

DOCKET NO. X07-CV-23-6177740-S : SUPERIOR COURT
 WENDY L. DEXTER, individually and : J.D. OF HARTFORD
 on behalf of all others similarly situated,
 v. : COMPLEX LITIGATION
 : DOCKET
 BENCHMARK MUNICIPAL TAX :
 SERVICES, LTD. : MAY 30, 2024

FILED

MAY 30 2024

HARTFORD J.D.

MEMORANDUM OF DECISION RE MOTION TO QUASH AND FOR PROTECTIVE ORDER

Before the court is the defendant’s motion to quash a subpoena and for a protective order related to a subpoena duces tecum issued to its attorney. The motion for protective order is denied for the three reasons outlined below.

The following facts and law inform this decision. In her complaint, the plaintiff alleges a violation of the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a, et seq., for the collection of litigation fees and costs in excess of those amounts statutorily permitted in tax lien foreclosure claims. More specifically, the plaintiff alleges that the defendant’s “practice of requiring foreclosure defendants to pay illegally inflated marshal fees and collection fees violates the Connecticut Unfair Trade Practices Act (CUTPA), which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” (Internal quotation marks omitted.) Am. Compl., ¶ 5.

The plaintiff issued a subpoena duces tecum to Juda Epstein, an attorney representing the defendant and co-counsel of record in the present matter. The defendant then moved to quash the subpoena, predicated upon the claim of attorney-client privilege and/or the work product privilege, and for a protective order relating to the production of documents requested. Although the defendant’s motion indicates that the subpoena duces tecum was attached to the motion, the

record reflects that no such document was filed. The defendant has also failed to provide a privilege log as required by Practice Book § 13-3 (d).

The plaintiff responded to the motion for protective order by, inter alia, providing the court with the defendant's answers to interrogatories as follows:

2. Identify and describe any and all steps taken by Benchmark to verify the accuracy of debts acquired from other entities.

ANSWER:

Handled directly by Benchmark's counsel, The Law Office of Juda J. Epstein.

3. Identify and describe Benchmark's policies and procedures for ensuring that debts acquired from other entities comply with General Statutes § 52-261(a)(2) and General Statutes § 12-195(h).

ANSWER:

Handled directly by Benchmark's counsel, The Law Office of Juda J. Epstein.

4. Identify and describe Benchmark's policies and procedures for investigating and correcting accounts when debt amounts are challenged by the persons Benchmark claims owe the debts, including challenges based on improper amounts charged by the previous debt holder.

ANSWER:

Handled directly by Benchmark's counsel, The Law Office of Juda J. Epstein.

"In Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice." *Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co.*, 249 Conn. 36, 52, 730 A.2d 51 (1999). "Nonetheless, it is not enough for the party invoking the privilege to show that a communication to legal counsel relayed information that might become relevant to the future rendering of legal advice. Instead, the communication must also either explicitly or implicitly seek specific legal advice about that factual information." (Internal quotation marks omitted.) *Harrington v. Freedom of Information Commission*, 323 Conn. 1, 16, 144 A.3d 405 (2016). See also *Ullmann v. State*, 230 Conn. 698, 713, 647 A.2d 324 (1994) ("[a]

communication from attorney to client solely regarding a matter of fact would not ordinarily be privileged, unless it were shown to be inextricably linked to the giving of legal advice”). The burden of proving each element of the privilege rests on the party asserting it. *State v. Hanna*, 150 Conn. 457, 466, 191 A.2d 124 (1963).

The attorney-client privilege is not a blanket one; rather, “[b]ecause the application of the . . . privilege tends to prevent the full disclosure of information and the true state of affairs, it is both narrowly applied and strictly construed.” (Internal quotation marks omitted.) *Harrington v. Freedom of Information Commission*, supra, 323 Conn. 12. “Because of the important public policy considerations that necessitated the creation of the attorney-client privilege, the ‘at issue,’ or implied waiver, exception is invoked only when the contents of the legal advice is integral to the outcome of the legal claims of the action. . . . Such is the case when a party specifically pleads reliance on an attorney’s advice as an element of a claim or defense, voluntarily testifies regarding portions of the attorney-client communication, or *specifically places at issue, in some other manner, the attorney-client relationship*. In those instances, the party has waived the right to confidentiality by placing the content of the attorney’s advice directly at issue because the issue cannot be determined without an examination of that advice. If the information is actually required for a truthful resolution of the issue on which the party has raised . . . the party must either waive the attorney-client privilege as to that information or it should be prevented from using the privileged information to establish the elements of the case.” (Citation omitted;

emphasis added; footnotes omitted; internal quotation marks omitted.) *Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co.*, supra, 249 Conn. 52-53.

In the present case, the defendant is attempting to assert a blanket claim to privilege without alerting the court to any specific communications that might invade the attorney-client privilege. Its failure to file a privilege log, as required by Practice Book § 13-3 (d), violates not only the practice book, but also this court's standing order; see Case Management Order, # 135, Discovery, ¶ 3.e; the latter of which advises the parties that the failure to strictly comply with the privilege log requirement renders any claim for privilege to be deemed waived. In light of the foregoing, the defendant has failed to satisfy its burden of proof in order to successfully assert a claim of privilege.

Moreover, even if the defendant had satisfied its burden of proof, its answers to interrogatories plainly puts the advice of counsel directly at issue. A party should not be permitted to answer an interrogatory asking for factual information¹ and then seek to protect that information through the cloak of the attorney-client privilege. *Metropolitan Life Ins. Co. v. Aetna Casualty & Surety Co.*, supra, 249 Conn. 52-53.

For the foregoing reasons, the motion to quash and for protective order is denied.

¹ Here, the steps taken by the defendant to verify the accuracy of debts acquired from other entities, its policies for ensuring that debts comply with statutory requirement and its policies for responding to challenged claims by indicating that it relied on counsel's policies.

THE COURT

/s/ #435707
Cesar A. Noble
Judge, Superior Court