

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

SHONK LAND COMPANY, LLC,

Plaintiff,

vs.

Civil Action No.: 18-C-193
Presiding Judge Wilkes
Resolution Judge Lorensen

CABOT OIL & GAS CORPORATION, and
CARBON WEST VIRGINIA COMPANY, LLC,

Defendants.

**ORDER COMPELLING UNREDACTED DOCUMENTS
TO THE COURT FOR IN CAMERA REVIEW**

This matter came before the Court this 19th day of March 2019 upon Defendant, Cabot Oil & Gas Corporation's Motion to Compel Communications Between Plaintiff and a Third-Party Lessee, TOR, LLC. Upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT & CONCLUSIONS OF LAW

On March 18, 2019, Defendant, Cabot Oil & Gas Corporation (hereinafter "Defendant") filed a Motion to Compel Communications Between Plaintiff and a Third-Party Lessee, TOR, LLC, requesting communications between Plaintiff Shonk Land Company, LLC (hereinafter "Plaintiff") and a representative of TOR, LLC. These communications involve a TOR, LLC representative F.T. (Tom) Graff, who is an attorney. See Def's Mot., p. 1. Cabot argues that Shonk will not produce the communications because of attorney-client privilege since Mr. Graff is an attorney. *Id.* Cabot further argues the communications regarding the negotiation of the terms of a lease would place Mr. Graff in an adversarial context to Shonk, and attorney-client

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privilege would not apply. *Id.* On March 19, 2019, this Court issued its Briefing Schedule on said Motion, setting forth response and reply times.

Generally, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...”. W. Va. R. Civ. P. 26. Further, “[t]he general procedure involved with discovery of allegedly privileged documents is as follows: (1) the party seeking the documents must do so in accordance with the reasonable particularity requirement of Rule 34(b) of the West Virginia Rules of Civil Procedure; (2) if the responding party asserts a privilege to any of the specific documents requested, the responding party shall file a privilege log that identifies the document for which a privilege is claimed by name, date, custodian, source and the basis for the claim of privilege; (3) the privilege log should be provided to the requesting party and the trial court; and (4) if the party seeking documents for which a privilege is claimed files a motion to compel, or the responding party files a motion for a protective order, the trial court must hold an *in camera* proceeding and make an independent determination of the status of each communication the responding party seeks to shield from discovery.” Syllabus point 2, *State ex. rel Nationwide Mutual Insurance Co. v. Kaufman*, 222 W.Va. 37, 658 S.E.2d 728 (2008).

The Court finds that in addition to reviewing the briefing on the motion, it must inspect the allegedly privileged documents in order to make a knowledgeable and complete ruling on this issue. Therefore, Plaintiff is directed to file its privilege log and the withheld communications documents claimed as privileged under seal for *in camera* inspection and review. Plaintiff shall submit a copy of these to the chambers of the Presiding Judge.

CONCLUSION

Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff shall submit to the Court its privilege log and the withheld communications documents claimed as privileged, under seal for *in camera* inspection and review by paper copy. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record.



JUDGE CHRISTOPHER C. WILKES
JUDGE OF THE WEST VIRGINIA
BUSINESS COURT DIVISION

Date: 3/20/19
Certified copies sent to:
 counsel of record
 parties
 other
(please indicate)
By: certified/1st class mail
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Other directives accomplished:
[Signature]
Deputy Circuit Clerk

Bustle
S. Bowers
O. Reynolds
N. Johnson
J. Miller

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. BATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 20.
DAY OF March 2019
Cathy S. Batson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

From:

03/19/2019 10:45

#030 P.001/004

380 West South Street
Martinsburg, WV 25401
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CANTY CLERK
KANAWHA COUNTY CIRCUIT COURT

**Business Court
Division**

Fax

To: Cathy S. Gatson	From: Tessa Bowers, Law Clerk
Fax: 304-357-0473	Pages: 4 (incl. cover sheet)
Phone: 304-357-0440	Date: 3/19/2019
Re: Business Court Order to be filed	cc: n/a

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

This is an Order signed by Judge Christopher Wilkes, Senior Circuit Judge in Berkeley County, who is Presiding Judge in 18-C-193 (Kanawha County) as this case has been referred to the Business Court Division. This Order is to be entered in Kanawha County 18-C-193.

Please file and send attested copies to all counsels of record.