Ngiraidong v. Ngwal, 11 ROP 285 (Tr. Div. 2004)

HERMAN BALIO NGIRAIDONG,
Plaintiff,

v.

PASQUAL NGWAL
and BEKIAR NGWAL,
Defendants.

COUNCIL OF CHIEFS OF MEYUNS,
Intervenor.

CIVIL ACTION NO. 04-134

Supreme Court, Trial Division
Republic of Palau

Decided: September 13, 2004

LARRY W. MILLER, Associate Justice:

This matter is before the Court on Intervenor's motion to limit the number of interrogatories propounded by plaintiff. The motion is denied because of Intervenor's failure to comply with ROP R. Civ. P. 37(a)(5):

> No motion relating to discovery shall be considered by the court unless the moving party, as part of the motion, makes a written showing that reasonable attempts have been made to engage in personal consultation with counsel for opposing parties and sincere attempts have been made to resolve differences, but that the parties are unable to reach an accord. This showing shall note with reasonable specificity the attempts so made and the persons contacted or attempted to be contacted.

Intervenor's motion fails to mention this rule, much less to show compliance with it.

Having said that, the Court should note that neither side has made much of an effort to understand the meaning of ROP R. Civ. P. 33(a), on which Intervenor's motion is based. As recently revised, Rule 33(a) provides that "[w]ithout leave of court, . . . any party may serve upon any other party written interrogatories, not exceeding 25 in ⊥286 number including all discrete subparts." Intervenor, simply totaling all of the subparts of plaintiff's interrogatories, seems to assume that "all . . . subparts" must be counted toward the 25-interrogatory limit. Plaintiff takes the opposite tack, appearing to argue that no subparts are counted toward that limit. Both are wrong. "Including discrete subparts" means that subparts should be counted *if* they are "discrete" from the principal interrogatory that they follow.

What does that mean? Courts interpreting Federal Rule 33(a), on which our rule was based, have held that interrogatory subparts are to be counted as discrete subparts if they are not "logically or factually subsumed within and necessarily related to the primary question." *Kendall v. GES Exposition Servs.*, 174 F.R.D. 684, 686 (D. Nev. 1997). If the primary question can be answered fully and completely without answering the subpart, then the subpart is a "discrete" question that should be counted separately. The idea, simply, is to separate those subparts that are truly parts of the primary question from those that ask new or different questions and should therefore be counted to prevent parties from evading the 25-question limit.

With this guidance, the parties should consult with each other and, only if consultation is fruitless–which seems highly unlikely if both sides make "sincere attempts . . . to resolve differences"–should a new motion be filed.