No. _____

In The
Supreme Court of the United States

DORA L. BONNER,

Petitioner,

v.

TRIPLE S MANAGEMENT CORPORATION
AND
TRIPLE-S VIDA, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Introduction

The Court of Appeals upheld grant of summary judgment for Respondents on Plaintiff's claims for RICO violations and state law claims of Breach of Contract, Fraud and Breach of Fiduciary Duty.

The court erred in upholding the district court's grant of summary judgment on Respondents merits defense based on affidavits only. The appeals court also erred in upholding the district court's denial of Motion to Compel answers to discovery and Motions for additional time for discovery from both Plaintiff and Respondents. Under U.S. Supreme Court's authority, summary judgment does not permit weighing of evidence and Plaintiff must have an adequate time for discovery.

I. Did the First Circuit Court of Appeals error in granting summary judgment to both Triple-S Management Corporation and Triple-S Vida based solely on a single merits defense claim?

II. Did the First Circuit Court of Appeals error by deciding on the admissibility of nonmovants' evidence before determining if there was a genuine issue of material fact, and subsequently, weighing the evidence thus causing a conflict in the Circuit Courts?

III. Did the Circuit Court of Appeals error in failing to consider whether Bonner had enough time to complete discovery before it upheld the District Court's grant of summary judgment, despite incomplete discovery and requests from all parties to extend the discovery period evidencing a split between the circuit courts.

STATEMENT OF RELATED CASES

Dora L. Bonner v. Triples S Management Corporation, Triple-S Vida, No. 19-CV-01128 (GAG-BJM), U.S. District Court for the District of Puerto Rico, Judgment entered December 17, 2021.

Dora L. Bonner v. Triple S Management Corporation, Triple-S Vida, Inc., No. 22-1066, U.S. Court of Appeals for the Third Circuit. Judgment entered May 19, 2023.

Dora L. Bonner v. Triple S Management Corporation, Triple-S Vida Inc., No. 22-1006. U.S. Court of Appeals for the First Circuit. Rehearing denied, Judgment entered, June 23, 2023.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR WRIT

OPINIONS BELOW

The Opinion of the court of appeals (App. 1-22) is published at 68 F.4th 677 (1st Cir. 2023). The judgment of the court of appeals (App. 23-24) is unreported. The order of the Court of appeals denying the Motion for Rehearing for Panel and En Banc (App. 24) is not reported. The Order of the Magistrate Judge granting summary judgment (App. 27-45) is published at Civil 19-1228 (BJM) (D.P.R. Dec. 17, 2021). The Magistrate Judge's decision denying Motion to Compel (App. 46-48) is published at civil 19-1228 (BJM) (D.P.R. Sep. 21, 2021). The District Court Decision Denying Motion to Dismiss Petitioner's Amended Complaint (App. 59-75) is published at Civil No. 19-1228 (GAG) (D.P.R. Mar. 30, 2020).

JURISDICTION

The judgment of the court of appeals was entered on May 19, 2023. (App. 23). The court of appeals denied a timely petition for rehearing for the Panel and en banc on June 23, 2023. (App. 25). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The jurisdiction of the District Court arose under the Racketeer Influenced and Corrupt Organizations Act ("RICO), 18 U.S.C. §1962(b), (c) and (d) and under 28 U.S.C. §1332(a)(1) because the amount in controversy exceeds $75,000, excluding interest and costs and defendants are citizens of different states or U.S.

territories. The Magistrate Judge also had supplemental jurisdiction under 28 U.S.C. §1367 over Plaintiff's claims of breach of contract, fraud and breach of fiduciary duty.

STATUTORY PROVISIONS INVOLVED

The Racketeer Influenced and Corrupt Organization Act (RICO) provides in relevant part:

> Under 18 U.S.C. §1962(d) it is unlawful for any person to conspire to violate any of the provisions of Subsection (a) (b) or (c) of this section.
>
> The RICO statute prohibits four types of activities: (1) investing in, (2) acquiring, or (3) conducting or participating in an enterprise with income derived from a pattern of racketeering activity or collect of an unlawful debt or (4) conspiring to commit any of the first three types of activity. 18 U.S.C. §1962(a)-(d).

STATEMENT OF THE CASE

On March 13, 2019, Dora L. Bonner ("Bonner") filed a Complaint in the District of Puerto Rico against insurance companies Triple-S Management Corporation and Triple-S Vida Inc. (collectively "Triple-S"), alleging they incurred in civil violations, under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§1961 *et seq.*, as well as fraud,

breach of contract and fiduciary duty, under Texas state law, devised a scheme to defraud her of over $8 million. **(Court of Appeals Appendix "COA App." 12-96)**. Plaintiff seeks treble damages and damages for the remaining claims. *Id.* On May 17, 2019, Triple-S moved to dismiss Bonner's claims, arguing that she failed to state a claim upon which relief can be granted, pursuant to F.R.Civ.P. Rule 12(b)(6). **(Docket Nos. 12; 18)**. Specifically, Triple-S contended that: (1) its companies and subsidiaries have never entered in a contractual, or otherwise, have a relationship with Bonner; (2) Bonner's civil RICO claims fail to meet the express distinctness requirement, and (3) Plaintiff's complaint ignores that enterprises cannot be held liable under 18 U.S.C. §1962(c). *Id.* On March 30, 2020, the district Court issued an Opinion and Order denying the Motion to Dismiss, and allowing the case to proceed to the discovery phase. **(Docket No. 23)**.

On February 18, 2021, Bonner served on Triple-S their First Set of Interrogatories and Request for the Production of Documents ("Bonner's First Set"). **(COA App. 137-148)**. On March 19, 2021, one day before the expiration of the deadline to respond to Bonner's First Set, Triple-S' counsel requested an extension of 20 days to submit their Response to Bonner' First Set. The new deadline to respond to Bonner's First Set was April 10, 2021. Nonetheless, the undersigned did not receive the Response to the First Set until April 20, 2021. **(COA App. 118-119)**. The tardy Response was replete with objections to almost all discovery requests and no privilege log.

Faced with no responses to its discovery request, on July 6, 2021, Bonner moved the district court to compel Triple-S to respond to her First Set. **(COA App. 118-148)**. On September 21, 2021, the district court denied Bonner's Motion to Compel **(COA App. 374-383)**, Bonner moved to reconsider on October 6, 2021 **(COA App. 384-391)** and November 17, 2021, the Court denied the Motion for Reconsideration. **(Docket No. 73)**.

In the meantime, on September 9, 2021, Triple-S moved for summary judgment **(COA App. 360-373)**, supplementing the motion with a statement of purportedly uncontested facts. **(COA App. 204-359)**. Bonner opposed the motion on November 9, 2021 **(COA App. 405-490)**, and submitted a memorandum in opposition to Triple-S's statement of uncontested facts. **(COA App. 491-515)**. On December 3, 2021, Triple-S also submitted a reply in response to Bonner's opposition. **(COA App. 525-530)**.

Finally, on December 17, 2021, the district court issued an Opinion and Order granting Triple-S's Motion for Summary Judgment **(COA App. 531-544)**, and a Judgment dismissing the case. **(COA App. 545)**. Bonner appealed to the First Circuit Court of Appeal on January 15, 2022.

Bonner's appeal asked the following questions: (1) if the district court erred in determining that there was no genuine issue of material fact, and that Appellees were entitled to judgment as a matter of law; and (2) if the district court erred in denying Appellant's Motion to Compel Appellees' responses to interrogatories and

request for production of documents because: (a) Appellees failed to timely respond to Plaintiff's discovery requests under F.R.Civ.P. Rule 33 and 34; (b) Appellees failed to object to the interrogatories and request for production of documents with specificity or provide privilege logs; and (c) Appellant sufficiently established that the information sought in their tailored discovery requests is reasonably calculated to lead to the discovery of admissible evidence. **(Pet. App. Br. p. 2)**.

The Court of Appeals upheld all the decisions of the District Court. This Writ of Certiorari followed.

REASONS TO GRANT WRIT OF PETITION

I. Responsibility for Justice

> Did the First Circuit Court of Appeals error in granting summary judgment to both Triple-S Management Corporation and Triple-S Vida based solely on a single merits defense claim?

A. Affidavits Alone

The law on use of affidavits instead of a jury trial is well established according to this court's ruling in *Poller v. Columbia Broadcasting System*, 368 U.S. 464, 473 (1962). "It is only when the witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised. Trial by affidavit is no substitute for trial by

jury so long has been the hallmark of 'even-handed justice.'"

Poller establishes that – we [this court] can't establish "What the truth is" based on the affidavits of the parties. This court confirmed the well established rule. "We look at the record on summary judgement in the light most favorable to . . . the party opposing the motion and conclude here that it [summary judgment] should not be granted." *Id.* at 473.

Likewise, this court should vacate the Motion for Summary Judgment granted against Bonner, based on the inadmissible affidavits of respondents and contraverted evidence by Bonner's pleadings and affidavit.

B. Well Established standards for Grant of Summary judgment.

1. Celotex Corp. v. Catrett, 477 U.S. 317 (1986)

Celotex is a seminal case reviewing the standard for Summary Judgment.

This court found that "a party seeking summary judgment always bears the initial responsibility of informing the court of the basis for its motion and identifying those portions of "the pleadings, depositions, answers to interrogatories and admission on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Id.* at 323.

The court then confirmed that the nonmoving party does not have to produce evidence in a form that would be admissible at trial in order to avoid summary judgment. *Id.* at 324.

The court further clarified the holding in *Adickes* as "the burden on the moving party may be discharged by "showing" – that is pointing out to the district court that there is an absence of evidence to support the non-moving party's case. *Id.* at 325.

Justice White's concurring opinion made it crystal clear that "it is the defendant's task to negate if he can, th claimed basis for the suit" adding 'summary judgment should not be granted without . . . [moving party] somehow showing that the named witness' possible testimony raises no genuine issue of material fact. *Id.* at 328.

II. Weighing Evidence

Did the First Circuit Court of Appeals error by deciding on the admissibility of nonmovants' evidence before determining if there was a genuine issue of material fact, and subsequently, weighing the evidence thus causing a conflict in the Circuit Courts?

"In resolving the motion, the court may not undertake to evaluate the credibility of the witnesses, weigh the evidence, or resolve factual disputes; so long as the evidence in the record is such that a reasonable jury drawing all inference in favor of the non moving party

could arrive at a verdict in that party's favor, the court must deny the motion. *Anderson*, 477 U.S. at 242, 255.

Neither TSM or TSV objected to Bonner's Evidence as hearsay or alleged that Bonner's evidence was inadmissible, but rather because Bonner suffered as "a result of fraudulent acts committed by individuals impersonating Defendants employees, agents and/or officers." **(COA App. 372)**.

A. Court's Inadmissibility Evaluation

Even though neither TSM nor TSV objected to Bonner's evidence as hearsay or refer to it even in passing except to deny they are legitimate, both the district court and the court of appeals evaluated the evidence for admissibility even though defendants made no objections to the evidence as inadmissible then weighed the evidence finding it was not authenticated and therefore not admissible. Weighing of Evidence is not permitted at the summary judgment stage and evidence does not have to be in an admissible form to defeat a summary judgment. *Celotex*, 477 U.S. at 324. The only question should be "is there a question of fact."

B. Weighing evidence's admissibility causes conflict between Circuit Courts.

Neither the District Court nor the First Circuit Court of Appeals followed the well established rules of summary judgment in this case.

The First Circuit Court of Appeals is the only one of the appeals courts which permits weighing of evidence to determine its admissibility prior to analyzing the summary judgment. This creates a conflict between the Circuit Courts.

C. First Circuit Court of Appeals stands alone.

First Circuit

The First Circuit Court of appeals stands alone in that it requires the Court to determine admissibility of evidence prior to considering the motion for summary judgment relying on *Vasquez v. Lopez-Rosario*, 134 F.3d 28, 33 (1997) which holds that evidence that is inadmissible at trial, such as inadmissible hearsay, may not be considered on summary judgment. (Citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141 (1997)).

Additionally the court requires that "once we determine what evidence can properly be considered, we review the district court's decision *de novo.* (Citing *Acosta-Orozco v. Rodriguez de-Rivera*, No. 97-1489, 1997 WL 775350 at 1 (1st Cir. Dec. 22, 1997)).

(This analysis of the evidence conflict with this court's holding "that the nonmoving party does not have to produce evidence in a form that would be admissible at in order to avoid summary judgment." *Celotex*, 477 U.S. at 324.)

The *Vazquez* case dealt with a termination where the plaintiff felt like he was discharged because of his

political affiliation. There was deposition evidence. The court then examined the statements from the deposition to determine if they were admissible evidence. *Id.* at 33. The court found some of the statements admissible, but others not because the plaintiff could not identify the speaker. *Id.* at 35.

The case does not indicate whether there was any evidence other than statements. It is also unclear whether the movant's alleged that the evidence was hearsay or whether the court *sua sponte* evaluated the admissibility of the evidence.

The court of appeals ultimately confirmed the district court finding of summary judgment because the admissible evidence was insufficient to show that plaintiff was fired for political reasons. *Id.*

The foregoing analysis conflicts with this court's holding "that the nonmoving party does not have to produce evidence in a form that would be admissible at trial in order to avoid summary judgment." *Celotex*, 477 U.S. at 324. The First Circuit Court of Appeals failed to discuss whether the minority of Bonner's evidence viewed created an issue of material fact. Or what inferences were drawn from the admissible evidence. **(COA App. 21)**. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The judge "must ask . . . not whether the evidence unmistakably favor one side or the other, but whether a fair minded jury could return a verdict in favor of the plaintiff on the evidence present." *Anderson*, 477 U.S. at 252.

D. Other Circuit Courts hold weighing non movants' evidence impermissible.

Second Circuit

McClellan v. Smith, 439 F.3d 137, 144 (2d Cir. 2006). Held that "credibility assessments, choices between conflicting version of the events, and weighing of evidence are matters for the jury not the court on a motion for summary judgment."

Third Circuit

In *Boyle v. County of Allegheny Pennsylvania*, 139 F.3d 386, 393 (3d Cir. 1998) the court held "at the summary judgment stage, a court may not weigh the evidence, or make credibility determinations; these tasks are left to the fact-finder.

Fourth Circuit

The case of *Podbersky v. Kirwin*, 38 F.3d 147 (4th Cir. 1994) specifically addresses the issue of weighing evidence on a motion for summary judgment. In that case, the court held that the district court erred in resolving a factual dispute on a summary judgment, noting that "district court" may not resolve conflicts in the evidence on summary judgment motions."

Fifth Circuit

The Fifth Circuit follows the same pattern in *Lozovyy v. Kurtz*, 813 F.3d 576 (5th Cir. 2015) which

concludes that the Louisiana Supreme Court would likely decline to access credibility or weigh evidence in order to resolve disputed issue of material fact before trial.

Sixth Circuit

Moran v. Al Basit LLC, 788 F.3d 201, 206 (6th Cir. 2015) explicitly stated that "at the summary judgment stage, the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.

Eighth Circuit

Kenney v. Swift Trans., Inc., 347 F.3d 1041, 1044 (8th Cir. 2003), the court explicitly stated that "in ruling on a motion for summary judgment a court must not weigh evidence or make credibility determinations."

Ninth Circuit

In *Dominguez-Curry v. Nev. Transp. Dept.*, 424 F.3d 1027, 1035 (9th Cir. 2005) the explicitly states that the judge should not weigh evidence or make credibility determinations at the summary judgment stage with respect to statements made in affidavits.

Tenth Circuit

In *Stinnett v. Safeway, Inc.*, 337 F.3d 1213, 1216 (10th Cir. 2003), the court stated that "credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.

Eleventh Circuit

In *Lane v. Celotex Corp.*, 782 F.2d 1526, 1528 (11th Cir. 1986), the court of Appeals held "the district court must not resolve factual disputes by weighing conflicting evidence. (Citing *Warrior Tombigbee Transportation Co. v. M/V Nan Fung*, 695 F.2d 1294, 1298 (11th Cir. 1985)).

D.C. Circuit

In *Arrington v. U.S.*, 473 F.3d 329, 332 (D.C. Cir. 2006). The court held "because the resolution of this issue involves credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences, from the facts, it is inappropriate for summary judgment."

Federal Circuit

In *BASF Corp. v. SNF Holding Co.*, 955 F.3d 958, 963 (Fed. Cir. 2020). The court held: "at the summary judgment stage the judge's function is not himself weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine

issue for trial. (Citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

III. Fundamental Fairness

> Did the Circuit Court of Appeals error in failing to consider whether Bonner had enough time to complete discovery before it upheld the District Court's grant of summary judgment, despite incomplete discovery and requests from all parties to extend the discovery period evidencing a split between the circuit courts.

A. Adequate time for full discovery.

2020 was the year the World paused – as a silent, invisible killer, Covid-19 shut down schools, churches, businesses, governments and travel. The whole world was walking around looking like bandits with face masks. Families were encouraged not to gather for Thanksgiving or Christmas in the United States.

Justice procedure became strange as we learned about "Zoom's" and "Teams" and other video conferencing. The tradition of hand shaking was replaced with plexiglass and hand sanitizer. People were dying like flies, giving new meaning to "here today and gone tomorrow." Over 1,000,000 people died from Covid-19 in the United States alone, disproportionately affecting those over the age of 65.

This describes the environment the parties faced in attempting discovery in this case. Bonner filed her

case on March 13, 2019. **(Docket No. 5)**. TSM and TSV, represented by the same attorneys, filed a Motion to dismiss on May 17, 2019. **(Docket No. 17)**.

Bonner lived in Texas, Respondent; TSM was in Puerto Rico; TSV was in Costa Rica; and, local counsel had a primary office in Florida. As a result, Bonner never personally met the Judge in this case even by Zoom or other video conferencing. We had a phone call for the 26(f) conference on October 16, 2020. **(Docket No. 46)**.

Bonner never personally met the attorneys for TSM and TSV or local counsel during this proceeding. It was truly a paper case.

October 13, 2020 – this case was transferred to the Magistrate Judge on by mistaken agreement **(Docket No. 39)** and discovery closed on August 3, 2021 **(Docket No. 50)** before the court ruled on Bonner's Motion to Compel Discovery. **(COA App. 374; Docket No. 56)**. Both parties filed a request for more time for discovery prior to the Court's Ruling on Motion to Compel Discovery. **(COA App. 134; Docket No. 53)**.

B. Adequate Discovery and Request for more time to complete discovery

Neither TSM nor TSV ever submitted a single document other than those disclosed on their initial disclosures. In fact, TSM and TSV advised the court in its Opposition to Bonner's Motion to Compel TSM and TSV to Respond to Interrogatories and Request for

Production of documents filed on July 20, 2021 **(COA App. 149)** stating "Defendants have already provided Bonner every piece of evidence relevant to her claim that is in defendants possession." **(COA App. 174)**.

Both Bonner **(COA App. 134)** and TSM and TSV **(Docket No. 53)** request discovery to be extended until ninety (90) days after the court's ruling on the Motion the Compel. The court never ruled on either request.

The district court in his ruling on the Motion to Compel Production of Discovery, ordered the parties to meet to discuss further interrogatories 1, 2, and 3 and Request for Production 1 and 11 within ten (10) days of the court's motion. The parties met but resolved nothing – and Bonner received no other documents. **(Docket No. 63)**.

C. Conflicts between the Circuit Courts on need for Rule 56(f)

Several courts of appeal have addressed the issue of adequate time for discovery in the context of a summary judgment motion. They run the range from absolutely improper; to it depends on whether the party made the court aware of the need for discovery; to only if a Rule 56(f) is filed explaining the need for additional discovery thus representing a split between the circuits. The 3, 4, 6, 7, 9, and D.C. Circuit generally hold that parties should be given an adequate opportunity for discovery. The 1, 5th Circuits generally hold that the parties need to show a need for additional

discovery, while the 2, 8 and 10th Circuit explicitly hold that if a 56(f) Motion is not filed with sufficient information to allege why the discovery is needed, then summary judgment is appropriate.

First Circuit

The First circuit held in *Tyree v. Foxx*, 835 F.3d 35, 43-44 (1st Cir. 2016) that the district court did not abuse its discretion in denying the plaintiff's motion to compel, but the dissent argued that the plaintiff was not given a fair opportunity to discovery crucial evident.

Second Circuit

The Second Circuit in *Burlington Coat Factory Warehouse Corp. v. Esprit De Corp.*, 769 F.2d 919 (2d Cir. 1985), the court emphasized the need for a party to make a timely request for additional discovery, and the requirement to file an affidavit under Rule 56(f) explaining the need for more discovery.

Third Circuit

The Third Circuit in *Shelton v. Bledsoe*, 775 F.3d 554, 565 (3d Cir. 2015), discusses the importance of giving a party opposing summary judgment an adequate opportunity to obtain discovery, and specifically references Rule 56(d) of the Federal Rules of Civil Procedure.

Fourth Circuit

The Fourth Circuit has held that summary judgment is premature when outstanding discovery requests

exist on material issues. In *Goodman v. Diggs*, 986 F.3d 493, 500 (4th Cir. 2021), the court specifically noted that summary judgment should only be granted after adequate time for discovery.

Fifth Circuit

The Fifth Circuit has held that summary judgment is proper even when discovery requests are outstanding, *Netto v. Amtrak*, 863 F.2d 1210, 1215 (5th Cir. 1989)

Sixth Circuit

The Sixth Circuit in *Emmons v. McLaughlin*, 874 F.2d 351, 357 (6th Cir. 1989) held Appellate relies on the ongoing discovery dispute to prove the "reasons stated" for a postponement of summary judgment under Rule 56(f). . . . [h]is right to further discovery hinged not upon information in Appellees' control, but instead upon facts, that if they existed, should have been with Appellant's personal knowledge."

Seventh Circuit

In *Smith v. OSF Healthcare Sys.*, 933 F.3d 1859, 865-866 (7th Cir. 2019), the court held "appellate courts often remand a denial of additional time for discovery, especially if there are pending discovery disputes" and we need not go as far as "almost a matter of course, but these precedence emphasize the importance of allowing a party the opportunity to take

meaningful discovery before granting summary judgment against her."

Eighth Circuit

The Eighth Circuit has held that summary judgment is not required to be delayed until discovery is complete, but that the nonmoving party must make a good faith showing of why they cannot respond to movant's affidavits. In *Humphreys v. Roche Biomedical Laboratories*, 990 F.2d 1078, 1081 (8th Cir. 1993) the court specifically noted that the nonmoving party must demonstrate how postponement of a ruling on the motion will enable them to oppose the movant's showing of the absence of a genuine issue of fact.

Ninth Circuit

In *Klingele v. Eikenberry*, 849 F.2d 409, 412 (9th Cir. 1988) the court held we generally disfavor summary judgment where relevant evidence remains to be discovered. (Citing *Taylor v. Sentry Life Ins.*, 729 F.2d 652, 656 (9th Cir. 1984) (per curiam)).

Tenth Circuit

The Tenth Circuit held, "A party seeking to defer a ruling on summary judgment under 56(f) must file an affidavit that explain[s] why facts precluding summary judgment cannot be presented. *Libertarian Party Nm v. Herrera*, 506 F.3d 1303, 1308 (10th Cir. 2007).

Eleventh Circuit

The Eleventh Circuit has held that summary judgment is improper when the plaintiff has not received responses to interrogatories that contain information critical to the issues in dispute, as in *Cowan v. J. C. Penney Co., Inc.*, 790 F.2d 1529, 1532 (11th Cir. 1986).

D.C. Circuit

In *International Union v. National Right to Work Legal Defense*, 781 F.2d 928, 935 (D.C. Cir. 1986), the D.C. Circuit held that summary was appropriate because the Plaintiff had received adequate and substantial opportunities to uncover specific facts that would warrant a trial.

Bonner's Request of Additional Time for Discovery

While Bonner did not submit a 56(f) affidavit while the summary judgment was pending, she did make the court aware of the need for more time for discovery. She filed a Motion for Reconsideration of the Court's Ruling on the Motion to Compel **(COA App. 384)** as well as the previously mentioned Motion for additional discovery in Plaintiff's Motion to Compel Discovery Responses **(COA App. 134)** and Defendants' Motion for Extension of time for discovery. **(Docket No. 53)** Additionally, Bonner filed two (2) request for additional time to respond to respondent's Motion for Summary Judgment. First on September 22, 2021, just asking for an extension to respond to the motion **(Docket No. 57)** and then, on October 25,

2021, a second request for an extension to respond to summary explicitly explaining why Bonner needed more time because of outstanding discovery disputes and efforts to address summary judgment evidence.

Court of Appeals Review in Bonner's case

While the Court of Appeals extensively recited the requests Bonner made for additional time for discovery in its *Procedural History* (App. 5-6), the court did not address the issue of adequate time for discovery in its discussion of this case.

D. Motion to Compel Discovery

1. Triple-S failed to timely respond to discovery request under FRCP Rule 33 and 34

On February 18, 2021, Plaintiff served on Triple-S their First Set of Interrogatories and Request for the Production of Documents. **(COA App. 137-147)**. On Friday, March 19, 2021, one day before the expiration of the deadline to respond to Plaintiff's First Set, Triple-S' counsel requested an extension of 20 days to submit their Response to Plaintiffs' First Set. The new deadline to respond to Bonner's First Set was April 10, 2021. Triple-S filed its untimely responses on April 20, 2021, ten days after the due date with no justification of its failure to answer timely. **(COA App. 119)**.

Triple-S waived their right to object to the discovery by failing to produce the documents requested or

answering the interrogatories or requesting and agreeing with Plaintiff on a further extension to respond to Plaintiff's discovery request. *See Marx v. Kelly, Hart & Hallman*, 929 F.2d 8, 10 (1st Cir. 1991).

In the *Marx* case the issue was whether the district court abused its discretion in dismissing plaintiff-appellant's complaint for failure to comply with discovery orders pursuant to F.R.Civ.P. Rule 37(b)(2)(C). The Court held that by Plaintiff failure to timely answer discovery "Any objections have been waived by failure to serve objections within the time provided by Rule 34(b). *Id.* at p. 11. This Court held that "***Fed. R. Civ. P. 34(b)*** requires that a party upon whom a request for discovery is served respond within thirty days, either stating its willingness to comply or registering its objections. If the responding party to make a timely objection, or fails to state the reason for an objection, he may be held to have waived any or all of his objections. *Id.* Triple-S in response to a request for production of documents propounded by plaintiff, did not produce them, did not object to them nor did it seek an extension to respond, which prompted the district court to grant opposing party's motion to compel." **(COA App. 188)**. So, Triple-S should be required to produce all requested documents.

Bonner propounded on four (4) interrogatories to Triple-S. **(COA App. 143-144)**. Triple-S made general objections with no specificity. **(COA App. 188-199)**.

The Case of *Vazquez-Fernandez*, points out how objections to discovery should be made. The court

advises that It is well settled that: [t]he party resisting production bears the burden of establishing lack of relevancy or undue burden . . . [T]he "mere statement by a party that the interrogatory . . . was overly broad, burdensome, oppressive and irrelevant" is not adequate to voice a successful objection." . . . "On the contrary, the party resisting discovery must show specifically how each interrogatory is not relevant or how each questions is overly broad, burdensome or oppressive." *Vasquez-Fernandez v. Cambridge College, Inc.*, 269 F.R.D. 150, 154 (D.P.R. 2010). There were only four interrogatories and Triple-S responded to each of them with general objections or claiming privileges **(COA App. 190-192)**.

2. Triple-S failed to object to Interrogatories and Request for Production of documents with specificity or provide privilege logs.

Even after taking an additional twenty (20) days to answer following the granted extension, Triple-S failed to produce a single document, and instead objected to nearly every response with a general, nonspecific answer or objection and claim of privilege without inclusion of a privilege log or identifying the privilege. **(COA App. 193-197)**.

Therefore, respectfully, the Court should have found that Triple-S waived their rights to object and order Triple-S to respond to each interrogatory and request for production of documents.

The Court of appeals held the district court did not abuse its discretion in finding that Triple-S did not waive its objections based on untimeliness" (App. 8), however. the District Court did not even discuss the timeliness of the discovery in his ruling on the Motion to Compel. **(COA App. 374-383)**.

The Court of Appeals held that Bonner did not dispute Triple-S' assertion that she failed to meet her obligation under Local Rule 26(b) and Federal Rule of Civil Procedure 37(a)(1) for Interrogatories 1, 2 and 3 and RFP 1 and 11, the district court did not abuse its discretion in denying without prejudice Bonner Motion to Compel as to those interrogatories and RFPs.

Bonner advised the court in her Motion to Compel **(COA App. 134-135)** of the Meet and Confer. In light of TSM and TSV declaration that Defendants have already provided Bonner every piece of evidence relevant to her claim that is in Defendant's possession." **(COA App. 174)**, it was obvious that TSM nor TSV were not interested in participating in discovery in this matter.

The court denial of all of her discovery in the Motion to Compel; his failure to conference with the parties concerning his order for the discovery he found inadequate; his failure to acknowledge that the parties still needed more time to complete discovery was a clear showing of "manifest injustice," defined as where the court's discovery order was plainly wrong and resulted in substantial prejudice to the aggrieved party." *Cascade Yarns, Inc. v. Knitting Fever, Inc.*, 755 F.3d 55, 59 (1st Cir. 2014). Bonner was clearly aggrieved

because she was unable to pursue her causes of action for RICO violations, Breach of Contract, Fraud and Breach of Fiduciary Duty because the Court determined that all her request for evidence was irrelevant or too broad even though neither TSM nor TSV supported their objections with specificity.

This Court should vacate and remand for further discovery requiring TSM and TSV to respond to all the discovery propounded in this matter.

CONCLUSION

The petition for Writ of Certiorari should be granted.

On this 1st day of November, 2023.

Respectfully submitted,

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