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| SHAWN McMILLIN, | : | IN THE COURT OF COMMON PLEAS OF |
| | : | LYCOMING COUNTY, PENNSYLVANIA |
| Plaintiff | : | |
| | : | |
| vs. | : | NO. 04-00,678 |
| | : | |
| ED KOHLER, | : | CIVIL ACTION - LAW |
| | : | MOTION TO COMPEL DISCOVERY AND |
| Defendant | : | MOTION FOR ENLARGEMENT OF TIME |

Date: October 5, 2004

MEMORANDUM OPINION AND ORDER

This Order is entered in relation to Plaintiff's Motion to Compel Discovery and Motion for Enlargement of Time, filed August 2, 2004. The essence of Plaintiff, Sean McMillin's (hereafter "McMillin") action, which has been started by a Writ of Summons, is that Defendant interfered with McMillin being hired for a new job in an actionable manner such as interference with contract or by libel or slander. The basis for the motion is the failure of Defendant, Ed Kohler, (hereafter "Kohler") to answer certain questions when being deposed prior to the filing of a complaint. The pre-complaint deposition had been scheduled by agreement of the parties. At the deposition Kohler, at the objection and instruction of counsel, refused to give names of individuals who had advised him that McMillin had not been hired for the new job. McMillin now seeks to compel Kohler to answer the questions.

McMillin's counsel acknowledged at argument that plaintiff had sufficient information with which to file a complaint setting forth all of its intended causes of action. This Court believes the discovery rules should be interpreted liberally. Rule 4001 does permit discovery in aid of preparation of pleadings. The information sought might, if not actually providing information that might be pleaded could reasonably be expected to lead to sources of

information which might be included in the pleadings. This Court is constrained, however, by the decision of the Pennsylvania Superior Court in *McNeal v. Jordan*, 814 A.2d 234 (Pa. Super. 2002), which as to pre-complaint discovery holds that “. . .(P)re-complaint discovery is permissible if it is shown that, one, the plaintiff has set forth a *prima facie* case and, two, the plaintiff cannot prepare and file a complaint otherwise.” *Id.*, at 246. In this case McMillin acknowledges that he can file a complaint without the information refused at the deposition. Accordingly, under the ruling in *McNeal*, we must deny Plaintiff’s request.

ORDER

Accordingly, it is ORDERED and DIRECTED that Plaintiff’s Motion to Compel Discovery and Motion for Enlargement of Time filed August 2, 2004 is DENIED. Plaintiff shall proceed with the filing of a Complaint within twenty days after notice of the entry of this Order is given.

BY THE COURT,

William S. Kieser, Judge

cc: Joseph Orso, III, Esquire
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Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)