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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA, :

Plaintiff, :

-versus- : Civil Action

SOLVENTS RECOVERY SERVICE OF NEW ENGLAND, : No. H-79-704

Defendant. :

- - - - - - - - - - - - - - - - x

United States District Court
141 Church Street
New Haven, Connecticut
July 28, 1981

B e f o r e: HONORABLE ARTHUR H. LATIMER, U.S. MAGISTRATE

A p p e a r a n c e s:

Representing the United States of America

ERICA L. DOLGIN, ESQ.
Environmental Enforcement Section
Land & Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

Representing Solvents Recovery Service of New England

MICHAEL L. RODBURG, ESQ., of Counsel
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A Professional Corporation
65 Livingston Avenue
Roseland, New Jersey, 06068

(At 2:40 P.M.)

THE COURT: Good afternoon. I will call United States against Solvents Recovery Service of New England, Civil H-79-704.

Counsel had requested partly I gather as a matter of convenience in view of the logistics involved that there be an immediate hearing on a request or motion by Plaintiff to compel discovery, more specifically as revealed in the papers I have just reviewed that it be authorized by the Court to proceed with questions concerning one Albert Tatro and circumstances surrounding termination of his employment with Defendant.

Now I recall the case from having reviewed pleadings in some other connection, obviously skeletal moving papers. I do see Counsel here. Perhaps you can simply introduce yourselves for the record and tell me what you believe the problem is.

My understanding from the Clerk was that the trial judge was not immediately available. I don't think that poses a problem because a discovery or non-dispositive motion or application by magistrates is fairly typical and the ruling subject to any review of any sort of interlocutory rule would be immediately effective, but since apparently this is of some particular concern to you all I

understand basically, obviously what the government is saying. Perhaps you would like to fill in further, but perhaps I would like more particularly to hear from Defendant why this sort of inquiry would be inappropriate.

Am I correct that you are in an ongoing deposition at this time?

MISS DOLGIN: Your Honor, my name is Erica Dolgin, and I am an attorney with the Department of Justice from Washington. The local attorney is Attorney Frank Santora who is on vacation so I have been taking the deposition.

The deposition is ongoing at this point and may I say all of us, none of us are from Connecticut. We all come here because it's sort of the intermediary point between Boston and New Jersey where the deponent lives.

THE COURT: Have you experienced other serious problems with the deposition or has it been proceeding more or less in the usual course?

MISS DOLGIN: Everything else has been very smooth and by agreement.

THE COURT: Alright. Very well.

MR. RODBURG: My name is Michael Rodburg. I am from the firm of Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan. In this matter we are counsel for Solvents

Recovery of New England, which is the Defendant in this case. I'm appearing in this case and have been admitted pro hoc vice before Judge Cabranes.

And a question arose as the moving papers disclose today concerning the circumstances of the dismissal of one Albert Tatro. Mr. Tatro was deposed at some length having been brought to Connecticut for deposition by subpoena. He is not an employee of the Defendant, and he was deposed by the moving parties here, the Plaintiffs.

He was asked specifically about the circumstances of his dismissal. He was not represented at that deposition by counsel and refused or declined to answer such questions except to state that he was terminated for cause and would not answer further questions on the subject without advice of counsel.

As he had no counsel at that time I believe it was Mr. Carey who was questioning the witness and reserved that line of questioning. As far as I know there has been no motion brought before today with respect to that inquiry.

THE COURT: I take it that he had some reasonable notice of that deposition or was it very short notice?

MR. RODBURG: I believe he was given notice and the date was arranged and there were discussions with him.

I don't know that personally since we were there simply as a party.

THE COURT: He had not in any event engaged counsel as of that time?

MR. RODBURG: I don't know that.

THE COURT: But that is to say who appeared with him for the deposition?

MR. RODBURG: The deposition record discloses that no one appeared for him.

THE COURT: I see. Alright. Was he there then as a non-party witness under subpoena?

MR. RODBURG: Yes, your Honor, most clearly so.

THE COURT: Alright. And there was no followup proceeding you indicate with respect to enforcement of the matter?

MR. RODBURG: No, your Honor.

THE COURT: Alright.

MR. RODBURG: My point here today is a simple one that I think that that witness not only declined to give the reason but stated that it was for cause. Other witnesses who are also deposed as fact witnesses by Plaintiffs have indicated that it involved some embezzlement type activities. Our point is very simple. I think the matter

of common decency and courtesy if nothing else require that the Plaintiffs make this motion first with respect to Mr. Tatro as explained on the record and it appears that the Plaintiff's purpose in questioning about the circumstances of his dismissal relate to his credibility as a witness for the government.

It strikes us as somewhat odd that the government would be seeking to seek evidence to impeach the credibility of one of their witnesses at this stage of the proceedings. At any rate, I won't dispute that may be tangentially related to discovery from their point of view, but I think in light of the circumstances that surround the dismissal that the fact it was admitted by him that it was for cause, it strikes me that as a matter of courtesy and decency that any motion should be brought first to compel his disclosure of the questions. I don't think it would be fair for him to have our witness here today to be asked those same questions which Mr. Tatro respectfully declined to answer.

THE COURT: How long ago are we talking about, the Tatro deposition I mean?

MR. RODBURG: The Tatro deposition was May 12, 1981.

THE COURT: And has it been transcribed and filed yet?

MR. RODBURG: It's been transcribed. I assume it's been filed.

THE COURT: And when were the depositions of the other witnesses of whom you speak taken?

MR. RODBURG: There is a reference to Mr. Tatro's dismissal in the deposition of James Michael Maguder taken May 5, 1981, and it's a reference on pages 138, line 6, through page 141, line 7.

I might say there was no objection raised by this party as to those questions of Mr. Maguder at that time. He was a fact witness, not a party witness.

And similarly there was a deposition of a Mr. Bankert taken May 6, 1981. And there is again a reference to the circumstances of his, Mr. Tatro's dismissal on page 182, line 9 continuing about to page 188, line 7, again without objection from this party as Mr. Bankert was a fact witness.

THE COURT: I don't want to get too far off field, but what is your trial preparation schedule expectation with Judge Cabranes?

MR. RODBURG: I think September is the date upon which discovery is to be completed. What day in September I don't recall offhand.

I expect, however, there will be a motion

by one party or the other to extend that.

THE COURT: Yes. And is he on vacation currently?

MR. RODBURG: Mr. Tatro?

THE COURT: No, Judge Cabranes?

MR. RODBURG: We were informed this afternoon he's on vacation until August 3rd.

THE COURT: Where does Mr. Tatro live?

MR. RODBURG: I would refer to the transcript for that information. I think he testified I think somewhere in New Jersey. My associate tells me he gave his address as Southington, Connecticut.

THE COURT: Would you respond, if Plaintiff's counsel said that this line of inquiry of the current deponent is in all likelihood going to come up anyway by way of corroboration if nothing else and it's simply a matter of logistical convenience for you all to proceed now, I don't want to get fanciful, but it seems to me that that was a logical enough line of response.

Your thought was that simply, I shouldn't say simply, but it was more seemly if you will to pursue the matter with Mr. Tatro directly in the first place or at least through enforcement mechanism. I don't know whether Plaintiff would think that awkward but I'm certain at some

point Plaintiff is going to say that we want to ask these questions as a followup anyway much as we did of these other witnesses, and I'm just curious what your general response would be.

MR. RODBURG: Our response I think is that there is a party whose interests are affected who is not here or represented. Though we can't presume to represent his rights or his interests, we feel that we at least we have the responsibility at this time to decline to answer the questions unless ordered to do so.

THE COURT: I understand, and does it look to you if you can say that this Mr. Tatro is a potential witness for Plaintiff, occupies as far as the records developed, any significant relationship to the controversy between you all?

MR. RODBURG: I don't think so. There is no dispute as to that. Miss Dolgin requires him as a prime government witness.

MISS DOLGIN: I might say why we were so concerned, we believe that Mr. Tatro through an examination of the documents, we decided that Mr. Tatro would be, apart from Mr. Boll, the president of the company, and maybe even more so the person best able to answer questions about the day to day operations of the business over the years.

So we are very concerned about determining whether or not indeed he would be a credible witness and if there were contested facts whether we could rely on his testimony. And we believe this information relating to his dismissal would affect our decision in that matter.

THE COURT: In resort to Mr. Tatro as witness, you mean?

MISS DOLGIN: Right. Whether I think we would have to rely on Mr. Boll for a lot of facts alternatively.

THE COURT: Alright. Yes. Well, what do you say to defense counsel's general position regarding timing and/or a direct enforcement vis-a-vis Tatro in the first place and the like?

MISS DOLGIN: Again, when Mr. Tatro refused to answer the questions we appreciate the fact that if indeed the facts did show him possibly criminally liable even if he came back with an attorney at a later date he would probably be pleading the Fifth Amendment. I mean, in terms of what we believe we would be able to get from him ultimately in his deposition.

As you said, we would end up resorting possibly back to Mr. Boll again to try to pin down some of the facts that Mr. Tatro would or would not be able to offer.

THE COURT: Yes, alright. What is your schedule with respect to Mr. Boll's deposition? In other words, what is the plan, how far have you gotten?

MISS DOLGIN: We were hoping to finish today and I don't know how, whether we will. Possibly we will run into tomorrow but we are, from my direct questions, I think we must be at least two-thirds through.

THE COURT: Independent of this matter what's the scheduling problem if any with Mr. Boll as far as this deposition is concerned?

MR. RODBURG: I know of no scheduling problem.

THE COURT: In other words, it is convenient to continue?

MR. RODBURG: These dates were set for the express purpose of his deposition today, and tomorrow was reserved if necessary.

THE COURT: I see.

MR. RODBURG: It would be desirable to conclude today and I would be willing to go into the evening hours if it's possible to finish today. If that's impossible then we are prepared to continue tomorrow.

THE COURT: Thank you.

I have had the motion to compel discovery

filed by the Deputy Clerk, Miss Stewart, in open court, and I appreciate Defendant's position. But I do think on balance that this is a line of inquiry that is appropriate and is likely to be pressed even after a helpful or unhelpful further attempt at extracting answers from Mr. Tatro himself.

And since it's of some significance to the litigation, although I appreciate Defendant's sensibilities and sense of courtesy, I think by no means is it frivolous or insubstantial, I think that it is fair enough and I think certainly it is more convenient to pursue this matter, that is, obviously to the extent of this deponent's, Mr. Boll's, knowledge at this point, and I would expect the inquiry and the answer to be relatively brief within the frame, overall framework of the deposition.

And accordingly, having heard counsel's respective arguments I'm endorsing at this time the motion to compel discovery as granted in the circumstances and certainly without costs. And I would again ask whether just in terms of the other scheduling matters counsel anticipated all or any other serious questions which are likely to disrupt proceeding with the deposition framework during this one day or two-day period?

MISS DOLGIN: The only ones that I could possibly guess might cause a problem, I plan to ask questions

about previous litigation involving SRS of New England.

I don't know whether -- that's the only thing I can think of at this point that might cause problems. I don't know how Defendant's counsel would react to that.

Other than that, I can't see any other issues being a problem. And the other question I had, might I assume that this order would cover any question by the intervenors which I haven't introduced them: Mr. Carey, representing the Connecticut Fund for the Environment; and Mr. Kelley, representing the Southington Water Department. And they might want to ask Mr. Tatro along that line.

THE COURT: I don't think you will have any problems with that. I take it that whatever has come up to now has been dealt with in the usual manner, reservations as to objections, methods and/or agreements or both. Alright. Anything else?

MISS DOLGIN: No, your Honor.

THE COURT: Alright. Thank you. I'll turn the motion papers back over to the Clerk for filing with the endorsement and adjourn at this time.

(Court adjourned at 3:05 P.M.)

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