STATE OF VERMONT

SUPERIOR COURT
Windsor County

CIVIL DIVISION
Docket No. 496-9-06 Wrcv

Kaveh Shahi and Leslie Shahi
Plaintiffs

v.

Deirdre Donnelly
Defendant

DECISION RE: PENDING MOTIONS

Plaintiffs seek to hold defendant liable for torts committed by her husband. The motions presently pending before the court involve clarification of the nature of the claims in the case as well as the scope of discovery to be permitted. The court is hopeful that this decision will help to articulate the contours of the case going forward, as well as the relationship between this case and the post-judgment proceedings in the case between plaintiffs and defendant's husband, *Shahi v. Madden*, No. 591-11-04 Wrcv.

The events of this case began in 2004 when plaintiffs Kaveh and Leslie Shahi sued Daniel Madden for timber trespass, invasion of privacy, and various other claims. Plaintiffs there recovered a judgment for approximately $1.8 million dollars, and plaintiffs have since attempted unsuccessfully to collect that judgment from Madden.

Madden and his wife, defendant Deirdre Donnelly, own a house as tenants by the entirety. Plaintiffs are seeking in this case to attach the house by establishing that Donnelly is jointly liable for the torts that Madden committed under theories of conspiracy, agency, negligent supervision, and negligent entrustment. Plaintiffs also seek to set aside the entirety in whole on the grounds that Donnelly and Madden's 2002 purchase of the property was a fraudulent transfer, or at least in part on the grounds that Madden fraudulently transferred about $100,000 of his personal funds into the construction of the property in order to shield those funds from his creditors.

Defendant has moved for dismissal of the claims on several occasions. In a written decision entered in May 2007, this court denied defendant's motion to dismiss the complaint but noted a potentially dispositive issue of claim preclusion. Accordingly, the court ordered the parties to proceed with discovery on the preclusion issue, and to file any motions for summary judgment on that issue, before proceeding with discovery on any other issues in the case.

Before conducting any discovery, defendant filed a motion for judgment on the pleadings on all of the issues in the case, including the preclusion issues. The motion was

denied and the parties were again instructed to proceed first with the discovery on the preclusion issues before seeking dispositive rulings on the other portions of the case.

As discovery commenced, it became apparent that there was some overlap between the discovery conducted under the auspices of this case and the post-judgment discovery that was occurring in *Shahi v. Madden*. The court accordingly consolidated the two cases for purposes of discovery, so that Donnelly was entitled to notice of discovery in the *Madden* case, and vice versa.

A review of the incoming motions also showed that the parties were seeking discovery on all the issues in the case, and attempting to litigate the merits of plaintiffs' claims through discovery motions. It was impossible for the court to resolve the discovery motions without at least beginning to rule on the substantive breadth of plaintiffs' claims.

Meanwhile, the parties filed cross-motions for summary judgment on the preclusion issues. In a written decision entered in April 2010, the court ruled that defendant was not entitled to dismissal of the case under the principles of claim preclusion, but also that plaintiffs were not entitled to the application of issue preclusion in their favor, since Donnelly was neither a named party nor in privity with a party during the *Madden* trial. In other words, the ruling was that Donnelly has not yet had her day in court on the allegations in the complaint. In reaching this conclusion, the court was aware of the ongoing discovery disputes, and therefore sensitive to plaintiffs' arguments that they needed more discovery in order to prove their contentions about the existence of a privity relationship between Donnelly and Madden during the previous trial. After considering the impact of the discovery sought, however, the court concluded that it would not affect the outcome, and therefore concluded that the entry of summary judgment was appropriate. See *Decision Re: Cross Motions for Partial Summary Judgment* at p.2 n.2 & p.5 (April 14, 2010).

After making this ruling, the court turned to the discovery motions. In order to avoid deciding several potentially-dispositive legal issues in the context of discovery motions, the court asked the parties to file supplemental memoranda on four issues that it saw as central to the pending motions: (1) whether a claim for fraudulent transfer can be sustained where the transaction occurred prior to the events forming the basis of plaintiffs' claim; (2) whether an agency relationship can be established where the alleged principal and agents are tenants by the entirety in the same property; (3) whether there was a "duty to control" here on the negligence claims; and (4) whether public policy would support setting aside the entirety even if Donnelly were entirely innocent.

In asking for the additional briefing, the court referred to a "second round" of summary judgment. It turns out that this was an unhelpful conceptual framework for analyzing the issues, because the factual record is not yet sufficiently developed to permit evaluation under the standards applicable to Rule 56. Since the reason for the additional briefing is to define the contours of discovery, the better framework is to view the motions under the standards applicable to Rule 12. This makes sense because the central

issue in the discovery motions is whether plaintiffs are entitled to seek discovery on the claims in their complaint. The answer to that question does not turn upon whether plaintiffs have adduced sufficient evidence of their theories to create a genuine issue for trial, but rather upon whether plaintiffs have merely stated a claim in the first instance under *Association of Haystack Property Owners, Inc. v. Sprague*, 145 Vt. 443, 446 (1985).

This is not to say that the additional briefing was unhelpful. On the contrary, it brought a degree of clarity to the contours of plaintiffs' claims, and revealed the extent to which the discovery arguments were based upon disagreements about plaintiffs' likelihood of success on the merits as opposed to whether plaintiffs had stated a claim upon which relief could be granted. As such, the additional briefing was illuminating as to the pending discovery motions, and will be helpful as the case progresses.

One last point remains before turning to the issues presented. Donnelly has argued that the April 2010 decision requires judgment in her favor on the counts for conspiracy, agency, negligent entrustment, and negligent supervision. Her argument is that plaintiffs have conceded that they would not pursue these claims if they were not entitled to the application of issue preclusion in their favor. The court finds no such concession in the record, however, and it was not the intent of the court to imply that Donnelly was entitled to judgment in her favor as a matter of law. The court's ruling was simply that plaintiff is not entitled to the application of issue preclusion, and therefore must prove in this proceeding that (1) Madden committed one or more specific torts and (2) Donnelly should be held jointly liable for that tort under one of the enumerated theories.

On the issues presented:

1. Plaintiffs have stated a viable claim for fraudulent conveyance to the extent that they allege that Madden rolled more than $100,000 in personal funds into the construction of the home in order to evade his creditors. "The law is clear that a debtor may not transfer property owned by himself, individually, to himself and his wife as tenants by the entireties if such a transfer will defraud creditors by putting that property beyond the creditors' reach." *Thomas J. Konrad & Assocs., Inc. v. McCoy*, 705 So.2d 948, 949 (Fla. Ct. App. 1998) (citation omitted). In other words, the cases support the position that an individual cannot roll personal funds into an entirety in order to evade personal creditors. *Becker v. Becker*, 138 Vt. 372, 375 (1980); *Patterson v. Hopkins*, 371 A.2d 1378, 1382–83 (Pa. Super. 1977).

Plaintiffs have also stated a viable claim for fraudulent conveyance as to the allegation that Donnelly and Madden took title to the Densmore Hill property in 2002 with the intent of defrauding Madden's creditors. It is true that this property transfer occurred before the occurrence of the events underlying this case, but the rule is that a creditor may avoid a transaction that was made before the creditor's claim arose so long as the creditor proves that the transaction was made with "actual intent to hinder, delay or defraud any creditor of the debtor." 9 V.S.A. § 2288(a)(1) (emphasis added). In other

words, plaintiffs may prove their claim by establishing that the transfer of Madden's personal assets into the purchase of the Densmore Hill property was done with the actual intent of defrauding an existing or potential creditor of Madden. *McLane v. Johnson*, 43 Vt. 48, 55 (1870); see also *In re Blatstein*, 192 F.3d 88, 97 (3d Cir. 1999) (explaining that the uniform fraudulent conveyance statutes do not require proof that the debtor intended to defraud the specific creditor-plaintiff, but rather, the transfer is fraudulent if it was done with the actual intent of defrauding any creditor).

The nature of the claim raises questions about whether plaintiffs have standing to pursue an allegation that Madden defrauded other creditors by entering into a transaction in 2002. As the supplemental briefing showed, however, standing is not an issue here because the fraudulent-conveyance statutes do not require plaintiffs to stand in the shoes of other creditors or otherwise to prove that other creditors were actually defrauded by the purchase of the property. Plaintiffs do not need to prove a claim of fraud on behalf of those creditors. Rather, the element to be proven under § 2288(a)(1) is that the Madden entered into the 2002 transaction with the actual intent of defrauding his creditors. It is Madden's state of mind at a given point in time that is the central issue.

Of course, in assessing the debtor's state of mind on a fraudulent conveyance claim, the burden of proof is clear and convincing evidence of actual intent to defraud. *Rose v. Morrell*, 128 Vt. 110, 114 (1969). It is not enough for plaintiffs to show merely that the transaction had the effect of shielding personal assets from existing or potential creditors, for that is always the effect of taking property as tenants by the entirety. Indeed, protection from individual creditors is one of the primary benefits of ownership of property as tenants by the entireties. In order to sustain their burden of proof, therefore, plaintiffs will need to show clear and convincing evidence that Madden actually intended to defraud a creditor, as opposed to merely intending to protect his assets, with consideration given to the "badges of fraud" enumerated in § 2288(b).

Another question was whether a fraudulent transfer could have occurred where the debtor was not the grantor but rather the recipient of the property. Here, it is helpful to clarify that plaintiffs are not challenging the conveyance of the property from the Bragdon Trust to Donnelly and Madden. Rather, plaintiffs are challenging the transfer of funds from Madden's personal account to the tenancy by the entirety, and thereby seeking to void the nature of the title taken by Donnelly and Madden. As such, plaintiffs have stated a cognizable claim under the fraudulent-conveyance statute.

Madden is a necessary party to the fraudulent conveyance claim, however. The general rule is that the debtor is a necessary party to a fraudulent-conveyance claim when the debtor retains an interest in the property conveyed. *Becker v. Becker*, 138 Vt. 372, 380–81 (1980); W.J. Dunn, Annotation, *Necessary Parties Defendant to Action to Set Aside Conveyance in Fraud of Creditors*, 24 A.L.R.2d 395 § 5 (1952 & Cum. Supp. 2010). Here, plaintiffs are seeking to set aside a transfer of funds from Madden's personal account into a tenancy by the entirety in which Madden holds an interest. As a result, Madden is needed as a party-defendant in this case so that he can defend himself against the allegation of fraudulent transfer, and also so that the claim for declaratory

judgment can be adjudicated in full. (If relief is granted, the declaration would affect the title of both of the co-tenants in the property.) Accordingly, plaintiffs will have thirty days within which to join Madden as a party-defendant on the fraudulent conveyance claim. See V.R.C.P. 19(a) (explaining that joinder of the necessary party, rather than dismissal, is the appropriate response when it becomes clear that a necessary party is missing from the action).

Finally, there is a significant statute-of-limitations problem with the claim. The fraudulent-conveyance statute provides that a cause of action for fraudulent conveyance is "extinguished" unless the action is brought "within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant." 9 V.S.A. § 2293(1). Here, the property was purchased in July 2002 and the complaint was not filed until more than four years later, in September 2006. Accordingly, the claim is extinguished unless plaintiffs are able to prove that they filed the complaint within one year after the transfer was or reasonably could have been discovered.

It seems tempting to say as a matter of law that the transfer reasonably could have been discovered in 2002 when the deed was recorded in the public land records. Cases from other states, however, make clear that the date of recording is merely one factor to be considered in determining the date on which a fraudulent conveyance should have been discovered, rather than a dispositive fact in and of itself. As the cases explain, "the purpose of the recording laws in general is to establish a priority between innocent claimants to the same property, not to give security to the perpetrators of fraud as against their victims." *Bueneman v. Zykan*, 181 S.W.3d 105, 111 (Mo. Ct. App. 2005); *Rappleye v. Rappleye*, 99 P.3d 348, 356 (Utah Ct. App. 2004). Resolution of the application of the discovery rule in this case must therefore await further factual development.

Plaintiffs have argued that the limitations defense was waived by defendant's failure to assert it in her answer. However, § 2293 does not merely provide a defense to an otherwise viable claim, but rather actually "extinguishes" the cause of action upon the expiration of the time period set forth by the statute. In other words, this statute bars the right to assert the cause of action in the first instance, rather than merely the remedy. Once the limitations period expires, there is no cause of action upon which relief can be granted. Accordingly, it is proper for the court to consider the limitations issue even though it was not asserted by defendant in her answer.

2. On the agency claim, the question presented was whether an agency relationship can exist where the alleged principal and the alleged agent are both tenants by the entirety in the same property. The supplemental briefing revealed two answers here. First, it is clear enough that one spouse may act as an agent for the other for the purpose of *conveying* or *encumbering* a tenancy by the entirety, e.g., *Allen v. Schultheiss*, 981 A.2d 610, 615 n.4 (D.C. 2009) (citing 7 Powell on Real Property § 52.03[4]), and it is similarly clear that there can be an agency relationship between spouses generally. See *Zukowski v. Dunton*, 650 F.2d 30, 34 (4th Cir. 1981) ("An agency relationship between husband and wife will not be established merely by virtue of their marriage. However,

this is not to say that such relationship cannot be established by other facts and circumstances."). Yet the cases cited did not exactly address the question of whether the same rule would apply when the *purpose* of the alleged agency is to improve property that belongs to both spouses as an entirety.

It is not necessary to address this question, however, because the supplemental briefing also drew out the possibility that Donnelly was using her own personal funds to finance the construction of the property, and that she appointed Madden as her agent to supervise the use of her money towards improvement of the property. In other words, there is a theory of agency here that does not require the court to confront the situation described above, and accordingly discovery on the claim should be permitted to go forward. See *Assoc. of Haystack Property Owners*, 145 Vt. at 446 (explaining that discovery should be permitted unless there is no set of facts upon which relief could be granted).

Beyond this, the factual issues described in the briefing involved whether or not the facts are sufficient to prove a master-servant relationship, and whether there was an adequate degree of control. As noted above, establishing an agency relationship between spouses requires evidence of other facts and circumstances beyond the mere marriage itself. *Zukowski*, 650 F.2d at 34. But resolving this factual dispute is a matter for summary judgment or trial. As such, discovery should be permitted on the agency claim.

3. Similarly, the supplemental briefing on the negligence claims made clear that the primary issue is whether the evidence supports the imposition of a duty of reasonable care on Donnelly to control the actions of her husband. One of the primary obstacles to plaintiffs' claim is establishing the existence of that duty as a matter of law. Yet the determination of whether a duty exists implicates "the sum total of those considerations and policy which lead the law to say that the plaintiff is entitled to protection," and the facts underlying the claim are profoundly important to a determination of the standard of reasonable care. *Denis Bail Bonds, Inc. v. State*, 159 Vt. 481, 487 (1993). Accordingly, the existence of a legal duty should be resolved on the basis of the actual facts established on summary judgment rather than the allegations advanced in the complaint and the supplemental briefing. *Assoc. of Haystack Property Owners*, 145 Vt. at 447.

4. Finally, it does not make sense to address the public policy question now. The public-policy arguments are relevant only in the event that plaintiffs do not establish entitlement to relief in the other counts of the complaint. As such, there is no reason to decide these issues unless they are squarely presented.

Discovery Motions

Having made these rulings, the court turns to the pending discovery motions, and in particular to plaintiffs' motion to compel answers to a number of interrogatories and requests for production (MPR #32). The background here is that plaintiffs sought a wide range of information from Donnelly, including information about the construction expenses that were incurred on the Densmore Hill property. Plaintiffs explained that the

information was sought in order to discover information relevant to the fraudulent conveyance claim (whether Madden rolled personal funds into the improvement of the property) and the agency claim (whether Donnelly appointed Madden as her agent to oversee the expenditure of her funds on the property). Yet defendant opposed the discovery primarily on the grounds that plaintiffs had failed to state a claim upon which discovery should be permitted.

Most of the parties' briefing on the motion to compel involved attempts to litigate the merits of the complaint. After receiving the benefit of the supplemental briefing, the court was able to resolve the arguments as explained above. In light of the foregoing rulings, therefore, the court addresses each of the specific discovery requests cited in the motion.

Interrogatory #6 requested information about construction expenses incurred before the entry of judgment in *Shahi v. Madden*. The information is relevant to documenting whether Madden rolled any personal funds into the entirety and whether Donnelly paid any construction expenses out of her own accounts. Accordingly, the motion to compel is granted.

Interrogatory #7 requests the same information about construction expenses incurred after the entry of judgment in *Shahi v. Madden*. The information is relevant to documenting whether Madden fraudulently rolled personal funds into the entirety while a judgment debtor. Although defendants contend that this theory of fraudulent conveyance is new, it was stated in the amended complaint. Accordingly the motion to compel is granted.

Donnelly seeks a protective order on the grounds that her records of construction expenses are commingled with her personal and unrelated financial records. She contends that it would be unduly burdensome to search through her documents for the requested information. She has not, however, supported this generalized assertion of a burden with any sort of factual showing as to the unreasonableness of the discovery request. It is always the burden of the party seeking a protective order to show good cause why protection should be granted, with reference to the specific facts and circumstances that support her claim for relief. 8A Wright & Miller et al, Federal Practice and Procedure: Civil 3d § 2035. Her motion for a protective order (MPR #37) is accordingly denied.

Interrogatory #8 seeks information regarding payments by Madden for construction expenses since the entry of judgment. The information is relevant to the claim for fraudulent conveyance, and the motion to compel is granted.

Interrogatory #9 seeks information about the work that Madden performed on the property. The information is relevant to the claim for agency, and the motion to compel is granted.

Interrogatory #10 seeks information about the individuals who provided materials and services for the improvement of the property since the Madden judgment. The information is relevant to the claim for fraudulent conveyance because it may identify persons to whom amounts were paid by Madden. The motion to compel is accordingly granted.

Interrogatory #11 seeks financial information about the source of the funding for the 2002 property purchase. The information is relevant to the claim for fraudulent conveyance because it will document the amount of personal funds spent by Madden in the transaction. Conversely, evidence of amounts paid by Donnelly will confirm that the amounts were not paid by Madden. Evidence that the source of some funds is unaccounted for might lead to further discovery. The motion to compel is accordingly granted.

Interrogatory #12 seeks identification of bank accounts held in Donnelly's name since 2002. The information is relevant to the fraudulent conveyance claims and the agency claims. The motion to compel is granted.

Interrogatory #13 seeks information about loans that Donnelly and Madden entered into as co-borrowers. The information is relevant to the fraudulent conveyance and agency claims, but only to the extent that any funds received from the loans in question were used towards the improvement of the Densmore Hill property. Other loans in which the funds were used wholly for some other purpose—such as a car loan—are not relevant. The motion to compel is accordingly granted in part and denied in part.

Interrogatory #17 asks whether Donnelly or Madden paid a prior settlement between the parties. Donnelly answered that she was not able to recall the precise source of the funds and was not able to produce any document relative to the issue. Assuming that this was a good faith response, the motion to compel is denied.

Interrogatory #18 sought information about who paid the attorneys' fees for Madden's defense in the *Madden* trial. Since the privity issue is no longer part of the case, and since any response to this discovery request would not have affected the outcome of the summary-judgment motion on preclusion, the motion to compel is denied. Cf. *Martin v. American Bancorp. Retirement Plan*, 407 F.3d 643, 652–53 (4th Cir. 2005). The information is not reasonably calculated to lead to the discovery of admissible evidence on the agency claim.

Interrogatory #19 sought production of any documents and communications between Donnelly and the attorney who represented Madden during the *Madden* trial. Because the information would not have changed the outcome of the privity determination, *Benson & Ford, Inc. v. Wanda Petrol. Co.*, 833 F.2d 1172, 1174–75 (5th Cir. 1987), and because the request is not reasonably calculated to lead to the discovery of admissible evidence on the agency claim, the motion to compel is denied.

Request for Production #29 seeks production of documents relevant to the construction of the Densmore Hill property, including any written contracts for services. It is another way of seeking information about expenditures that might have been made by Madden or Donnelly, and is relevant to the fraudulent conveyance and agency claims. The motion to compel is granted.

Interrogatories #32–33 request a description of the work performed on the Densmore Hill property between 2002 and present, with production of any supporting documents. Although the discovery request is somewhat cumulative to the detail requested in other interrogatories, the information is relevant to the fraudulent conveyance and agency claims, and the motion to compel is granted.

Request to Admit #37 requests an admission that Madden's work on the Densmore Hill property "benefitted" Donnelly. The request for admission is argumentative and involves a concept at the heart of the agency claim rather than an ascertainable or collateral fact. Requests for admission are not meant to elicit admissions about central issues in the case, but rather to expedite discovery and trial practice by identifying discrete components of the case that are not in dispute. 8A Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 2252. As such, the court will not require Donnelly to elaborate on her answer, which was that she was not able to admit or deny the request. The motion to compel is denied.

Request for Production #39 requests production of any and all communications between defendant and her insurance company. Donnelly responded that she "believes" she produced all of the non-privileged information requested. It is not clear to the court from this response whether the information required by Rule 26(b)(2) was actually produced or not. For this reason, the motion to compel is granted as to information required by Rule 26(b)(2), and is otherwise denied. The court does not see the relevance of any information other than that ordinarily produced during the routine course of discovery.

Interrogatory #41 requests information about the mortgage on the Densmore Hill property. It is another way of seeking information about the loans, and it is relevant to the claim for fraudulent conveyance. The motion to compel is granted.

Other Discovery Motions

The next discovery issue involves plaintiff's motion for *in camera* review of police records (MPR #40). The background here is that defendant apparently subpoenaed records from the Woodstock Police Department about any complaints made by plaintiffs against Madden and other complaints involving Madden. Plaintiffs then intervened by sending a letter to the police department suggesting that the subpoena should be viewed as a request for information under the Public Records Act, and that the request should be denied because the documents sought were exempted from disclosure as records that would threaten the safety of a particular person, 1 V.S.A. § 317(c)(25), that deal with the detection of crime, *id.* § 317(c)(5), or that are designated confidential, *id.* § 317(c)(1).

The exemptions in the Public Records Act are meant to apply to "disclosure to the public generally, not disclosure in response to discovery in litigation." *Douglas v. Windham Superior Court*, 157 Vt. 34, 38 n.2 (1991). Quite simply, the Act "does not create an evidentiary privilege." *Id.* It was accordingly improper to suggest that disclosure should be denied upon PRA grounds.

The subpoena was not a PRA request. It was a subpoena. V.R.C.P. 45.

As a pragmatic matter, the attorney for the police department has since suggested that plaintiffs be offered an opportunity to review and comment upon the discovery before it is released to defendants in order that plaintiffs may move for a protective order if necessary. Adherence to this procedure allows ample opportunity for ensuring that discovery is conducted with due regard for personal safety. It will furthermore clarify what exactly is in the files. As such, any *in camera* review by the court is premature at this time, and the motion is denied.

Moving through the other pending discovery motions, it appears that plaintiffs sent a subpoena duces tecum to Home Depot for any and all records relating to consumer transactions with Madden and Donnelly between 2004 and present. Donnelly moved to quash the subpoena is irrelevant (MPR #39). Yet the rule is that "a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action, unless the objecting party claims some personal right or privilege with regard to the documents sought." 9A Federal Practice and Procedure: Civil 3d § 2459. Here, the subpoena was directed to a nonparty, and there is no claim of privilege. The motion to quash is accordingly denied.

Plaintiffs moved to permit out-of-state depositions in *Donnelly* without Madden's participation for the reason that the sought-after information was not relevant to the *Madden* case. (MPR #31). The motion is denied in light of the foregoing ruling that Madden is a necessary party in the *Donnelly* case. As such, Madden will be entitled to discovery by virtue of his party status in this case rather than by virtue of the consolidation order. (However, the consolidation order still serves the purpose of ensuring that Donnelly has notice of any discovery occurring under the auspices of the *Madden* case.)

In making this ruling, the court has not addressed defendant's argument that the proposed depositions would be unduly burdensome, irrelevant, or an abuse of discovery. *Chrysler Corp. v. Makovec*, 157 Vt. 84, 89–90 (1991). Plaintiffs have not noticed any depositions and the pending motion does not seek permission to take depositions. The motion before the court was simply a request to modify the consolidation order, and that request is denied.

Finally, as a matter of housekeeping, a number of motions are moot. Plaintiffs' motion to dismiss the amended counterclaim (MPR #21) and plaintiffs' motion to

disqualify defense counsel (MPR #22) became moot when defendant voluntarily dismissed her amended counterclaim on July 15, 2009.

Also moot is plaintiffs' motion for clarification of the consolidation order (MPR #29) and defendant's cross-motion to stay discovery pending appeal in *Madden* (MPR #30). Both motions involved complications that arose in connection with the appeal of the *Madden* case. Since the appeal has been decided and the injunction vacated, the complications are no longer present. The motions are moot.

Plaintiff Leslie Shahi moved for joinder in notice of deposition (MPR #26). The date of the notice has passed and in any event the motion did not appear to request any action on the part of the court. The motion is moot.

Lastly, defendant's motion for a Rule 16 conference (MPR #33) will be denied for the time being. Instead, the parties are asked to complete and submit a new discovery order.

ORDER

(1) Plaintiffs' Motion to Dismiss and/or Strike Amended Counterclaim (MPR #21), filed June 3, 2009, is ***denied as moot***;

(2) Plaintiffs' Motion to Disqualify Defense Counsel (MPR #22), filed June 9, 2009, is ***denied as moot***;

(3) Plaintiff Leslie Shahi's Motion for Joinder in Notice of Deposition (MPR #26), filed July 6, 2009, is ***denied as moot***;

(4) Plaintiffs' Motion for Clarification Re: 7/8/09 Order (MPR #29), filed July 22, 2009, is ***denied as moot***;

(5) Defendant's Motion to Stay Depositions (MPR #30), filed Aug. 10, 2009, is ***denied as moot***;

(6) Plaintiffs' Motion to Allow Out-of-State Depositions (MPR #31), filed Aug. 18, 2009, is ***denied***;

(7) Plaintiffs' Motion to Compel Discovery Responses (MPR #32), filed Aug. 18, 2009, is ***granted in part and denied in part***;

(8) Defendant's Motion to Schedule Rule 16 Conference (MPR #33), filed Aug. 26, 2009, is ***denied***;

(9) Defendant's Cross-Motion for Protective Order (MPR #37), filed Sep. 8, 2009, is ***denied***;

(10) Defendant's Motion to Quash Subpoena Re: Home Depot (MPR #39), filed Sep. 11, 2009, is ***denied***;

(11) Plaintiffs' Motion for *In Camera* Review of Police Records (MPR #40), filed Sep. 14, 2009, is ***denied***;

(12) Plaintiff's Motion in Response to Court Order (MPR #44), filed June 1, 2010, is ***denied***;

(13) Defendant's Motion Second Round of Summary Judgment (MPR #45), filed June 1, 2010, is ***denied***;

(14) The stay of discovery and filing currently in effect is ***vacated***;

(15) Plaintiffs shall join Daniel Madden as a party-defendant on the fraudulent conveyance claim within thirty days; and

(16) The parties are directed to file an amended discovery scheduling order by December 1, 2010.

Dated at Woodstock, Vermont this 21 day of September, 2010.

Hon. Harold E. Eaton, Jr.
Superior Court Judge

FILED

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VERMONT SUPERIOR COURT
WINDSOR UNIT