

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
12 CVS 16715

VIOLET MEIR, Individually and as Co- )  
Trustee of the Family Trust under Article IV )  
of the Revocable Trust Agreement dated )  
March 12, 2002 by Ezra Meir, Grantor and )  
THE FAMILY TRUST UNDER ARTICLE IV )  
OF THE REVOCABLE TRUST )  
AGREEMENT DATED MARCH 12, 2002 )  
BY EZRA MEIR, GRANTOR, by and through )  
Violet Meir, Co-Trustee, )  
Plaintiffs )

v. )

JOSEPH MEIR; VICTOR MEIR, Individually )  
and as Co-Trustee of the Family Trust under )  
Article IV of the Revocable Trust Agreement )  
dated March 12, 2002 by Ezra Meir, Grantor; )  
I. ALLAN FROM; HOWARD, STALLINGS, )  
FROM & HUTSON, P.A.; ALBERT MEIR and )  
LAURENE MEIR SPERLING, )  
Defendants )

**ORDER**

THIS MATTER comes before the court upon Defendants Joseph and Victor Meir's Motion to Deposit Payments into Court, for an Accounting for All Distributions and Use of Funds, and for Appointment of Third Party Fiduciary ("Motion to Deposit Payments"); Defendant Laurene Meir Sperling's Motion to Strike Memorandum ("Sperling Motion to Strike"); Plaintiff Violet Meir's Response and Motion to Strike Defendant's Motion and Memorandum to Deposit Payments into the Court, for Accounting, and for Appointment of Third Party Fiduciary ("Meir Motion to Strike"); Defendants Joseph and Victor Meir's Motion to Dismiss Complaint of Plaintiffs Violet Meir, et al., for Failure to State a Claim Upon Which Relief Can Be Granted ("Motion to

Dismiss Complaint"); Defendants Joseph and Victor Meir's Motion to Dismiss Crossclaims of Albert Meir for Failure to State a Claim Upon Which Relief Can Be Granted ("Motion to Dismiss Crossclaims"); Defendant Joseph and Victor Meir's Omnibus Motions Arising from Initial Session of Deposition of Plaintiff Violet Meir which include Motions: (a) to Dismiss or Strike the Complaint, pursuant to Rules 11(b) and 12(f) of the North Carolina Rules of Civil Procedure ("Rule(s)"), (b) for a Competency Determination, pursuant to Rule 17 of the North Carolina Rules of Civil Procedure to determine the competency of Plaintiff Violet Meir, (c) to Stay Discovery and (d) to Compel Violet Meir to respond to questions propounded during the deposition to which Violet Meir's Counsel asserted attorney-client privilege ("Omnibus Motions") and Defendants Allan From and Howard, Stallings, From & Hutson P.A.'s First Motion to Compel and Defendant Joseph and Victor Meir's Motion to Consolidate Trust Proceedings with Business Court Action ("Motion to Consolidate") (collectively, "Motions"); and

THE COURT, having reviewed the Motions, the briefs in support and opposition thereof, arguments of counsel and other appropriate matters of record, FINDS, CONCLUDES and ORDERS as follows:

1. Defendants Joseph and Victor Meir's Motion to Deposit Payments is DENIED. The court is informed that funds ("Funds") totaling \$167,220.01 have been deposited by Joseph and Victor Meir with the Clerk of Court for Wake County. The court is informed that of that total amount, \$83,610.01 has been deposited by Joseph Meir and \$83,610.00 has been deposited Victor Meir. The Funds deposited by Joseph and Victor Meir have been remitted in the form of cashier's checks payable to the order

of the Clerk of Court of Wake County. These checks have included the case number of the present action (12 CVS 16715) in the memo line. The court ORDERS that all such Funds be returned to Joseph and Victor Meir in accordance with the respective amounts deposited by each. The court further ORDERS that upon receipt of the Funds, Joseph and Victor Meir forthwith shall distribute the Funds to Violet Meir, Albert Meir and the Family Trust Under Article IV of the Revocable Trust Agreement Dated March 12, 2002 by Ezra Meir, Grantor, in accordance with the terms of the promissory notes described in the Complaint and Motion to Deposit Payments.

2. The Sperling and Meir Motions to Strike are DENIED.

3. Defendants Joseph and Victor Meir's Motion to Dismiss the Complaint is DENIED.

4. Defendants Joseph and Victor Meir's Motion to Dismiss the Crossclaims of Albert Meir is DENIED.<sup>1</sup>

5. Defendants Joseph and Victor Meir's Motion to Strike Complaint, Motion for Competency Determination and Motion to Stay are DENIED. In concluding that the Motion for Competency Determination should be DENIED, the court notes that an Order for Competency Evaluation was entered by the Wake County Clerk of Court on May 1, 2013. Pursuant to the Clerk's order, Dr. Sally Johnson ("Dr. Johnson") is to perform a competency evaluation of Violet Meir. The court finds no reason to conduct a separate competency evaluation of Violet Meir at this time. The court ORDERS that a copy of Dr.

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<sup>1</sup> The court concludes that the Crossclaims of Albert Meir are sufficiently stated to survive the Motion to Dismiss, but notes that the legal theories on which the Crossclaims rest are tenuous. Given their technical sufficiency, dismissal of the Crossclaims pursuant to Rule 12(b)(6) would be inappropriate. This Order is without prejudice to the right of Defendants to seek resolution of the Crossclaims pursuant to a Rule 56 Motion.

Johnson's evaluation report be provided to this court by the parties to this action immediately upon their receipt of the report.

6. Defendant Joseph and Victor Meir's Motion to Consolidate is DENIED.

7. The Motions to Compel filed by Defendants Joseph and Victor Meir and by Allan From ("From") and Howard, Stallings, From & Hutson P.A. ("From Firm") are GRANTED, in part.

8. Both Motions to Compel assert that counsel for Plaintiff improperly asserted objections based upon attorney-client privilege to certain questions asked of Violet Meir during her prior depositions. Plaintiff's counsel, in many instances, objected to questions asked of Violet Meir during her depositions on the basis that the answers to those questions were protected from discovery by the attorney-client privilege. Plaintiff's counsel further instructed Violet Meir not to answer those questions to which counsel objected on the basis of attorney-client privilege. The Motions to Compel argue that Plaintiff's counsel's objections were inappropriate on their face given that the questions posed to Violet Meir did not require her to divulge any confidential communications with her existing or previous attorneys.

9. The court agrees with counsel for Defendants. At least a significant majority of Plaintiff's counsel's objections on the basis of attorney-client privilege were inappropriate given the question asked. The transcripts of both depositions of Violet Meir are replete with incorrect assertions by Plaintiff's counsel that the attorney-client privilege protects the details surrounding the factual allegations of the Complaint.

10. The attorney-client privilege does not protect against the disclosure of facts. Rather, it only protects against the disclosure of certain confidential

communications between an attorney and client. *See Upjohn Co. v. United States*, 449 U.S. 383, 396-97 (1981); *In re Miller*, 357 N.C. 316, 336 (2003). The fact that Violet Meir and her counsel may have discussed certain facts related to this case does not trigger the application of any protection as to those facts. The court concludes that the attorney-client privilege does not attach to specific facts simply because Violet Meir is aware of those facts only because of conversations with her attorney. In addition, the attorney-client privilege does not protect against the disclosure of Violet Meir's personal opinions, feelings or knowledge.

11. In many instances, counsel for Defendants asked Violet Meir to elaborate on the factual allegations of her verified Complaint. Such questions were objected to by Plaintiff's counsel on the basis of attorney-client privilege. These objections were inappropriate. The facts underlying Plaintiff's verified Complaint are discoverable by Defendants.

12. Due to the numerous instances of counsel for Plaintiff objecting based on attorney-client privilege during prior depositions of Violet Meir, the court, in its discretion, elects not to review each objection and corresponding question individually. Instead, the court will allow, forthwith, further deposing of Violet Meir by counsel for Joseph and Victor Meir and counsel for From and the From Firm. Counsel for Joseph and Victor Meir shall be allowed to conduct one additional deposition of Violet Meir. Counsel for From and the From Firm shall also be allowed to conduct one additional deposition of Violet Meir. These depositions shall be conducted at the same time and place.

13. At any and all future depositions, Violet Meir shall answer questions posed to her in accordance with court's determinations above. Plaintiff Violet Meir otherwise

shall fully answer questions related to the factual basis for her verified Complaint at any and all future depositions. Counsel for Plaintiff shall refrain from raising objections based on attorney-client privilege that are in contravention of the court's determinations above as to the applicability of the attorney-client privilege.<sup>2</sup>

14. In addition, at the resumption of Violet Meir's deposition(s) counsel for Plaintiff shall refrain from making speaking objections or other statements that might suggest an answer to Violet Meir.<sup>3</sup>

15. Any future depositions of Violet Meir shall be conducted in accordance with the restrictions and accommodations provided for in the Court's Order on Motion to Modify Protective Order entered on March 28, 2013.

SO ORDERED, this the 31st day of May, 2013.

/s/ John R. Jolly, Jr.  
John R. Jolly, Jr.  
Chief Special Superior Court Judge for  
Complex Business Cases

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<sup>2</sup> The terms of this Order are not intended to preclude counsel for Plaintiff from raising appropriate objections based upon attorney-client privilege or other protectable privilege.

<sup>3</sup> The court finds that the conduct of Plaintiff's counsel during the prior depositions of Violet Meir does not rise to the level of sanctionable conduct. The court, however, will consider the imposition of sanctions against counsel for any party to this action for objections raised during future depositions of Violet Meir which are not grounded in good faith.