Mundy clearly states "several".

17. In paragraph 8 of Mr. Mundy's Affirmation, he falsely implies that Petitioner made his discovery requests while a settlement offer was pending. Nothing could be further from the truth. On May 6, 2002, the Court made an offer to Mr. Mundy in open court for his client to agree to a one-year protection order against Respondent—Mr. Mundy refused. Petitioner served his discovery requests on May 17 and 24, 2002. It wasn't until fifteen minutes before the July 2, 2002, hearing that Petitioner learned of the settlement offer when Judge Sturm's law clerk told Petitioner that Mr. Mundy was offering a one-year order of protection with no admissions by Respondent. Petitioner exercised his constitutional right and did not accept the belated offer.

18. Paragraph 9 of Mr. Mundy's Affirmation misrepresents and misleads when it states "Petitioner refused to accept a Stipulation granting him the very one year order of protection he seeks…." Here Mr. Mundy failed to state the full details of the settlement offer that included Respondent not admitting to any wrong doing, which would make the order in this situation a meaningless deterrent, since it concerns a respondent steeped in the culture of Chechnya where she grew up and one who will most likely use her many homeland connections to carry out the threats communicated to Petitioner.

19. A one-year order of protection with out admission of wrong doing fails to provide sufficient protection for Petitioner, since it also does not disclose the identity of the man making the telephone calls. The man, as FBI agent Vadim Thomas opined, is probably an organized crime member that works at “Flash Dancer Topless Club”, which is the very same club where Respondent has worked as a stripper for the past two years.
20. Mr. Mundy also failed to note in his deceptive efforts to discredit Petitioner’s refusal of a settlement offer that the Family Court has the power to grant a three-year order of protection when there is exposure of Petitioner to physical injury.
21. If Mr. Mundy would listen to the two audiotapes in his possession of two of the threatening telephone calls made to Petitioner, even he would conclude that they carry the threat of physical injury. Add in the common knowledge among international law enforcement officials and private security and intelligence firms that deal with Chechnya and Russia (Petitioner served as Acting Country Manager of Russia for Kroll Associates) and any reasonable person would conclude that threats originating from a Russian with money, Respondent earns tax free an estimated $12,000 or more a month, require an effective deterrence.
22. It is difficult to convey to the Court the matter-of-fact brutality and utter disregard for court decisions that constitute business as usual in Russia and Chechnya. Disputes are more likely to be resolved with money and guns than by the courts in these two intertwined cultures. Unfortunately, many immigrants bring with them to America their traditional ways for handling disputes. Respondent has both the means in terms

of money and the connections with Russian and Chechen organized crime to employ traditional Russian and Chechen methods to achieve her ends.

23. A settlement that provides for a two or three year protective order where it is on the record that Respondent admits to her intent, reasons and actions taken in arranging for some man to make the threatening telephone calls will provide sufficient deterrence to protect Petitioner from Respondent hiring some Russian or Chechen hoodlum who charges the going rate of $5,000, plus airfare and hotel expenses, for disposing of a foreigner because the FBI will have a record sufficient for them to act upon. Such a settlement would also avoid protracted litigation and continuing legal fees.

24. Mr. Mundy's Affirmation arrogantly argues that Petitioner had no right to refuse Mr. Mundy's settlement. Since it is Petitioner and not Mr. Mundy who has been threatened with the clear message of grave bodily harm, Petitioner, and not Mr. Mundy, has at least some right to decide whether a settlement offer is more likely to effectively deter Respondent in the future so that Petitioner may be restored to the peace of mind and freedom from fear he possessed before these threats began in October 2001.

25. Mr. Mundy's Affirmation regularly omits pertinent facts such as in paragraph 16 where it states, "On July 2, 2002, Respondent had every reason to believe that the instant proceeding was to be settled in its entirety." Mr. Mundy, apparently prone to hyperbole, failed to state any of the "every reason" that led Respondent to expect a settlement.

26. Also in paragraph 16, Mr. Mundy refers to "additional evidence" that Petitioner is trying to harass Respondent, but Mr. Mundy fails to provide any. Mr. Mundy has

apparently forgotten the issue in this case is threatening and harassing telephone calls made to Petitioner. Petitioner's exercise of his constitutional right to petition an American court for protection from an alien resident and her associates is not harassment.

27. Mr. Mundy verbalizes his mask of righteous indignation at Petitioner's discovery requests by calling them "outrageous" in paragraph 7 of his affirmation. If they were so outrageous, why didn't he respond as provided for under CPLR 3103 (a), 3122 and 3133 rather than doing nothing that necessitated Petitioner to file motions to compel?
28. Mr. Mundy didn't respond because he wanted to avoid any discovery whatsoever, as he admits in paragraph 18 of his Affirmation—a not very subtle way of violating Petitioner's rights under the CPLR and thwarting legislative policy. Mr. Mundy goes so far in his twisted logic for preventing all discovery that the standard he advocates for the Court to use in determining the appropriateness of a discovery request is to make a "cursory review" of the demands and then throw them all out.
29. Furthermore, Mr. Mundy cites old law in paragraph 25 of his affirmation relying on Rios v. Donovan, 21 AD2d 409, 250 N.Y.S.2d 818 (1st Dept 1964) for the rule that a notice for discovery and inspection must call "for the production of specifically identified documents." (Emphasis by Mr. Mundy) According to New York Civil Practice, Weinstein, Korn and Miller, Section 3120.17, page 31-494, in 1993, CPLR 3120 (a)(1) was amended to eliminate the requirement that the notice to produce documents specifically identify the documents being requested. (Emphasis by Petitioner)

30. Mr. Mundy's objections are clearly overbroad in that he objects to every demand without any specificity and provides only conclusory statements that merely regurgitate a litany of adjectives without providing any argument as to why the adjectives apply.
31. Mr. Mundy only provides a small number of examples of what he considers are improper discovery requests by Petitioner.
32. In paragraph 19 of Mr. Mundy's Affirmation he objects to Petitioner's interrogatory concerning Respondent's notice of United States Immigration and Naturalization Proceedings (INS) concerning her. Petitioner alleges that part of the purpose for at least two of the three threatening telephone calls was to prevent him from providing information to the INS. If Respondent is the subject of an INS investigation or proceeding than that provides one bit of evidence towards showing that Respondent had a motive for instigating the threatening telephone calls.
33. Also in paragraph 19 is Mr. Mundy's objection to whether Respondent associated with any criminals in Russia (which technically includes Chechnya), Cyprus, Italy, Mexico or America. Respondent worked as a prostitute in all of the first four countries and apparently in America. (The truth, sadly, is what it is, and Petitioner is willing to provided proof.) The netherworld of the sex industry commonly includes organized criminals who make threats and break bones as part of their trade. If Respondent regularly associates with such persons, then that provides a piece of evidence towards showing means in that Respondent had access to the type of people who make a living, in part, from threatening others.

34. In paragraphs 21-23 & 28, Mr. Mundy once again throws about conculsory statements in an effort to pander to false gender stereotypes in order to rally the Court with knee jerk emotionalism against Petitioner's requests for information that Mr. Mundy characterizes as "personal" along with other descriptions for which he provides no support.

35. Mr. Mundy only revealed a handful of specific objections concerning requests for what he calls "personal" information, the parameters of which he didn't define, but apparently believes include any information concerning Respondent's means, motives and activities in conspiring to threaten Petitioner with grave bodily harm. Mr. Mundy seeks to set a new standard for discovery whereby the mere invocation of the word "personal" bans all discovery of relevant evidence.

36. Mr. Mundy specifically objects to the following requests as improper because they concern "personal" information:

    a. Copies of passports and model photo cards. In the threatening telephone calls, the man making the threats always starts by saying he is "calling on behalf of Angelina." Respondent's full legal name is Alina Alexandrovna Shipilina, but when she began working as a prostitute and lap dancer she adopted the stage name "Angelina". Logically, Petitioner needs to provide evidence that Respondent uses the name Angelina. Since Respondent has two Russian passports, one for traveling to the United States and another for other travels, this second passport may show her name as "Angelina". In addition, Respondent had model photo cards shot using the name "Angelina".

b. Work schedules and list of customers. Respondent works five nights a week as a lap dancer at Flash Dancers Topless Club. The club issues a work schedule to each stripper on a weekly basis. The average lap dancer nets $500 a night at Flash Dancers for $10,500 a month, Exhibit 3, Club Reviews by Dancers, which infers Respondent has the cash to hire a hoodlum to make and carry out threats. The income from Respondent's prostitution clients also infers means.

c. List of customers. Logically, there exists a significant likelihood that the man making the threatening telephones is one of Respondents customers.

d. Credit card statements. May show a series of payments to a "doing business as" that is the man making the threatening telephone calls.

37. Petitioner did not think about requesting sanctions until Mr. Mundy raised the issue in paragraph 24 of his Affirmation. Mr. Mundy's palpably outrageous and improper conduct in stonewalling the discovery process by intentionally doing nothing after he received Petitioner's discovery requests violated CPLR 3103(a), 3122 and 3133 which constitutes grounds for sanctions. Nevertheless, Petitioner is not requesting sanctions, but rather discovery of all data material and necessary for Petitioner to obtain a meaningful order of protection that will dispel the ever-present fear and danger of physical harm from some shadowy figure that telephones "on behalf of Angelina".

38. Wherefore, for all the foregoing reasons, the Court should not deny Petitioner the right to conduct discovery by vacating all of Petitioner's discovery demands.

Dated: July 17, 2002
New York, New York

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