

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

John C. Depp, II,)

Plaintiff,)

v.)

Amber Laura Heard,)

Defendant.)

Civil Action No.: CL-2019-0002911

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FAIRFAX, VA

PLAINTIFF JOHN C. DEPP, II'S OPPOSITION TO DEFENDANT AMBER LAURA HEARD'S MOTION TO COMPEL RESPONSES TO ELEVENTH AND TWELFTH REQUESTS FOR PRODUCTION OF DOCUMENTS

I. The Motion Is Believed Moot As to Contracts/Related Documents

The parties appeared close to agreement on certain issues when Ms. Heard filed her motion to preserve a December 10 hearing date before the meet and confer process had concluded. Mr. Depp believes that the parties are now in agreement as to Ms. Heard's RFPs seeking Mr. Depp's performance contracts. Mr. Depp already produced contracts for many films and agrees to producing any additional film contracts in his possession and his contract with Christian Dior. Mr. Depp is also willing to produce responsive documents (if any) to Ms. Heard's RFPs for communications with Mr. Depp's employers under those contracts regarding terminations, complaints or concerns about Mr. Depp, as narrowed in the meet and confer.

II. Mr. Depp's Objections Related to His Defenses Are Appropriate

Ms. Heard served unreasonably broad and vague RFPs for all documents "supporting, refuting, or otherwise relating to" his affirmative defenses. Mr. Depp agrees in principle that non-privileged documents supporting his defenses may be discoverable. But Ms. Heard has failed to specifically describe identifiable categories of documents that might support Mr. Depp's defenses. Instead, she took a shortcut, making a blanket demand for everything in the world that might be deemed to "relate" to his defenses. That violates the requirement of Va. R. S. Ct. 4:9(b)(i) that RFPs "*must set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity.*" Simply put, there is no file that can be searched that contains all documents that might "relate" to an entire affirmative defense. Mr. Depp has agreed to produce documents in response to some requests, but subject to legitimate objections – the requests are too broad and too vague.

III. Ms. Heard Is Not Entitled to Privileged Documents

Ms. Heard also seeks privileged materials, arguing that Mr. Depp's assertion of the attorney-client privilege is incompatible with his Fourth and Fifth Affirmative Defenses to her Counterclaim for defamation. Not so. Mr. Depp's Fourth Affirmative Defense (that Mr. Depp did not make the statements at issue) merely points out an undisputed fact that is alleged in Ms. Heard's own Counterclaim – the statements that form the basis of her Counterclaim were made by Adam Waldman, not Mr. Depp. And Mr. Depp's "Fifth Affirmative Defense" is not an active defense, but merely a *reservation of rights* to assert hypothetical defenses related to the scope of Mr. Waldman's authority. Mr. Depp is not intending to rely on privileged communications with Mr. Waldman at trial and is under no obligation to waive privilege. As for Ms. Heard's argument that it is contested that Mr. Waldman's statements are attributable to Mr. Depp, that is of course true; but it does not follow from that fact that Ms. Heard is entitled to obtain privileged communications between Mr. Depp and Mr. Waldman. *It is Ms. Heard's burden to establish that Mr. Waldman was acting at the behest of Mr. Depp in making the statements in question* (not Mr. Depp's burden to disprove it), and Mr. Depp is under no obligation to waive privilege merely because he disputes that Ms. Heard can carry her burden.

IV. Mr. Depp's Objections to Documents "Related" to Denials Are Appropriate

Ms. Heard served broad, vague, and open-ended requests for any documents that could be deemed to relate to Mr. Depp's denials of the allegations in each paragraph of her Counterclaim. Not only do these requests fail to specify reasonably particularized categories of documents as required under Va. R. S. Ct. 4:9(b)(i), but also many of them *relate to allegations that are no longer at issue*, because they are focused on Ms. Heard's third cause of action in her Counterclaim, which was essentially an attempt to hold Mr. Depp accountable for any negative

post about her on social media, **and which was dismissed following Mr. Depp's Demurrer and Plea in Bar.** For instance, RFP No. 47 in her Eleventh RFPs demands that Mr. Depp "produce all documents supporting, refuting, or otherwise relating to Your denial of ¶¶ 13-14 of the Counterclaim." Those paragraphs have nothing to do with the three allegedly defamatory statements still at issue in the Counterclaim:

"In total, there are at least dozens if not hundreds of inauthentic accounts that impugn Ms. Heard while praising Mr. Waldman. This messaging further evidences the origin of Mr. Depp's unlawful campaign and demonstrates that these inauthentic accounts are actively coordinating content to manipulate the Twitter platform and avoid detection."

"As examples, these inauthentic accounts include the following: ReemDepp, MyGrindelwald, mderndarkwizard, pomta5426, depp_soldier, PerspectiveDepp, depphead_, Ray Ray Depp, Depplyyours, ILoveGellert, J ackiedepp 1963, JDeppS _girl. Investigation has revealed hundreds of others."

The Court has already rejected Ms. Heard's argument that Mr. Depp is accountable for every unpleasant comment about her on the Internet. Serving scores of RFPs for all documents "related" to these irrelevant and baseless allegations is harassment. Moreover, ***many paragraphs in Ms. Heard's Counterclaim do not even contain factual allegations but are just opinions or insults directed at Mr. Depp.*** For instance, RFP No. 59 demands all documents "supporting, refuting, or otherwise relating" to Counterclaim paragraph 27:

"Without this case, Mr. Depp's attempts to keep this matter in the press would amount to nothing more than a four-year old stale story that has been rehashed ad-nauseum. He would be wholly unable to generate any interest from the public, and thus without recourse to pursue his bitter obsession with destroying Ms. Heard. Movie studios and brands do not tend to care about issues they have no reason to think the public cares about. But if Mr. Depp can generate the impression that viewers and consumers do care - by fomenting a fantasy of online outrage and hatred for Ms. Heard, and its relevance animated by press coverage and "news" around this case - his fixation can continue to gain ground."

How does one even begin to look for documents that "support, refute, or relate" to a rant like that? Ms. Heard failed to meet her burden under Rule 4:9(b)(i).

V. Mr. Depp's Charitable Donations Are Irrelevant

In another example of Ms. Heard's blatant "tit for tat" discovery tactics, she also served a blanket demand for documents showing all of Mr. Depp's charitable donations, apparently as retaliation for Mr. Depp's discovery into her purported donations to the Children's Hospital, Los Angeles, and the ACLU. But Ms. Heard's purported donations to those organizations are relevant because she tied her supposed donations to her motives in alleging abuse. Ms. Heard issued a press release during the parties' divorce in which she stated that "money played no role for me personally and never has, except to the extent that I could donate it to charity," and testified under penalty of perjury in the UK action that she could have had no financial motive because "the entire amount of my divorce settlement was donated to charity"—only for it to emerge that five years after the parties' divorce, Ms. Heard kept most of the money. Conversely, Mr. Depp's charitable donations are totally irrelevant. Mr. Depp has never tied his charitable donations to this case, has never indicated that he intends to present evidence about his own donations, and does not intend to do so.¹

VI. Ms. Heard's RFPs Re: RFA and Interrogatory Responses Are Improper

In another example of Ms. Heard's use of discovery as a blunt instrument, Ms. Heard demanded all documents "supporting, refuting, or relating" to any of Mr. Depp's denials of RFAs or interrogatory responses. Mr. Depp objected, since the mere fact that a question has been asked in discovery does not mean that every document that could be deemed to "relate" to the

¹ The Motion also relies on the fact that in 2016 Mr. Depp paid, as part of the divorce settlement, \$100,000 each to the ACLU and CHLA in 2016, being under the mistaken impression that Ms. Heard actually intended to honor her public promises to donate the divorce money. Ms. Heard objected and insisted that the money be paid to her. Nothing about those facts makes *Mr. Depp's* personal charitable donations relevant.

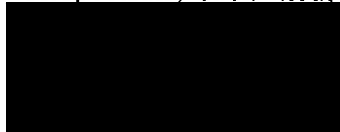
response is discoverable (particularly given the blatant overbreadth of Ms. Heard's written discovery). For instance, Ms. Heard's Interrogatory No. 17, reads as follows:

Identify each judicial or administrative proceeding (including all details needed to locate the docket) in which You have had any involvement (including as a party, witness, or nonparty) from January 1, 2010 to the present, and include a description of (i) the nature of each proceeding; (ii) the court in which the proceeding was/is maintained; (iii) Your involvement in the proceeding, (iv) the status of the proceeding; and (v) the result, if the proceeding has concluded.

It is not reasonable to demand every document that "supports" or "relates" to a response to questions like this, since that effectively opens the door to every document that "relates" to wholly unrelated litigations. This is a global problem with these RFPs, since many other interrogatories or RFAs similarly are arguably "related" to documents that have no plausible relationship to this case. Ms. Heard must serve different requests that describe reasonably identifiable categories of documents.² Ms. Heard also demands documents that "relate" to Mr. Depp's "denials" of her RFAs – and then cites a series of RFAs, *many of which Mr. Depp did not even deny* (see the 4th and 5th RFAs in their entirety). These requests are neither appropriately particularized, nor reasonable, and, where they relate to responses other than denials, they are not even intelligible.

² Nonetheless, in the interests of compromise, Mr. Depp is prepared to produce the following in response to the interrogatories specifically listed in the Motion: (1) documents, if any, evidencing drug or alcohol use by Mr. Depp or Ms. Heard on any dates of alleged abuse (although such documents are believed to have been long-since produced); and (2) a fully executed copy of Mr. Depp's separation agreement with Vanessa Paradis, to the extent that one can be located – but again, it is believed that the copy produced is the only one in Mr. Depp's possession.

Respectfully submitted,



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