

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

BARBARA LATHAM, INDIVIDUALLY	§	
& AS REPRESENTATIVE OF MURIEL	§	
L. MINTZ, DECEASED, & ESTELLE	§	
NELSON, INDIVIDUALLY & HEIR OF	§	
MURIEL MINTZ, DECEASED	§	
	§	Cause No. 4:17-cv-03875
	§	
JUDGE MIKE WOOD, IND. & IN	§	
HIS CAPACITY AS STATUTORY	§	
PROBATE JUDGE OF HARRIS	§	
COUNTY, ET AL	§	JURY DEMAND

**DEFENDANT MICHELE GOLDBERG’S RESPONSE TO PLAINTIFFS’ OPPOSED
MOTION TO COMPEL AND MOTION FOR LEAVE,
SUBJECT TO MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant MICHELE GOLDBERG (“Defendant”), and, subject to her Motion to Dismiss, files this Response to Plaintiffs’ Opposed Motion to Compel and Motion for Leave, and would respectfully show the Court the following:

I.

**SUMMARY OF OBJECTIONS TO PLAINTIFFS’ MOTION TO COMPEL AND MOTION
FOR LEAVE**

There is no discovery abuse occurring in this case and there is no basis for a motion to compel, appointment of a special master or for sanctions against Defendant Goldberg.

Plaintiffs complain about probate court proceedings in state court in their motion, which do not form the basis of any motion to compel Defendant in this case.

Depositions are premature and not in the best interest of judicial economy as this Court lacks subject matter jurisdiction and responsive pleadings must still be filed by all

Defendants to the most recent amended complaint.

Defendant vehemently objects to Plaintiffs' request that the Court toll the time for amendment of their pleadings "past depositions of the parties and discovery".

II.

BACKGROUND

A hearing was held before this Court on January 2, 2018 wherein an Order was signed granting Plaintiffs an extension of time until February 20, 2018 to file a First Amended Complaint pending Plaintiff Barbara Latham's appointment as personal representative of the Estate of Muriel Mintz.

In response to Plaintiffs' First Amended Complaint, Defendant Michele Goldberg filed a Rule 12(b) Motion to Dismiss and Answer subject thereto on February 16, 2018.

Plaintiffs subsequently filed a Second Amended Complaint on February 21, 2018 and then a Third Amended Complaint on February 22, 2018, subject to a Motion for Leave to file same. The Court has not yet ruled on Plaintiffs' Motion for Leave to file the Third Amended Complaint. The responsive pleading deadline to the most recently filed complaint(s) has not elapsed.

Plaintiffs now file this motion seeking to compel discovery and for sanctions.

III.

STATE COURT PROCEEDINGS ARE AN IMPROPER BASIS FOR MOTION TO COMPEL IN FEDERAL COURT

Plaintiffs' motion to compel refers to "improper motions to transfer venue" and attempts to disqualify Latham as personal representative in Brazoria County, Texas. There is an ongoing dispute between Plaintiff Latham and her brother, Defendant Donald Mintz, over appointment of a personal representative in the matter entitled In the

Estate of Muriel Luba Mintz, Deceased, Cause No. PR38321, in Brazoria County Court at Law No. 2. Such state court proceedings cannot be the basis of a motion to compel against Defendant Goldberg, who is not even a party to that state court dispute.

In fact, the ongoing proceedings in Brazoria County illustrate the lack of subject matter jurisdiction of this Honorable Court as Plaintiff Latham is not the personal representative of the Estate of Muriel Mintz, although she continues to appear in the federal court proceedings as such. Defendant respectfully asserts that depositions should occur after a determination has been made as to whether this Court has jurisdiction.

IV.

DEPOSITIONS AND DISCOVERY ARE PREMATURE

Undersigned counsel has not refused to produce Defendant Goldberg for deposition but has suggested that it is premature, as quoted in Paragraph 4 of Plaintiffs motion to compel.

The first request for deposition to Goldberg's counsel came prior to the deadline for filing responsive pleadings and the second request shortly thereafter. The responsive pleading deadline has not elapsed with respect to the latest complaint filed. Not all parties have responded to the prior live pleading. It is not in the best interest of judicial economy to take depositions before all parties are before the court.

Defendant Goldberg has filed a Rule 12(b) Motion to Dismiss and submits that it would be judicially economical to conduct discovery, including depositions, following the Court's ruling on same. Should Defendant Goldberg remain in this case after the motion to dismiss has been ruled on, deposition dates will be coordinated.

V.

It is not necessary for plaintiffs to conduct depositions in order for Plaintiffs to “obtain critical evidence” regarding Muriel Mintz’s death and to file their complaints, as they assert. Contrary to Plaintiffs’ assertion of “obstructionist tactics”, Plaintiffs’ Exhibit 36-1 includes an email from Plaintiffs’ counsel dated February 14, 2018 stating that “we pretty much already know what happened”. Plaintiffs’ Exhibits include the Houston Hospice and St. Luke’s records, or portions thereof.

VI.

OBJECTION TO APPOINTMENT OF A SPECIAL MASTER

Defendant Goldberg objects to appointment of a special master and to incurring the expense of same. Contrary to Plaintiffs’ assertion, Defendants have not “relentlessly abused process in the guardianship proceeding and trust lawsuit”. And, it is improper for Plaintiffs to seek appointment of a special master in federal court due to their displeasure with the guardianship and trust proceedings pending in state court.

VII.

Suggesting that depositions are premature prior to Defendants filing responsive pleadings, all parties appearing before the court and prior to a determination of whether there is subject matter jurisdiction in Federal Court does not in any way constitute a “pattern of abuse”.

VIII.

NO BASIS FOR SANCTIONS

Plaintiffs state that they have “hereby alerted Defendants of their intention to seek sanctions under Rule 37 for any further abuse of discovery or avoidance”.

Defendant Goldberg submits, based upon the foregoing, that absolutely no discovery abuse or avoidance has occurred and there is no basis for sanctions.

Defendant prays that Plaintiffs' Motion to Compel and/or Motion for Sanctions be denied and that Defendant go hence without delay with costs taxed against Plaintiffs, and for all other relief, both special and general, in law or equity, for which she may show herself to be justly entitled.

Respectfully Submitted

SPROTT NEWSOM,
QUATTLEBAUM & MESSENGER, PC

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 6th day of March, 2018, a true and correct copy of the foregoing was served by electronic mail through the Court's CM/ECF system, which constitutes service on all parties.

s/ Michele Quattlebaum
Michele Quattlebaum