

SASHA RODRIGUEZ, et al

v.

SLM CORPORATION
and SALLIE MAE, INC.

CIV. NO. 3:07CV1866 (WWE)

The Court has treated plaintiffs' "Appeal and Objection under Local Rule 72.2 seeking reconsideration of April 5, 2010 Order of Magistrate Judge Fitzsimmons, pursuant to 28 U.S.C. §636(b) (1) (A)" [doc # 237] as a Motion for Reconsideration, pursuant to D. Conn. L. Civ. R. 7(c).

1

to plaintiffs, and then wait for plaintiffs to respond to the Motion to Seal in light of any parts of the Motion for Protective Order found to be disclosable to the plaintiffs. The undersigned's failure to address this intermediate step is the basis on which plaintiffs contend that they were denied a "fair opportunity to contest the claim of privilege and work product protection." [Doc. #237 at 9].

The submitted documents were reviewed and a determination made that there were no substantive portions which could have been disclosed to plaintiffs without undermining the defendants' claims of privilege. The defendants supplied only a few documents which supported the assertion of privilege by establishing that litigation was anticipated and that steps were taken to enable counsel to provide legal advice concerning the anticipated, and subsequently pending, litigation. Disclosure of these documents would necessarily have revealed the subject matter on which the defendants were seeking legal advice. As plaintiffs were aware, the supporting declaration for the motion came from defendants' in-house counsel, which enabled the court to assess the privilege claims under applicable law. This is not the type of document to which the privilege log rules apply and, by its terms, clearly established that the declarant was acting in her capacity as a legal adviser in the circumstances described. Plaintiffs candidly admitted that affirmative answers to the Requests for Admission at issue would likely lead to requests that defendants produce any documents supporting the

response; however, the undersigned reviewed no such documents.

To the extent plaintiffs seek a ruling on whether any of the information submitted in support of the Motion for Protective Order was disclosable to plaintiffs, this Court now explicitly determines that it was not.

For the reasons stated in the Court's April 5, 2010 memorandum of decision [doc #234], the Court adheres to its previous ruling after reconsidering it in light of the plaintiffs' request for reconsideration. Based on the existing record, the Court has determined that compelling defendants to respond to the Requests for Admission as propounded would require the disclosure of information protected by defendants' attorney-client and work product privileges.

However, if the plaintiffs were to limit the scope of their Requests for Admission to the time frame alleged in the Third Amended Complaint during which plaintiffs Rodriguez and Gregoire were applying for students loans¹, the Court currently has no basis for concluding that responses would implicate these privileges or be subject to a protective order on that basis.

Accordingly, construing plaintiffs' Motion to "Appeal and Objection under Local Rule 72.2 seeking reconsideration of April

¹"Between October 2003 and March 2005, Ms. Rodriguez borrowed a total of \$19,500 in private student loans to fund her education and her loans went into repayment status as of September 2005." Third Amend. Compl. at ¶48; "In approximately May or June of 2003, Ms. Gregoire began the loan application process Thereafter, in approximately September 2003 Sallie Mae approved a \$14,276 CEC Signature Loan and disbursed the funds to the school." Third Amend. Compl. at ¶61.

5, 2010 Order of Magistrate Judge Fitzsimmons, pursuant to 28 U.S.C. §636(b) (1) (A)" **[doc #237]** as a Motion for Reconsideration pursuant to D. Conn. L. Civ. R. 7(c). The Motion for Reconsideration is **GRANTED** and upon reconsideration the Court adheres to its previous ruling.

This is not a recommended ruling. This is a discovery ruling and order which is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. § 636 (b) (1) (A); Fed. R. Civ. P. 6(a), 6(e) and 72(a); and Rule 2 of the Local Rules for United States Magistrate Judges. As such, it is an order of the Court unless reversed or modified by the district judge upon motion timely made.

SO ORDERED at Bridgeport this 1st day of July 2010.

_____/s/_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE