

January 13, 2000

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Re: *Carl Enterprise, Inc. v. Elwood Morris*
Civil Action No. 1999-08-069
Letter Opinion on Defendant's Motion to Compel Discovery

Dear Counsel:

The Court has reviewed interrogatory no. 4 which is at issue in Mr. Brown's Motion to Compel heard by the Court on January 7, 2000.

The issue as the Court understands it, is whether Mr. Rafferty's client, Carl Enterprise, Inc., has filed a sufficient answer to interrogatory question no. 4, which requests a list of "all work that Carl Hauser, Carl J. Hauser, Carl F. Hauser, or Carl Enterprises, Inc. has performed on properties located on Wood Road in Wilmington, Delaware during the past 20 years, specifying the nature of the work and the property owner and address."

Mr. Rafferty points out that the instant action is an abuse of legal proceeding claim, Carl Enterprises, Inc. has filed against defendant Elwood Morris, not a retrial of the Magistrate's action. Mr. Rafferty pleads in paragraph 8 of his Complaint that ". . . [u]pon the completion of Mr. Morris' case, the Court dismissed the action for failure to present a prima facie case as to Carl Enterprises, Inc." According to the Complaint in paragraph 10, Carl Enterprises, Inc. contends that Mr. Morris' claim against Carl Enterprises, Inc. "was malicious, abusive, and unfounded." As set forth in the pretrial stipulation, the Court is requested in the instant action to decide "whether defendant prosecuted a frivolous claim against the plaintiff." (Paragraph 15, Pretrial Stipulation).

The Court finds interrogatory question no. 4 as written is overly broad, vague and not reasonably calculated to lead to discoverable evidence in this action. What the Court is asked to decide here, as the parties have set forth in the pretrial, is whether Mr. Morris' action below was frivolous. The Court understands that the Magistrate's decisions below dealt with an alleged improper sewer pipe installed at 41 Wood Road that allegedly caused flooding problems. Based upon a review of the record, this interrogatory is not relevant. D.R.E. 401, 403. It is also overly broad, burdensome and not reasonably calculated to lead to discoverable information in this action. *Gyoukos v. Reynolds*, Del. Super., 85 A.2d 236 (1951). The Court, therefore, DENIES the Motion to Compel Discovery, costs to be equally borne by both parties.

IT IS SO ORDERED this 13th day of January, 2000.

JOHN K. WELCH
ASSOCIATE JUDGE

JKW/vh

cc: Ms. Barbara Dooley, Civil Division