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SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: HON. ZELDA JONAS
Justice

TRIAL/IAS PART 25

LAUREN DAVIS, as Nominated Executrix of
the Estate of Arthur N. Wiener, and as Trustee
under an Agreement of Trust, dated April 3,
1995 and the First and Second Amendments to
Trust dated May 2, 1995 and June 19, 1995,

Plaintiff,

Index No. 12593/01

- against -

Sequence No. 3

Motion Date: April 28, 2003

PATRICIA A. GOODSSELL, individually, and
as a partner of Baron & Goodsell; ABBATE,
GOODSELL, LAWRENCE & WORDEN,
P.C.; BARON & GOODSSELL, a partnership,
and CHARLES BUTIN,

Defendants.

PATRICIA A. GOODSSELL,

Third-Party Plaintiff,

- against -

LAUREN DAVIS,

Third-Party Defendant.

The following papers read on this motion:

Notice of Motion	1
Attorney's Affirmation	2
Affidavit in Opposition	3
Affirmation in Opposition	4
Memorandum of Law	5

Plaintiff's motion for an order pursuant to CPLR §3126 to compel discovery of the notes taken during defendant Goodsell's interview with the decedent, as well as a further deposition regarding those conversations, is granted.

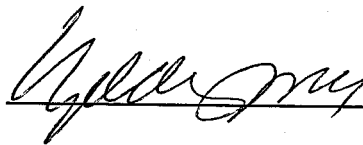
The disclosure shall be made by defendant within ten days from the date of entry of this order, and further deposition, if needed, shall be conducted within twenty days thereafter.

Plaintiff, the executrix and trustee of the estate of Arthur Wiener, commenced the instant action against the attorney, defendant, Patricia Goodsell, who had drafted the Last Will And Testament of Arthur Wiener, which established a charitable trust. The causes of action against defendant relating to the representation of Mr. Wiener and the alleged negligent drafting of the trust has been dismissed by the Court because of the statute of limitations (Defendant's Opposition Papers, Exhibit A). The only causes of action remaining against Patricia Goodsell pertain to her representation of plaintiff trustee for her alleged failure to advise the trustee as to the availability of the charitable deduction for the assets passing to the charitable remainder trust and the time requirements for the filing of a federal estate tax return and for the reformation of the trust.

Defendant asserted during her deposition the attorney-client privilege in refusing to disclose conversations she had with the deceased in preparing the trust. Plaintiff claims that the plaintiff executrix-trustee has the right to waive the attorney-client privilege on behalf of the deceased because this is an action brought on behalf of and in the interest of the estate, citing the case of *Mayorga v. Tate* (302 A.D.2d 11).

The Court agrees. The recent case of *Mayorga* clearly promulgates the rule that an executor may, in the interest of the estate, waive the attorney-client privilege of the deceased (*Id.*, at 15). Further, the defendant attorney cannot stand behind the attorney-client privilege to thwart discovery particularly when defendant is the subject of the lawsuit, *i.e.* legal malpractice.

Dated: 6/16/03



J.S.C.

ENTERED

JUN 19 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**