

Case# 2017-04992-105 Docketed at Montgomery County Prothonotary on 08/28/2020 11:33 AM. Fee = \$0.00. The filer certifies that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

DOROTHY RIVERA
vs.
BOROUGH OF POTTSTOWN

NO. 2017-04992

COVER SHEET OF MOVING PARTY

Date of Filing August 28 2020

Moving Party BOROUGH OF POTTSTOWN; KEITH PLACE

Counsel for Moving Party SHERYL L BROWN, Esq., ID: 59313; BRIAN CONLEY, Esq., ID: 311372

Document Filed (Specify) MOTION FOR PROTECTIVE ORDER OR FOR EXTRAORDINARY RELIEF

Matter is: (Appealable) | (Interlocutory)

Discovery Needed: (Yes) | (No)

If applicable, Civil Case Management Order Discovery Deadline: _____

CERTIFICATIONS - Check **ONLY** if appropriate:

Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. (Required by Local Rule 208.2(e) on motions relating to discovery.)

Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check **ONE** of the Choices Listed Below:

_____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____, 20____.

_____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____, 20____ at **1:00 p.m.** at **321 Swede Street, Norristown, PA.**

_____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

_____ Rule Returnable at time of trial.

By: _____

Revised 06.19

Court Administrator

DOROTHY RIVERA, et al.	:	
	:	IN THE COURT OF COMMON PLEAS
Plaintiffs,	:	MONTGOMERY COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	No. 2017-04992
BOROUGH OF POTTSTOWN, et al.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this _____ day of _____, 2020, upon consideration of the Motion for a Protective Order and Extraordinary Relief of Defendants, Borough of Pottstown and Keith A. Place, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**.

It is further **ORDERED** that:

- a) Defendants shall produce a random selection of (100) inspection reports of Pottstown rental properties, including all properties owned by Plaintiffs Camburn and O'Connor;
- b) The parties shall meet and confer to agree upon the random selection, which may be determined geographically;
- c) The Plaintiffs shall remit payment to Defendants in the amount of .40/page for the records produced;
- d) The Plaintiffs shall remit payment to Defendants for any overtime costs incurred by the Defendants in producing discovery responses;

- e) The Plaintiffs are not entitled to discovery of formal or informal police call information referenced in the Better Landlord, LLC Municipal Services Study; and
- f) Police reports shall be limited to only those resulting from rental inspections.

It is further **ORDERED** that the deadline for Defendants to produce documents responsive to Plaintiffs' discovery requests, as set forth in this Courts June 23, 2020 Order, shall be extended to sixty (60) days from the date of this Order.

BY THE COURT:

Haaz, J.

SIANA LAW

By: Sheryl L. Brown, I.D. # 59313
Brian C. Conley, I.D. #311372
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ATTORNEYS FOR DEFENDANTS
BOROUGH OF POTTSTOWN
AND KEITH A. PLACE

DOROTHY RIVERA, et al.	:	
	:	IN THE COURT OF COMMON PLEAS
Plaintiffs,	:	MONTGOMERY COUNTY, PENNSYLVANIA
	:	
v.	:	
	:	No. 2017-04992
BOROUGH OF POTTSTOWN, et al.:	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS, BOROUGH OF POTTSTOWN AND KEITH A. PLACE’S
MOTION FOR A PROTECTIVE ORDER OR FOR EXTRAORDINARY RELIEF**

Defendants, Borough of Pottstown and Keith A. Place (“Pottstown Defendants”), by and through their attorneys, Siana Law, hereby move for a Protective Order pursuant to Rule 4012 of the Pennsylvania Rules of Civil Procedure or for extraordinary relief and, in support thereof, aver the following:

I. PROCEDURAL AND FACTUAL HISTORY

1. On March 13, 2017, Plaintiffs, Dorothy Rivera, Eddy Omar Rivera, and Steven Camburn, filed a Declaratory Judgment action in the Court of Common Pleas for Montgomery County seeking a determination that the Borough’s rental-inspection ordinance (Chapter 11, Housing, § 201 *et seq.*) is unconstitutional pursuant to Article I, Section 8 of the Pennsylvania Constitution. (Doc. #0, Complaint).

2. Plaintiffs served two sets of Interrogatories and Request for Production of Documents upon the Pottstown Defendants on July 31, 2017 and March 5, 2019.

3. The Pottstown Defendants served Objections and Responses to Plaintiffs

Interrogatories and Requests for Production of Documents on August 28, 2017, Amended Objections and Responses on February 20, 2018 and Second Amended Responses on May 4, 2018.

4. On April 4, 2019, Pottstown Defendants served Objections and Responses to Plaintiffs' Second Set of Interrogatories and Request for Production of Documents.

5. The Pottstown Defendants filed a Motion for Judgment on the Pleadings on June 21, 2018, which was granted (Doc. # 77).

6. Plaintiffs filed a Notice of Appeal (Doc. # 86) and this Court reversed itself, requesting that the Commonwealth Court relinquish jurisdiction (Doc. #91).

7. The Commonwealth Court entered an Order that vacated and remanded the discovery Orders "so that the trial court may reconsider these discovery motions on remand, to the extent necessary, in light of "the Commonwealth Court's Opinion." See the Commonwealth Court Opinion ("Cmwlth. Ct. Op."), which is attached hereto as Exhibit "A".

8. On June 23, 2020, upon remand, this Court entered an Order granting Plaintiffs' First, Second and Third Motions to Compel, but denied Plaintiffs' Motion for Sanctions (Doc. # 103).

II. LEGAL ARGUMENT

9. Following the Court's Order, Defendants began preparing the responsive documents to be produced per the Order. (Doc. # 103).

10. In order to produce the requested documents, the Borough will have to review over 5,200 property files to obtain all inspection reports for all rental properties.

11. This would include the complete rental inspection records for each inspection of every Borough of Pottstown rental property since the Borough's Rental Inspection Ordinance took effect in 2015. (See Defendants' Responses to Plaintiffs' First, Second and Third Motions to Compel,

Doc. #s 38, 62 and 99).

12. In accordance with Defendants' prior objections to this requested discovery, Judge Weilheimer ordered that discovery related to non-parties was not relevant, on grounds that Plaintiffs' "lacked standing to pursue an 'as applied' constitutional challenge regarding landlords, tenants and citizens who are not parties to this case." (See the April 4, 2018 Order regarding Plaintiffs' First Motion to Compel, Doc. # 41).

13. The April 4, 2018 Order guided the scope of discovery throughout this litigation until this Court's June 23, 2020 Order. (Doc. # 103).

14. Following this Court's June 23, 2020 Order, the parties agreed to extend the deadline to response to Plaintiffs' discovery requests until August 23, 2020.

15. Upon performing due diligence respective to the request, Pottstown advised that over five-thousand two-hundred (5,200) rental units were subject to inspection, resulting in thirty to forty thousand (30,000 – 40,000) pages of documents.

16. All of the responsive documents must be hand-searched and copied.

17. The documents would then be subject to a second review for redaction.

18. The Borough has limited, and budgeted resources and production of the requested documents will require significant overtime, copying expenses, and additional time and expense for the redaction of private information in the tens of thousands of pages of documents.

19. The time, expense and resources required to produce the requested documents will result in a substantial monetary, budgetary and staffing hardship for Pottstown, especially during the instant pandemic.

20. On August 6, 2020, via correspondence to Plaintiffs' counsel, Defendants sought Plaintiffs' concurrence in modifying the scope, timing and expense of discovery in light of the

aforementioned burdens.

21. Specifically, Defendants proposed, *inter alia*, limiting the scope of discovery to a random selection of rental properties and cost-sharing for production and overtime costs.

22. Plaintiffs' did not concur, necessitating the instant Motion.

23. Accordingly, Defendants request a protective order, limiting the scope of discovery, extending the timeframe to produce responsive documents, and establishing a cost-sharing provision.

24. Specifically, Defendants request the following:

- a. Production of a random selection of rental inspection reports, to include all properties owned by Plaintiffs Camburn and O'Connor;
- b. The random selection will be determined by the parties geographically and by number;
- c. Plaintiffs agree to remit payment to Defendants in the amount of .40/page (in accordance with Pennsylvania law regarding the production of medical records);
- d. Plaintiffs remit payment for overtime costs incurred by the Borough in having to retrieve and copy the requested records;
- e. Discoverable police reports be limited to only those resulting from rental inspections (as requested by Plaintiffs in their formal requests for production);
- f. Plaintiffs waive and formal or informal requests for police call information referenced in the Better Landlord, LLC Municipal Services Study; and
- g. The timeframe for responses to be produced is extended for a period of sixty (60) days from the date this Court enters an Order on the instant Motion, which time period may be reconsidered and extended upon agreement of the parties, or motion to this Court, in consideration of the substantial scope and burden of production

(and any such request will be freely given as justice may require).

25. In the alternative, Defendants request a conference with this Court and counsel for Plaintiffs (which may be conducted remotely) in order to address the voluminous and burdensome discovery responses and to reach an agreement on the scope, extent and time of further discovery in this matter.

WHEREFORE, the Pottstown Defendants respectfully request this Honorable Court enter an Order granting their Motion for a Protective Order and for Extraordinary Relief, and ordering that discovery be limited in accordance with this Motion, and as set forth in the proposed form of Order; or, in the alternative, that the Court schedule a conference with all counsel to address the voluminous and burdensome discovery responses and to reach an agreement on the scope, extent and time of further discovery in this matter.

Respectfully Submitted,

SIANA LAW

Date: August 28, 2020

By: /s/ Sheryl L. Brown
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