FST CV 19-6042782 S	SUPERIOR COURT STAMFORD-NORWALK JUDICIAL DISTRICT	: SUPERIOR COURT
MIANUS RIVER GORGE, INC.	2021 MAR 24 P 2:02	: JUDICIAL DISTRICT : STAMFORD/NORWALK
v.		: AT STAMFORD
GRETCHEN A. MEYER, TRUSTEE OF THE 107 JUNE ROAD TRUST, ET AL		: MARCH 24, 2021

MEMORANDUM OF DECISION

Plaintiff has moved pursuant to P.B. § 13-14 to compel defendant George Mead ("Mead") to respond to certain questions posed at his deposition that he did not answer at direction of counsel on grounds of attorney-client privilege. For the reasons stated below, the motion for order of compliance is granted.

In *State v. Kosuda-Bigazzi*, ___ Conn. ___, 2020 WL 1808821 *5 (2020), the Supreme Court recently restated the narrow scope of the attorney-client privilege recognized in this state:

"'Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived'.... 'In Connecticut, the attorney-client privilege protects both the confidential giving of professional

advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice.... The privilege fosters full and frank communications between attorneys and their clients and thereby promote[s] the broader public interests in the observation of law and [the] administration of justice.' ... The privilege applies, however, only when necessary to achieve its purpose; it is not a blanket privilege." (Citations omitted).

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"The privilege ... must be narrowly applied and strictly construed. ... 'The burden of establishing the applicability of the privilege rests with the party invoking it....'" Id. 2020 WL 1808821 *6. (Citations omitted).

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"The privilege is narrowly applied, strictly construed, and applies only when necessary to foster full and frank communications between attorneys and their clients." Id. 2020 WL 1808821 *14.

Mead has the burden of proving that the communications concerned confidential information. "For privilege to attach the communication must be confidential." *Fensore v. Lyons*, 2017 WL 1311107 *2 (Conn.Super. 2017)

(Krumeich, J.) citing *PSE Consulting, Inc. v. Frank Mercede and Sons, Inc.*, 267 Conn. 279, 330 (2004).

Mead has the burden to prove that any facts the question would elicit are inextricably linked to the giving of legal advice; any discoverable facts that are not privileged must be disclosed. "'Not every communication between attorney and client falls within the privilege. A communication from attorney to client solely regarding a matter of fact would not ordinarily be privileged, unless it were shown to be inextricably linked to the giving of legal advice.'" *Fensore*, 2017 WL 1311107 *3 n. 4, quoting *Ulmann v. State*, 230 Conn. 698, 713 (2002). "In Connecticut, communications of fact between attorneys and clients that are 'inextricably linked to the giving of legal advice' are protected by the attorney-client privilege. *Ullmann v. State*, 230 Conn. 698, 713, 647 A.2d 324 (1994). The privilege protects 'the giving of information to the lawyer to enable counsel to give sound and informed advice.' *Metropolitan Life Insurance Co. v. Aetna Casualty & Surety Co.*, 249 Conn. 36, 52, 730 A.2d 51 (1999)." *Adisa Veliju, PPA v. Tejeda*, 2017 WL 5923394 *3 (Conn.Super. 2017) (Lager, J.). "... [T]he privilege extends to "the giving of information to the lawyer to enable counsel to give sound and informed [legal] advice. ... As this court long has recognized, '[i]t is obvious that professional assistance would be of little or no avail to the client, unless his legal adviser were put in possession of all the

facts relating to the subject matter of inquiry or litigation, which, in the indulgence of the fullest confidence, the client could communicate. And it is equally obvious that there would be an end to all confidence between the client and [the] attorney, if the latter was at liberty or compellable to disclose the facts of which he had thus obtained possession....'" *Blumenthal v. Kimber Mfg., Inc.*, 265 Conn. 1, 15 (2003) (citations omitted).

Mead has not borne his burden of proving that his response to the questions posed necessarily would disclose confidential communications between attorney and client related to the giving of legal advice. To the extent that the questions would elicit factual information, Mead has not shown that the factual information was confidential and inextricably linked to the giving of legal advice.

Defendants are represented by the same legal counsel. Connecticut recognizes that attorney-client communications may be protected from disclosure where there is joint representation. "'When two or more people consult an attorney together on a matter of joint interest ... their communications [are] privileged as to the outside world, though not as to each other in a later controversy between themselves.'" *Pagano v. Ippilliti*, 245 Conn. 640, 649-50 (1998) quoting *State v. Cascone*, 195 Conn. 183, 186–87 (1985) (protected

privileged "communications between codefendants and their joint attorney when the conversation related to their participation in the charged offense").[1]

Mead's invocation of privilege was overbroad and precluded inquiry into communications between co-defendants to which counsel was not a party and outside counsel's presence. Defense counsel objected to disclosure of communications that he asserted were conducted under the direction or supervision of counsel. Such a blanket privilege does not exist and would be an open invitation to discovery abuse. Counsel cannot insulate discoverable facts known to co-defendants simply by directing the parties to communicate with each other concerning the subject matter of the dispute. The predicate for attorney-client privilege is the protection of confidential communications between attorney and client for the purpose of obtaining or giving legal advice. See *Bianco v. Deming*, 2020 WL 8130202 *1 (Conn.Super. 2020) (Krumeich, JTR). The joint representation privilege simply protects from waiver otherwise privileged attorney-client communications when communicated with a jointly represented party.[2] The non-

[1] "For the co-client privilege, it suffices for the clients to have a common interest, not necessarily interests that are identical in all respects. So long as their interests are common, co-clients who consult the same lawyer would reasonably expect that their communications with the lawyer to which they are mutually privy would be protected from disclosure to third parties by the attorney-client privilege. The legitimate expectation of privilege is unmistakably higher in the co-client context than the broader community-of-interest context involving parties who are not represented by the same counsel." *Supreme Forest Products v. Kennedy*, 2017 WL 120644 *2 (D. Conn. 2017) (Meyer, J.).

[2] In *State v. Kosuda-Bigazzi*, the Supreme Court noted "'[voluntary] disclosure of confidential communications ... constitutes a waiver of [the] privilege as to those items.'" 2020 WL 1808821 *14 n.15, quoting *Harp v. King*, 266

disclosing party must still establish the communication itself and any facts related thereto that he seeks to preclude from discovery are privileged. Counsel's presence would not necessarily be required if the communications between the jointly represented parties concerned discussion of privileged communications with counsel; for example, what the client told counsel or what counsel told the client in a confidential communication concerning legal advice would retain privileged status, but simply because counsel directed or supervised the communication between clients would not make otherwise non-privileged communications privileged, whether or not counsel is present, particularly as to non-privileged facts communicated that would otherwise be discoverable. The blanket objections at the deposition shut off inquiry into matters that might well have been discoverable and discouraged follow-up inquiries that would have tested the assertion of privilege and the parameters of any privilege asserted. On this motion Mead has not provided any additional information that would substantiate the blanket assertion of privilege.

The motion for order of compliance is granted and the objections are overruled. Mead is ordered to appear for resumption of his deposition at a

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Conn. 747, 767 (2003). A third party's presence or participation in the communication or subsequent disclosure of its contents to a third party may waive any privilege and is an appropriate area of inquiry.

mutually convenient date and time. The Court will not impose any costs or fees on Mead at this time.

DECISION ENTERED IN ACCORDANCE WITH THE FOREGOING ON 3/24/21. JDN SENT 3/24/21.

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Krumeich, J.T.R.