

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
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2021 JAN -8 PM 1:40

JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

John C. Depp, II,

Plaintiff,

v.

Amber Laura Heard,

Defendant.

Civil Action No.: CL-2019-0002911

PLAINTIFF JOHN C. DEPP, II'S OPPOSITION TO DEFENDANT AMBER LAURA HEARD'S MOTION TO COMPEL PLAINTIFF DEPP TO ABIDE BY THIS COURT'S PREVIOUS ORDERS AND PRODUCE DOCUMENTS AND RESPONSES TO DEFENDANT'S FIRST, SECOND, FOURTH, AND FIFTH REQUESTS FOR PRODUCTION, AND FOR SANCTIONS FOR CONTINUING VIOLATIONS OF THIS COURT'S ORDERS AND MOTION FOR SANCTIONS FOR DEFENDANT'S VIOLATIONS OF THIS COURT'S ORDERS AND PROCEDURE REGARDING DISCOVERY

Defendant's motion is an inexcusable abuse of the discovery process, and is littered with misrepresentations to the Court. Ms. Heard certified that she had met and conferred in good faith. That is false. Ms. Heard claims that Mr. Depp "refused" to provide full production or supplemental responses, is also false. Ms. Heard asserts that Mr. Depp has refused to comply with this Court's Orders and failed to produce documents, false as well. *Prior to the filing of this Motion, Ms. Heard was advised in writing with respect to each and every document request identified in her Motion that Mr. Depp was not in possession of any responsive documents that had not already been produced, and would be willing to supplement his written responses to the extent necessary.* Ms. Heard nevertheless proceeded to file this Motion, falsely alleging that Mr. Depp had failed to produce documents that she was already informed do not exist in his possession.

In short, Ms. Heard continues to burden this Court with frivolous, unnecessary motions that violate the Rules of the Virginia Supreme Court. Mr. Depp respectfully requests that the Court deny Ms. Heard's latest motion and sanction her. Enough is enough.

ARGUMENT

1. Ms. Heard Did Not Properly Confer Prior To Bringing This Motion.

Despite her certification to the contrary, Ms. Heard failed to meet and confer in good faith prior to bringing this Motion, as mandated by the Rules of the Supreme Court of Virginia. *See, e.g.,* Va. Sup. Ct. R. 4:12(b). That is all the more troubling, given that the limited discussions among counsel that actually took place should have made clear that there was no basis to bring this Motion. Ms. Heard's meet and confer efforts consisted of sending an accusatory email to counsel for Mr. Depp, asking Mr. Depp to "ensure that all documents responsive have been produced" (without even referencing that this Motion was contemplated).

That same email demanded that Mr. Depp identify all documents in his more than 18,000-page productions that are responsive to each request by Bates number (without citation to any authority mandating that Mr. Depp do so). Strangely, Ms. Heard also made a blanket demand (without argument or explanation) that Mr. Depp withdraw any and all objections to Ms. Heard's discovery. (Motion, Att. 2.)

In response, Mr. Depp's counsel advised Ms. Heard's counsel as follows with respect to each document request identified in counsel's email and in this Motion: ***"[t]o our knowledge, Mr. Depp is in possession of no non-privileged documents that have not been produced that would be responsive to this request. We are willing to supplement our written response. The right to produce after-discovered documents is reserved."*** (Att. 3) (Emphasis added). Mr. Depp also advised Ms. Heard that Mr. Depp would not simply withdraw all objections on a blanket basis, but that ***"we will certainly be pleased to meet and confer with you to the extent that have a more specific concern about a specific objection."*** (Att. 3) (Emphasis added). With respect to Ms. Heard's highly unusual demand that all documents responsive to each request be identified by Bates number, Mr. Depp invited Ms. Heard to provide supporting authority: ***"[i]f you are in possession of authority requiring us to cite Bates numbers in response to a request for production, please provide the same, so that we may evaluate it. Otherwise, please cease making demands for which you have no legal basis."*** (Att. 3) (Emphasis added).

Ms. Heard provided no authority in support of her demand. Nor did she ever identify any specific concerns about any of Mr. Depp's objections, or even bother to respond to Mr. Depp's assurances that his production was believed to be complete. Instead, eight days later, and without any further efforts to confer, Ms. Heard simply filed the present Motion. She later ***completely ignored Mr. Depp's subsequent request that the Motion be withdrawn and that she***

engage in further meet and confer discussions. (Exhibit A hereto). The Motion can and should be summarily denied, based merely on the failure to meet and confer. *See, e.g.,* Va. Sup. Ct. R. 4:12(b) (“Counsel of record *shall* make a *reasonable effort* to confer before giving notice of a motion.... The notice shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action”); *Rainey for Estate of Rainey v. Anderson*, No. 2:17CV444, 2018 WL 3636596, at *1 (commenting on analogous federal rule).

2. Ms. Heard’s Misrepresentations Are Indefensible

Defendant and her counsel make false allegations of Plaintiff’s bad faith and violations, without bothering to support these accusations with facts, and despite warning from the Court to refrain. Her allegation that Plaintiff “has no intention of providing full production” is utter nonsense, and blatantly misrepresents that substance of counsel’s communications. *As Ms. Heard was explicitly informed before she filed this Motion, Mr. Depp’s document productions in response to each of the document requests identified in the Motion are believed to be complete.* Mr. Depp has conducted reasonable searches and has produced all non-privileged documents in his possession that are responsive to Ms. Heard’s discovery, which total more than 18,000 pages. Indeed, the volume of Mr. Depp’s productions substantially exceeds Ms. Heard’s.¹ Ms. Heard’s wild accusations that Mr. Depp has somehow “refused” to fully produce documents appears to be based on nothing more than counsel’s unsupported speculation and wishful thinking about what documents might exist, and has no actual basis in fact. As such, this Motion has no valid basis and should never have been filed. Moreover, *Mr. Depp has already*

¹ Of course, no litigant can ever completely rule out the possibility that additional responsive documents might be discovered at a later date, and Mr. Depp appropriately reserves his right to produce any after-discovered documents.

supplemented most of his responses and advised Ms. Heard that he was willing to further supplement as appropriate.

3. Mr. Depp Has No Obligation to Identify Documents Responsive to Each Request by Bates Number

Ms. Heard persists in her improper demand that Mr. Depp re-review his more than 18,000-page productions, and then identify all documents responsive to each request by Bates number. To date, Ms. Heard—who certainly has not done anything of the kind in responding to Mr. Depp’s document requests—has yet to offer *any* authority supporting this demand, despite Plaintiff’s repeated invitation to do so. Mr. Depp appropriately produced documents in his possession as they are maintained in the ordinary course, and Ms. Heard’s suggestion that he has an obligation to identify documents responsive to each of her many requests is simply wrong. Ms. Heard relies heavily on an out-of-context quotation from one of Mr. Depp’s U.K. attorneys referring to a “data dump,” but that quote from a non-U.S. lawyer, when read in context, is clearly simply referring to the fact that document production in the United States has been much broader than in the U.K., since discovery in the United States is broader than discovery in the U.K., such that the analysis involved in identifying responsive documents is different in the two jurisdictions. For the avoidance of doubt, Mr. Depp has not engaged in a “data dump,” but produced the document in the form in which he has them—and Ms. Heard’s counsel, who represents that she and/or her team has reviewed the entirety of Mr. Depp’s productions, should know better than to suggest otherwise. Mr. Depp has complied with the Court’s Orders and has fulfilled his discovery obligations by properly responding to each request, and producing non-privileged responsive documents to Ms. Heard. Ms. Heard’s misrepresentation that Mr. Depp has refused to produce documents and is unwilling to commit that there are no responsive documents is outrageous where he has plainly stated that he is not in possession of non-

privileged responsive documents. Mr. Depp cannot continue to be harassed with motions and emails filled with accusatory language just because Ms. Heard imagines that documents exist that Mr. Depp has stated time and time again are not in his possession.² And her requests for sanctions are patent nonsense, since Mr. Depp has complied with all applicable Orders, produced all responsive documents.

4. The Court Should Sanction Ms. Heard

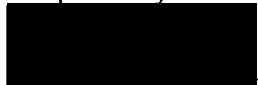
Enough is enough. This is not the first (or even the second) time that Defendant has jumped the gun by moving to compel without adequately meeting and conferring. Notably, counsel for Ms. Heard did not even respond to Mr. Depp's demand that she withdraw the motion and engage in a further meet and confer.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Ms. Heard's motion in its entirety, and sanction Ms. Heard for her continued discovery abuse and frivolous and unwarranted motion practice.

² As for Ms. Heard's open-ended and vague demand that Mr. Depp withdraw objections, Ms. Heard has not so much as identified any specific objections that she believes are improper, and certainly has not made any showing that any objections are improper.

Respectfully submitted,



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Dated: January 8, 2021

Exhibit A

Suda, Casey

From: Vasquez, Camille M.
Sent: Tuesday, January 5, 2021 2:29 PM
To: Elaine Bredehoft; brottenborn@woodsrogers.com
Cc: Chew, Benjamin G.; Moniz, Samuel A.
Subject: Depp/Heard: Heard's MTC

Elaine:

We have now had an opportunity to review your pending Motion to Compel set for hearing on January 15, 2021. The Motion is grossly inappropriate, was not preceded by a good faith meet and confer (despite your certification to the contrary), and dramatically misstates the status of Mr. Depp's document productions and the discussions of counsel. We direct your attention to the November 10, 2020 email (Attachment 3 to the Motion), in which we advised you as follows with respect to each document request at issue:

"To our knowledge, Mr. Depp is in possession of no non-privileged documents that have not been produced that would be responsive to this request. We are willing to supplement our written response. The right to produce after-discovered documents is reserved."

The November 10, 2020 email also invited you to provide authority for your request that we identify documents responsive to each request by Bates number (which you never did); invited you to further meet and confer telephonically (which you never did); and requested that you provide us with more specific information on any gaps or particular documents that you contend should have been included in our productions (which you never did).

Eight days later—without any efforts to further confer or respond substantively to our correspondence, and notwithstanding that we had already supplemented multiple discovery responses and were willing to further supplement as appropriate—you filed your Motion, in which you represented to the Court that "Depp's counsel made clear Depp had no intention of providing full production, identifying the production of any responsive documents, or committing that there were no responsive documents."

Under the circumstances, no valid basis exists for the filing of this Motion, and demand is hereby made that you immediately withdraw it. Of course, we stand ready to meet and confer to the extent that you believe any concerns raised in the Motion are unresolved. However, absent confirmation of the withdrawal of your Motion by close of business on Wednesday, January 6, 2021, we will seek all appropriate sanctions for your and your client's ongoing discovery abuse in filing this baseless and unnecessary motion.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of January 2021, I caused copies of the foregoing to be served via email (per written agreement between the Parties) on the following:

Elaine Charlson Bredehoft (VSB No. 23766)
Carla D. Brown (VSB No. 44803)
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