

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

GROVE FRESH DISTRIBUTORS, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 89 C 1113
)	
EVERFRESH JUICE COMPANY and)	Chicago, Illinois
HUGO POWELL,)	April 20, 1990
)	9:45 a.m.
Defendants.)	Motion

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

APPEARANCES:

For the Plaintiff:	MR. JOHN P. MESSINA 135 South LaSalle Street Chicago, Illinois 60603
For the Defendant:	MC DERMOTT, WILL & EMERY, by MR. LAZAR POL RAYNAL 227 West Monroe Street 31st Floor Chicago, Illinois 60606-5096
Court Reporter:	Wanda L. Barnes Official Court Reporter, by Tracey D. McCullough 219 S. Dearborn Street Suite 1918 Chicago, Illinois 60604 (312) 435-5568

1 THE CLERK: 89 C 1113, Grove Fresh versus Everfresh.
2 MR. MESSINA: Good morning, Your Honor. John
3 Messina for the plaintiff.
4 MR. RAYNAL: Good morning, Your Honor. Lazar Raynal
5 for the defendants.
6 MR. MESSINA: I have two motions, Your Honor. One
7 is for leave to file additional appearances.
8 THE COURT: Granted.
9 MR. MESSINA: The other motion, Your Honor, concerns
10 interrogatories.
11 THE COURT: Yes, I have read your motion. Your
12 response to this?
13 MR. RAYNAL: Your Honor, did you receive our
14 preliminary response?
15 THE COURT: No, I did not.
16 MR. RAYNAL: Okay. Would you like me to tender one
17 to your --
18 THE COURT: Yes.
19 (Document tendered.)
20 MR. RAYNAL: It's quite short, Your Honor.
21 THE COURT: Explain something to me, and that is
22 your response to the interrogatory identify every person who
23 who is or was an officer, director, shareholder of Everfresh.
24 MR. RAYNAL: Excuse me, Your Honor.
25 THE COURT: Your response to the interrogatory

1 identify every person who is or was an officer, director, or
2 shareholder of Everfresh.

3 MR. RAYNAL: Well, Your Honor, I guess we did not --
4 I think there's a copy of our answer attached to Mr.
5 Messina's. If I can find it quickly.

6 Well, Your Honor, Exhibit, I guess it's, A to Mr.
7 Messina's carried a copy of our response, which was that we
8 told them that John LaBat, Inc., is the sole shareholder --

9 THE COURT: What I am concerned about is the first
10 sentence.

11 MR. RAYNAL: The officers, directors and so forth?

12 THE COURT: Right. I'm concerned about the first
13 sentence of your response.

14 MR. RAYNAL: That there was a -- ambiguous beyond
15 the scope of discovery. I think that that --

16 THE COURT: What I want to know is what's confusing
17 and ambiguous.

18 MR. RAYNAL: Well, Your Honor, I think that that
19 objection was withdrawn at a later point, was it not, John?

20 MR. MESSINA: It was, but they still haven't
21 answered the question. That's part of the problem.

22 MR. RAYNAL: Okay. And then an affidavit was
23 supplied, Your Honor, by Hugo Powell. You know, he is the
24 president and CEO. And I guess I don't understand, Your
25 Honor, how this just can't be answered at his deposition.

1 MR. MESSINA: Judge, the interrogatories are
2 directed to the corporation, and what I'm looking for are
3 answers that speak for the corporation, not just an
4 individual.

5 MR. RAYNAL: Well, Mr. Power will speak on behalf of
6 the corporation and as an individual defendant.

7 THE COURT: When is Powell to be deposed?

8 MR. MESSINA: He's to be deposed a week from
9 yesterday, April 26th.

10 THE COURT: Do the Powell deposition. Do the Powell
11 deposition without documents. If the Powell deposition is
12 not satisfying, you can depose Powell again at a date of your
13 choosing.

14 MR. RAYNAL: Your Honor, as to the documents issue,
15 can I respond to that, please.

16 THE COURT: Yes.

17 MR. RAYNAL: Your Honor, Mr. Weitzman attached to
18 that -- I think it's the first exhibit to our response -- a
19 letter which he sent over by messenger to Mr. Messina on the
20 16th of April, which apparently was supposed to cover a
21 conversation they had on the 11th which stated that we would
22 provide documents.

23 But most of these interrogatories can only be answered by
24 documents. I think the thrust of this is Mr. Messina's
25 unhappy with the fact that Mr. Powell, who is the current

1 CEO, no longer -- does not have any personal knowledge about
2 these actions in question.

3 And, as a matter of fact, the tight group of people that
4 did have knowledge about it are no longer with the company.
5 He can only say I was told or this is what I heard because
6 that's all he knows. I think neither side will dispute that
7 Mr. Powell came in after the activity in question.

8 Now, since nobody is there any longer to answer these
9 questions, we have informed Mr. Messina by that hand
10 delivered letter on April 16th, and apparently there was a
11 conversation on the 11th that Mr. Weitzman nor Mr. Stedler
12 could be here today. And that's why I'm here.

13 And if Your Honor's going to inquire more about those
14 discussions, we would ask for additional time. But our
15 response is, Your Honor, that we will provide answers by
16 documents under Rule 33 C. And Mr. Messina was told this.
17 That letter went to him. He received that letter two days
18 before --

19 MR. MESSINA: Counsel, you were not party to those
20 conversations.

21 MR. RAYNAL: May I finish, please. May I finish,
22 please. I'm talking just about these letters. That letter
23 was hand delivered two days before this motion was filed. We
24 did not hear back from Mr. Messina about him coming out to
25 see documents. I spent all day Tuesday out at the facility

1 organizing documents for his review with the expectation that
2 he was going to come out.

3 MR. MESSINA: Judge, they never told me --

4 MR. RAYNAL: Excuse me. Let me finish. And that's
5 our position, Your Honor. If he wants to see these
6 documents, we can provide them. I have been organizing them
7 out at the facility for the review.

8 MR. MESSINA: Your Honor, under 33-C if they wanted
9 to produce documents in lieu of answers, that's certainly
10 their right. But 33-C says identify what documents you are
11 going to produce. What they just did was send a one sentence
12 statement. We're going to produce documents in lieu of the
13 interrogatories.

14 What I am looking for, Judge, is a specific response to
15 each of the 16 interrogatories addressed to the corporation.
16 If there are documents responsive that satisfy it, so be it.
17 All I am asking for is what the rules provide for, and what I
18 bargained for in the settlement agreement in March.

19 What I'd like to do, Your Honor, is go forward with the
20 Powell deposition, but also to have an order entered that
21 would require Everfresh to file answers to the interroga-
22 tories. It's now two weeks after the date they agreed to
23 serve answers.

24 THE COURT: It does say here in Rule 33-C that, "It
25 is a sufficient answer to such interrogatory to specify the

1 records from which the answer would be derived or ascertained
2 and to afford the party serving the interrogatory reasonable
3 opportunity to examine, audit, or inspect such records, and
4 to make copies, compilations, abstracts, or summaries."

5 Well, the letter does take care of affording the party
6 reasonable opportunity to examine, but it seems not to deal
7 with the question of the specification. And the Rule says,
8 "A specification shall be in sufficient detail to permit the
9 interrogating party to locate and to identify, as readily as
10 can the party served, the records from which the answer may
11 be ascertained." So you owe him a specification.

12 MR. RAYNAL: Okay, Your Honor. And if we would have
13 been asked for that at an earlier time. I mean the position
14 was -- our position was, Your Honor: We'll bring you out and
15 we'll show you these documents here are responsive.

16 THE COURT: Let me tell you what my difficulty is.
17 The first difficulty I have is that I stayed discovery, which
18 I was asked to do on the understanding that the remainder of
19 discovery if the motion to dismiss was lost, would be
20 conducted at the convenience of the plaintiff, something
21 which Mr. Weitzman has apparently forgotten.

22 Secondly, some of the answers to the interrogatories
23 really raise questions of good faith. It may very well be
24 that identifying every person who is or was an officer,
25 director, or shareholder of Everfresh is beyond the scope of

1 discovery. But I don't believe it is confusing and
2 ambiguous, yet this is the written objection that was filed.

3 The objection was withdrawn, but it raises a concern in
4 my mind as to the true willingness to comply with the
5 obligations on the discovery. It seems to me to be a tongue
6 in cheek objection to an interrogatory, which is appropriate
7 for a skit about the American legal procedure, but not
8 something that you'd actually do in a courtroom.

9 The third thing about it is your comment to me when we
10 raised the question of the letter that Weitzman wrote. And I
11 said to you that Rule 33-C requires opportunity to inspect
12 and copy and also requires a specification. And your
13 response was that they should have asked you for a
14 specification.

15 I think that's wrong. I think 33-C is your option to
16 exercise. And when you exercise that option, you are to
17 provide the specification. I don't think it's Messina's
18 burden to ask for the specification. Now, this may all be a
19 terrible misunderstanding, but what I've seen thus far does
20 not convince me that there's an appropriate desire on the
21 part of your clients to comply with discovery.

22 And I am not saying that it may not be innocent, but the
23 specification is something that you ought to produce if you
24 are invoking 33-C. And I read Weitzman's letter as invoking
25 33-C. And all he did is he said: Okay. Here's 33-C, and

1 here's your opportunity to examine this. I think Weitzman
2 had an obligation to provide the specification under 33-C if
3 he wanted to invoke it. Frankly under the conditions that
4 exist now, I think that your opponent could say you don't
5 have an exercise of the 33-C option and you better answer the
6 interrogatories.

7 And I'd be inclined under the circumstances to require
8 the answering of the interrogatories and not permit you to
9 invoke 33-C because you have invoked it improperly. And if
10 you get from this the impression that I am somewhat disturbed
11 at the response to discovery and the conduct of discovery,
12 you are correct. I am somewhat disturbed.

13 But I will at least permit you a second chance to
14 exercise your option under 33-C, and you will by Tuesday
15 morning produce the specification required under 33-C. And
16 considering the past history of this matter, if you have
17 doubts in your mind as to weighing whether something ought to
18 be more specific or more general, I would resolve it in terms
19 of being more specific and identifying those documents that
20 respond to individual interrogatories rather than more
21 general. And we will see where we go from here.

22 MR. RAYNAL: What was the question, Your Honor?

23 THE COURT: And we will see where we go from here.

24 MR. MESSINA: Oh, Your Honor, would the Court
25 entertain providing in the order that at some reasonable date

1 that there would be answers supplied to those interrogatories
2 to which they are not going to be exercising 33-C. There are
3 16 interrogatories, and I am certain that not all of them can
4 be answered by the 33-C option.

5 THE COURT: I think that's probably correct. Have
6 you looked at the documents yourself now? Have you completed
7 looking at them?

8 MR. RAYNAL: Not completely, Your Honor. I was out
9 there Tuesday. I was planning on being out there all week as
10 it progressed, but we never heard back, you know, that he was
11 going to come out, and then this came up.

12 MR. MESSINA: Judge, there is one particular
13 interrogatory that I am most interested in, which is the one
14 that asks Everfresh to identify all the employees who knew
15 about the adulteration and who took part in it. That it
16 seems to me is something which gives names and addresses and
17 dates of employment.

18 THE COURT: Yes, you can give that to them by
19 Tuesday, too.

20 MR. RAYNAL: Is that interrogatory one?

21 MR. MESSINA: No, that's not interrogatory one.

22 THE COURT: And you can come back again if you have
23 another difficulty.

24 MR. RAYNAL: Your Honor, if could I just say one
25 thing. There is an issue of a protective order, and we are

1 trying to work it out amongst us an agreed order, and we
 2 received Mr. Messina's draft back yesterday. If we are
 3 unable to agree on that, do you want to set another date so
 4 that we can come in, because obviously the types of things
 5 that are going to be responsive to these interrogatories are
 6 specific customer information. All very confidential
 7 information.

8 THE COURT: I don't want to set a date. You can
 9 pick a date.

10 MR. RAYNAL: Thank you, Judge.

11 * * * * *

12 C E R T I F I C A T E

13 I hereby certify that the foregoing is a true and correct
 14 transcript of the aforesaid matter.

15
 16
 17 -----

18 Court Reporter Date

19
 20
 21
 22
 23
 24
 25