STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

E.J. PECK, INC.,

Plaintiff,

vs. Case No. 2015-810-CB

WOLVERINE PLATING CORPORATION,

Defendant.
_____/

OPINION AND ORDER

Before the Court is a portion of Defendant's November 23, 2015 motion to compel. Plaintiff has filed a response to the motion and requests that the motion be denied.

I. Standard of Review

A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been an abuse of that discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343-346; 497 NW2d 585 (1993). Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. *Id.*; MCR 2.302(B)(1). MCR 2.313(A)(2)(a) permits the Court to enter an order compelling discovery if a deponent fails to answer a question made during a deposition. Although broad discovery is encouraged, a party opposing discovery must not be subject to "excessive, abusive, irrelevant or unduly burdensome discovery requests." *Hamed v Wayne County*, 271 Mich App 106, 110; 719 NW2d 612 (2006) (internal citation omitted). As such, a court may issue "any order that justice requires to

protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." MCR 2.302(C). Furthermore, discovery should not be extended merely to allow a "fishing expedition." *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004).

II. Arguments and Analysis

In its motion, Defendant requests an order requiring Plaintiff to identify when it first communicated with its counsel and to produce any engagement agreement he executed with his counsel. Further, Defendant requests that Plaintiff identify who, if anyone, drafted, or assisted in the drafting of, the "manufacturer's representative agreement" it provided to Defendant in its October 31, 2014 email (*See* Defendant's Exhibit 6.)

At the hearing held in connection with this matter, Plaintiff's counsel stipulated to provide a redacted copy of the retainer agreement Plaintiff executed with his counsel in connection with this matter. With respect to the remaining items, Plaintiff contends that the information sought is protected by the attorney-client privilege and/or work product privilege.

A party resisting discovery based on the attorney-client privilege or work-product privilege has the burden of showing that the privilege applies. *In re Columbia/HCA Healthcare Corp Billing Practices Litigation*, 293 F3d 289, 294 (6th Cir 2002). The attorney-client privilege attaches to direct communication between a client and his attorney as well as communications made through their respective agents." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 618; 576 NW2d 709 (1998). "The scope of the attorney-client privilege is narrow, attaching only to confidential

communications by the client to his advisor that are made for the purpose of obtaining legal advice." *Id.* at 618–619.

In this case, the information sought is merely the date(s) of any communications between the Plaintiff and its counsel prior to retaining his counsel. The information sought does not seek the content of the communications or any other confidential information. Furthermore, Plaintiff has failed to present any support for its position that the information sought is protected by attorney-client privilege. Accordingly, the Court is convinced that Plaintiff has failed to establish that the dates of his pre-retention communications with his counsel are protected by the attorney-client privilege.

With respect to the work product doctrine, the premise of the doctrine is that "any notes, working papers, memoranda or similar materials, prepared by an attorney in anticipation of litigation are protected from discovery." *Messenger v Ingham Co Prosecutor,* 232 Mich App 633, 637; 591 NW2d 393 (1998). In this case, none of the requested information at issue, other than the retainer agreement that Plaintiff has agreed to produce, is a physical item; rather, the remainder of the sought information is merely dates and the identity of anyone who assisted Plaintiff in drafting the "manufacturer's representative agreement". Accordingly, the work product doctrine is not implicated in the parties' instant discovery dispute.

For the reasons discussed above, Plaintiff has failed to establish that the discovery sought is protect by the attorney-client privilege and/or work product doctrine. Accordingly, the Court is convinced that Defendant's motion to compel must be granted.

IV. Conclusion

For the reasons discussed above, Defendant's motion to compel the date of any pre-retention communications with his counsel regarding this matter and the identity of anyone who assisted Plaintiff in drafting the "manufacturer's representative agreement" is GRANTED. Plaintiff shall provide the above-referenced information to Defendant within 14 days of the date of this Opinion and Order. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: FEB 02 2016

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge