

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT

ESTATE OF LISA MCPHERSON, by)
and through the Personal Representative,)
DELL LIEBREICH,)
))
Plaintiff,)
))
v.)
))
CHURCH OF SCIENTOLOGY FLAG)
SERVICE ORGANIZATION,)
))
Defendant.)

Civil Action No. 2001-04612

**REPLY MEMORANDUM OF ROBERT S. MINTON
IN FURTHER SUPPORT OF HIS MOTION TO QUASH**

In its Opposition Memorandum, Scientology fails to address the substance of Mr. Minton's motion to quash but instead focuses its efforts on attacking Mr. Minton and spinning its fictional web of a Minton-led conspiracy. Scientology's continuing efforts to gain access to Mr. Minton's banking records are a transparent attempt to harass, embarrass, and annoy him. Mr. Minton respectfully requests that this Court quash the subpoenas directed at FleetBoston and Fidelity.

I. Curtailment Of Scientology's Discovery Efforts Is Necessary To Prevent Further Harassment

All persons are entitled under Rule 26(c) of the Massachusetts Rules of Civil Procedure to protection against discovery that would cause, *inter alia*, "annoyance, embarrassment, [or] oppression" Non-parties in particular are afforded even greater protection against harassing

discovery or the production of confidential information. See Blount Int'l v. Schuylkill Energy Resources Inc., 124 F.R.D. 523, 526 (D. Mass. 1989) (“While discovery is a valuable right and should not be unnecessarily restricted, the ‘necessary’ restriction may be broader when a nonparty is the target of discovery.”) (quoting Dart Indus. v. Westwood Chemical Co., 649 F.2d 646, 649 (9th Cir. 1980) (citation omitted)); In re Candor Diamond Corp., 26 B.R. 847, 849 (S.D.N.Y. 1983) (“Restriction on discovery may be broader where a non-party is the target of discovery to protect such third parties from unnecessary harassment . . . or disclosure of confidential information.”). Moreover, a party simply cannot seek discovery concerning a non-party for the purpose of “discovering” a cause of action against him. Blount Int'l, 124 F.R.D. at 527.

In short, because Mr. Minton is a non-party, he “is entitled to considerable protection from the court to prevent needless compromise and injury to [him].” Collins & Aikman Corp. v. J.P. Stevens & Co., 51 F.R.D. 219, 221 (D.S.C. 1971). Mr. Minton respectfully requests that the Court grant him such protection in the instant matter by quashing the subpoenas directed to FleetBank and Fidelity.

A. Scientology’s Improper Motive Is Abundantly Clear From Its Prior Abuse Of Discovery In This Action

As demonstrated by Scientology’s past conduct in this very action in Florida, Mr. Minton’s fear that Scientology will seek retribution against him through the misuse of his banking records is real. Scientology does not deny that as recently as October 2001 it (i) obtained Mr. Minton’s banking records as third-party discovery from Bank of America in the Florida action, (ii) made hundreds of photocopies of a personal check written by Mr. Minton in July 2001 that was contained within those records, and (iii) posted the photocopies of the check along with a harassing “Profile of Robert Minton” throughout a hotel in Cleveland where

Mr. Minton was receiving an award at a CULTinfo conference from the Leo J. Ryan Educational Foundation. Affidavit of Robert S. Minton, dated November 16, 2001, at ¶¶ 4-5. These actions were taken in an attempt to undermine Mr. Minton's credibility and to harass and intimidate him. This incident speaks volumes about Scientology's intentions in obtaining further discovery from Mr. Minton's banks in Massachusetts.

Scientology claims – without offering even a scintilla of evidence – that the “financial information” contained in the flyers posted in the Cleveland hotel was “a matter of public record in the Florida case.” Opposition Memorandum, at 12. At the outset, this statement is simply untrue. Moreover, even if it were true that certain information concerning contributions to the non-profit entity CULTinfo were publicly available, that fact would not justify the use of related materials for purposes outside of the litigation and in such a manner as to harass and intimidate. Scientology cannot deny that a photocopy of the actual check that was written by Mr. Minton to the Leo J. Ryan Educational Foundation was not previously a part of the Florida court's record. (Presumably, this is why Scientology served a subpoena in the first place.) Scientology simply has no excuse for engaging in this sort of outrageous behavior.

Requiring FleetBoston and Fidelity to respond to the subpoenas at issue will serve only to further Scientology's efforts by providing it with another opportunity to harass Mr. Minton, and Mr. Minton implores the Court not to permit such discovery abuses to be repeated. In light of Scientology's pattern of out-of-court harassment of Mr. Minton (as detailed in his opening memorandum), he respectfully requests that the Court quash the subpoenas directed to FleetBoston and Fidelity.

II. The Subpoenas Extend Far Beyond That Which Might Be Relevant To The Wrongful Death Action

In all events, Scientology seeks discovery of payments far beyond any inquiry relevant to the Florida action and seeks to justify such discovery with untruthful and inflammatory accusations concerning Mr. Minton. Scientology's Opposition is rife with inaccuracies and strewn with highly inflammatory ad hominem attacks on Mr. Minton. Mr. Minton vigorously denies these false statements and mischaracterizations. To be clear, Mr. Minton has not made any unlawful or improper payments to fact or expert witnesses in the Florida action. He has not hired anyone to participate in demonstrations against Scientology. He has not controlled the Florida litigation in any way. Scientology's bare accusations should not be permitted to guide the manner or extent of discovery in Massachusetts.

A. Only Payments To Bona Fide Witnesses Can Even Conceivably Be Relevant To The Wrongful Death Action

Only discovery concerning payments to bona fide witnesses can even conceivably be relevant to the Florida wrongful death action. To the extent that Scientology alleges that Mr. Minton has made payments to "witnesses" in the action, it only makes sense that each such "witness" must have some connection to the wrongful death action as an expert, percipient, or other fact witness. Any payments made by Mr. Minton to individuals outside of that group have no relevance to the Florida action.

1. Any Discovery Should Be Limited To Mr. Minton's Payments To Plaintiff's Witnesses

Any discovery of FleetBoston or Fidelity should be limited to payments made by Mr. Minton to *plaintiff's* witnesses, for it only makes sense that it is "the pecuniary interest of a witness or his prejudice or bias in favor of the party calling him" that is relevant. Thomas v. Safraty, 2001 WL 417280 (Mass. Super. Feb. 2, 2001). Although Scientology may be entitled to

discovery that might demonstrate that a *plaintiff's* witness is not disinterested, Scientology should not be permitted to create the false pretense of "relevance" simply by adding a name to its witness list or insisting that a particular individual is a witness. In short, Scientology's witness list is suspect, and it is within this Court's discretion to limit the extent of the inquiry concerning witnesses in the wrongful death action by limiting discovery of Mr. Minton's payments (if at all) to witnesses identified by the plaintiff in the Florida action.

2. Scientology Has Included A Variety Of Individuals Who Are Not Bona Fide Witnesses On Its "Witness" List Purely For Discovery Reasons

The witness list filed by Scientology must be carefully scrutinized, as it includes individuals who have no connection whatsoever to the facts and circumstances surrounding the death of Lisa McPherson but have been designated for the sole reason that they are critics of Scientology. Scientology's hidden reasoning is readily apparent: Scientology seeks discovery concerning payments to, among others, critics of Scientology. Scientology therefore included such individuals on its "witness" list precisely because they sought discovery about them. It is not a coincidence that virtually all of the individuals identified on Scientology's witness list are critics of Scientology. Scientology's "witness" list is an artifice created precisely for the purpose of obtaining harassing and abusive discovery.

B. The Florida Court Has Not Authorized Discovery Of Payments Made To Mr. Minton From Entities Other Than The LMT

To the extent that the subpoenas call for the production of bank records reflecting payments to Mr. Minton from entities other than the Lisa McPherson Trust, they are simply overly broad and seek discovery far beyond that authorized by the Florida court.

The logical starting point for any evaluation of Scientology's application to this Court is the order authorizing discovery issued by the Florida court in the form of out-of-state

commissions. Scientology has wholly ignored the terms of the Florida court's order, which strictly limits the scope of the subpoenas insofar as they relate to payments made to Mr. Minton. In summary, the Florida court's order authorizes discovery of records reflecting payments to Mr. Minton only from the Lisa McPherson Trust. Specifically, in its Order Regarding Out of State Deposition, the Florida court authorized issuance of a subpoena to Fidelity Investments calling for:

financial records of Robert Minton relating to the payment of funds to plaintiff or plaintiff's agents or counsel, payments to witnesses in this action, and receipt of funds from or paid to the company Lisa McPherson Trust, Inc.

The Court authorized issuance of a similar subpoena to FleetBoston calling for:

financial records of Robert Minton relating to the payment of funds to any of the parties or agents or counsel of plaintiff, payments to witnesses in this action, and receipt of funds from or paid to the company Lisa McPherson Trust, Inc.

Affidavit of Linda M. Ricci, dated November 16, 2001, at Exhibits 8 and 9. The Florida court did not, as Scientology would have it, authorize discovery of "all of the financial records of these banks." See Opposition Memorandum, at 12. Such a suggestion is absurd. As evidenced by their terms, the Florida Court's orders do not permit Scientology to discover payments made to Mr. Minton from Operation Clambake, Andreas Heldal-Lund, "any" Norwegian bank, "any" German bank, or Gerald Armstrong. Scientology, again, is over-reaching, and its assertion that the subpoenas have "been carefully limited to be tailored solely to the issues" in the Florida action and "to disclosure of information relating to the witnesses and parties therein" is disingenuous at best. See Opposition Memorandum, at 12.

III. Scientology's Ad Hominem Attacks On Mr. Minton Reflect Bad Faith

The tenor of Scientology's Opposition Memorandum makes manifest its bad faith in seeking the discovery at issue. Scientology attempts to distract the Court by making ad hominem

attacks against Mr. Minton and ascribing “business” or “financial” motives to the assistance he has provided to critics of Scientology.

At the outset, Scientology’s assertion that Mr. Minton has “generally controlled the litigation” is completely false. See Opposition Memorandum, at 1. As set forth in the Affidavit of Kennan Dandar, Mr. Minton has in no way controlled the wrongful death litigation and has had no input on the strategic direction of the matter. Affidavit of Kennan G. Dandar, dated December 3, 2001, attached as Exhibit 1 to Supplemental Affidavit of Linda M. Ricci (hereinafter, “Supplemental Ricci Aff.”), at ¶¶ 3-4; see Deposition of Robert S. Minton (Oct. 12, 2001), attached as Exhibit 2 to Supplemental Ricci Aff., at 635-36. At all times, the litigation has been absolutely controlled by Dell Liebreich, the maternal aunt of Lisa McPherson. Id.

Scientology’s assertion that the plaintiff in the Florida action has agreed to provide the Lisa McPherson Trust with the proceeds from the action is equally without merit. Each of the various “snippets” cited by Scientology is incomplete, taken out of context, or simply false. By way of example, Scientology ostensibly quotes Mr. Minton as agreeing that the money he paid to plaintiff’s counsel was his “piece of the litigation.” See Opposition Memorandum, at 4. A review of Mr. Minton’s previous answer and the subsequent question and answer during his deposition on January 13, 1998 demonstrates that that is not in fact the case:

A. What I have said and what he has said is that if they – “they” being the estate of Lisa McPherson – are successful in getting money back over and above their legal expenses in this case and they had \$100,000 left to pay me, I would get paid back my \$100,000. If they do not succeed in this case, they’re under no obligation to pay me back.

Q. Do you own a piece of the litigation?

MR. JONAS: Objection to form.

Q. Do you own a piece of the litigation?

A. This \$100,000 is my piece, if that’s what you want to call it.

Deposition of Robert S. Minton (January 13, 1998), Exhibit 4 to Scientology Opposition Memorandum. Moreover, plaintiff Dell Liebreich herself has confirmed that she has “never entered into a binding agreement with Robert Minton nor the Lisa McPherson Trust nor anyone else as to any disposition of any funds obtained by the Estate of Lisa McPherson in the wrongful death action pending against the Church of Scientology in excess of any costs advanced by Robert Minton to defray costs in litigation.” Affidavit of Dell Liebreich, dated December 20, 2000, attached as Exhibit 3 to Supplemental Ricci Affidavit; see Dandar Aff., Exhibit 1 to Supplemental Ricci Aff., at ¶¶ 5-6.

Scientology’s outrageous and unsupportable accusations concerning Mr. Minton have no bearing on Mr. Minton’s motion to quash and should be disregarded.

IV. At A Minimum, This Court Should Enter A Protective Order Limiting Access To And Use Of Materials Produced By Fidelity And FleetBoston

Scientology seeks discovery concerning Mr. Minton of the most personal and private nature. Bank records constitute such highly sensitive information that they are specially protected by a Massachusetts statute known as the Electronic Funds Transfer law. Mass. Gen. Laws ch. 167B, § 16. This banking privacy law imposes a confidentiality obligation on financial institutions to limit the disclosure of customer account or electronic fund transfer information to third parties. Such records should be strictly guarded, particularly where, as here, the party seeking disclosure of such records has demonstrated a callous disregard for the special sensitivity of such records.

In light of the highly sensitive nature of the documents at issue, as well as Scientology’s past misuse of discovery as evidenced by its conduct only a few weeks ago in Cleveland, Mr. Minton respectfully requests that this Court – at a minimum – issue a protective order limiting access to documents produced by Fidelity and FleetBoston to counsel of record for the

parties and Mr. Minton's counsel only, strictly limiting use of such documents to the wrongful death action pending in the Circuit Court in and for Pinellas County, Florida, Case No. 005682-CI-11, and requiring that court filings making reference to or including such documents be made under seal.

For the foregoing reasons, Mr. Minton respectfully requests that the Court grant his motion to quash.

Respectfully submitted,

ROBERT S. MINTON

By his attorneys,



Stephen A. Jonas (BBO# 542005)

Linda M. Ricci (BBO# 600284)

Hale and Dorr LLP

60 State Street

Boston, MA 02109

(617) 526-6000

Dated: December 4, 2001

CERTIFICATE OF SERVICE

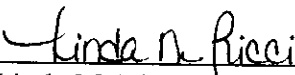
I, Linda M Ricci, hereby certify that a true copy of (i) Robert S. Minton's Assented-To Motion for Leave to File a Reply Brief in Further Support of His Motion to Quash, (ii) Reply Memorandum in Further Support of Robert S. Minton's Motion to Quash, (iii) Supplemental Affidavit of Linda M. Ricci in Further Support of Robert S. Minton's Motion to Quash, and (iv) List of Documents Filed Pursuant to Superior Court Rule 9A were served on this date to the following:

Brian D. Gross, Esq., Cooley Manion Jones LLP, 21 Custom House Street,
Boston, Massachusetts 02110 (by hand delivery);

Colleen Hankins, Esq., Mail Stop F9D, Fidelity Investments, 82 Devonshire
Street, Boston, Massachusetts 02109 (by hand delivery);

Jon Hayden, Esq., Mail Stop MADE 10019C, FleetBoston Law Department, 100
Federal Street, Boston, Massachusetts 02110 (by hand delivery); and

Ken Dandar, Esq., Dandar & Dandar, P.A., 5340 West Kennedy Blvd., Suite 201,
Tampa, Florida 33607 (by Federal Express).



Linda M. Ricci

Dated: December 4, 2001