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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Lois G. and William K. Washington,)
)
 Plaintiffs,)
)
 vs.)
)
 C. Dan Joyner, Realtors; aka Prudential)
 C. Dan Joyner, Realtors; Bill Brandt,)
 individually, and as agent for C. Dan)
 Joyner, Realtors; and Jason Jones,)
 buyer's agent, individually,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT
 Civil Action No. 2015-CP-23-05875

ORDER DENYING MOTION TO
QUASH AND GRANTING MOTION
FOR PROTECTIVE ORDER

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 SC Court of Appeals

This matter came is before me on a Motion to Quash the subpoena for deposition served upon Third Party Ms. Amy Finn, Esq. in this action,¹ or alternatively for a Protective Order, which was filed on July 15, 2016 by Ms. Finn (the "Motion"). Ms. Finn seeks to quash the subpoena for her deposition on the ground that as former counsel for Plaintiffs, any testimony concerning her representation is privileged. Alternatively, she seeks a Protective Order specifying the scope of the deposition. Prudential C. Dan Joyner and Bill Brandt (collectively "CDJ") contend the Motion should be denied because they do not seek to discover any privileged information.

This Motion was heard before me on August 22, 2016. Ms. Finn appeared on behalf of herself. Sarah Anderson, Esq. of Nelson Mullins Riley & Scarborough appeared on behalf of CDJ. Robert Charles Ray, Esq. was present on behalf of Plaintiffs but did not submit any oral or written argument on this Motion. For the following reasons the Motion to Quash is DENIED and the Motion for Protective Order is GRANTED.

¹ Ms. Finn resides in Richland County, thus the Subpoena for Ms. Finn's deposition issued from the Richland County Court of Common Pleas pursuant to Rule 45, SCRCP.

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I. PROCEDURAL HISTORY

Plaintiffs commenced the underlying case on September 25, 2015. Plaintiffs claim that CDJ falsely represented that the Subject Property was connected to the public sewer system when it was not, and they subsequently incurred damages in connecting the property to the public sewer system. Plaintiffs' Complaint alleges that "the first indication the Plaintiffs ever had that they were not connected to the public sewer" was March 6, 2013. However, CDJ had previously received a letter from Ms. Finn dated October 16, 2012 indicating Plaintiffs discovered the septic tank issues in September 2012. Thus, CDJ served Ms. Finn with a subpoena for her deposition to determine whether Plaintiffs' claims were barred by the statute of limitations. Ms. Finn filed the instant Motion on July 15, 2016.

II. ANALYSIS

"[T]he protection of privilege extends only to communications and not to facts." Upjohn Co. v. United States, 449 U.S. 383, 395, 101 S. Ct. 677, 685 (1981); see Cloniger v. Cloniger, 261 S.C. 603, 610, 193 S.E.2d 647, 652 (1973). "It is well-established . . . that the attorney-client privilege protects only confidential communications made for the purpose of seeking legal advice," but "does not prevent an attorney from testifying as to non-confidential matters." United States v. Bollin, 264 F.3d 391, 412 (4th Cir. 2001). "It is the substance of the communications which is protected, however, not the fact that there have been communications." United States v. Kendrick, 331 F.2d 110, 113-14 (4th Cir. 1964).

While the substance of confidential communications is protected by the privilege, the fact that the communication occurred is not privileged. See, e.g., Restatement (Third) of the Law Governing Lawyers § 69 (2000) ("the attorney-client privilege categorically does not apply to such matters as the following: the identity of a client; the fact that the client consulted the lawyer and the general subject matter of the consultation"); 3 Lane Goldstein Trial Technique § 13:97 (3d ed.)

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("[W]hile the privilege protects the substance of a meeting between an attorney and his or her client, it does not protect the fact of whether or not there was a meeting or the date of the meeting.")

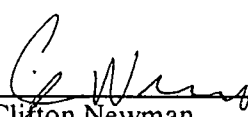
When Plaintiffs had notice of their claims is relevant to whether the claims against CDJ are barred by the three-year statute of limitations. Consequently, CDJ requests that it be allowed to take a limited deposition of Ms. Finn to discover: (1) the date when Ms. Finn and her firm were first contacted by the Plaintiffs; (2) the date when Ms. Finn was first retained by Plaintiffs; (3) the date when Ms. Finn first met with the Plaintiffs in relation to Ms. Finn's October 16, 2012 letter that she sent to Mr. Brandt of CDJ; and (4) any communications Ms. Finn had with third parties regarding the Subject Property, the septic tank, or connecting the Subject Property to the public sewer.

I find that CDJ should be allowed to proceed with the deposition of Ms. Finn, but shall be limited to the above-listed topics. I find that such information is not privileged. While the privilege protects the substance of a meeting between Ms. Finn and her client, it does not protect the fact of whether there was a meeting, the date of the meeting, or the general subject matter of the consultation.

III. CONCLUSION

IT IS THEREFORE ORDERED THAT the Motion to Quash the subpoena for Ms. Finn's Deposition is DENIED and the Motion for Protective Order is GRANTED as stated herein. Counsel for CDJ may proceed with the deposition of Ms. Finn consistent with this Order.

IT IS SO ORDERED.



Clifton Newman
Presiding Judge
Fifth Judicial Circuit

August 24, 2016
Columbia, South Carolina