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FOURTH DIVISION  
November 26, 2014

No. 1-14-1108

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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LEE KIM FATT, as Special Administrator of The Estate of FONG WAI YUENG, Deceased,	)	
	)	Appeal from the Circuit Court
	)	of Cook County, Illinois,
Petitioner-Appellant	)	County Department, Law
	)	Division.
v.	)	
	)	No. 14 L 3555
THE BOEING COMPANY, a Corporation, and MALAYSIAN AIRLINES,	)	
	)	The Honorable
Respondents-Appellees.	)	Kathy M. Flanagan,
	)	Judge Presiding.

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PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.

Justices Howse and Taylor concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court, while understandably frustrated by the repeated fishing expeditions of the petitioner's attorneys, was without authority to dismiss the petitioner's Illinois Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)) discovery petition without first holding a hearing.

¶ 2 This cause arises out of the March 8, 2014, disappearance of Malaysian Airlines flight MH370 (hereinafter flight MH370), presumably killing all 239 passengers and crew on board.

The petitioner-appellant, Lee Khim Fatt, as Special Administrator of the Estate of Foong Wai

Yueng, deceased, filed a verified petition for discovery pursuant to Illinois Supreme Court Rule 224 (hereinafter Supreme Court Rule 224) (Ill. S. Ct. R. 224 (eff. May 30, 2008)), seeking discovery relating to the identity of persons or entities who may have been responsible for the disappearance and crash of that airplane. The circuit court *sua sponte* dismissed the petition without holding a hearing, noting that it exceeded the scope of allowable discovery. The petitioner now appeals, contending that the court erred in dismissing the petition: (1) without first conducting a hearing as required pursuant to Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)); and (2) because the petition did not exceed the scope of allowable discovery. For the reasons that follow, we reverse and remand.

¶ 3

### I. BACKGOURND

¶ 4

It is undisputed that on March 8, 2014, flight MH370 disappeared en route from Kuala Lumpur, Malaysia to Beijing, China. Although the aircraft has not been located, and the cause of the disappearance remains unknown, all 239 passengers and crew on board are believed to be dead.

¶ 5

On March 28, 2014, the petitioner, Lee Khim Fatt, the husband of the deceased Foong Wai Yueng, a crew member on board flight MH370, obtained an order in the circuit court appointing him as special administrator of her estate. 740 ILCS 180/2.1 (West 2012). On that same date, the petitioner filed the instant verified petition for discovery pursuant to Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)).

¶ 6

In that petition for discovery, the petitioner alleged that the subject aircraft was manufactured by the respondent, Boeing Co. (hereinafter Boeing), and that it was operated by the respondent, Malaysian Airlines. The petitioner further alleged that he "reasonably believes" that he has a viable cause of action against certain entities for damages arising from the decedent's death "in

said occurrence, and proximately cause by the negligence of unknown individuals and entities in the design, manufacture, ownership, operation, lease, repair, and maintenance of the subject Boeing 777-200ER aircraft and its component parts, among possible other causes of this occurrence." In addition, the petitioner asserted that the respondent, Boeing, may be in possession of "records or other information identifying those individuals and entities who owned, operated, leased repaired and/or maintained the subject Boeing777-200ER aircraft, prior to and at the time of the accident."

¶ 7 Accordingly, the petitioner requested an order requiring the respondents to provide him with documents identifying the names, addresses and telephone numbers of all known owners of the aircraft, from the date of manufacture to the present, sales agreements, lease agreements, sublease agreements, and entities that performed maintenance or repair or other service work. Additionally, the petitioner requested an order for production of documents naming the identity of: (1) every individual who provided the pilots and copilots with any training related to the Boeing 777-200ER model plane, including, but not limited to, ground instruction, flight instruction, initial training, differences training, recurring training and/or simulator training and the location thereof; (2) each Boeing customer service representative or field service representative assigned to the subject aircraft; and (3) anyone who approved airworthiness of the aircraft.

¶ 8 Specifically with respect to the respondent, Boeing, the petitioner additionally requested the production of documents identifying the names of persons or entities in possession of evidence of findings of corrosion and fractures in the fuselage of the subject aircraft, which could lead to catastrophic decompression of the cockpit, and of any information pertaining to the cockpit instrument layout, and breaker locations. The respondent further requested documents that

identified the names of persons or entities: (1) who designed or manufactured the underwater locator beacon (ULB), the electrical wiring and components, all manuals, batteries, alarm systems, emergency oxygen generators, and flight and communications on the subject aircraft; and (2) who last inspected the fuselage, and the flight and communications systems on the plane.

¶ 9 With respect to the respondent, Malaysian Airlines, the petitioner additionally requested an order requiring the disclosure of documents identifying persons or entities in possession of information or documents pertaining to: (1) the company's safety practices; (2) any training of the crew of the subject aircraft, including safety training, cockpit resource management (CRM) training, and training regarding an event of fire in the cockpit and depressurization of the same; (3) any details regarding aircraft damage incidents; (4) Malaysian Airlines' physical and psychological evaluations of the crew of the subject aircraft; and (5) a detailed cargo listing (with locations), battery cargo (locations, quantities, types and packaging) and squawk sheets for the last year.

¶ 10 Without holding a hearing, on March 31, 2014, the circuit court *sua sponte* issued a four-page memorandum opinion and order finding that the petition exceeded the scope of allowable discovery as set forth in Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)). The court found that the petitioner was already in possession of the identity of two entities that may be liable in damages, namely the two named respondents, Boeing and Malaysian Airlines, and that therefore he could not avail himself of Rule 224 discovery.

¶ 11 In dismissing the petition, the court further explicitly noted that the attorneys representing the petitioner in the instant petition, had previously filed similar Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)) petitions against certain respondents on three separate occasions, including case No. 13-L-8002 involving Lao Airlines, case No. 13- L-12277, involving Asiana

Airlines, and case No. 14-L-3408, involving the same Malaysian Airlines flight disappearance, as the petition in this cause. The court noted that all of those petitions were assigned to it and that on each occasion, the court entered memorandum opinions and orders, dismissing those petitions as having been improperly brought. The court further stated that in case No. 14-L-3408, involving the disappearance of the same Malaysian Airlines flight as the instant petition, the court had already noted that "despite the orders in the Lao Airlines and Asiana Airlines dismissing the Rule 224 petitions as unfounded, the same law firm had proceeded, yet again, with the filing of the Rule 224 petition in the Malaysian Airlines case, knowing full well that there is no basis to do so." The court noted that in that case it had already warned the law firm that if it chose to do so again, it would impose sanctions on its own motion. The court explained that the only reason it was not imposing sanctions at present was because "the service of the order in [case No.] 14-L-3408 did not take place until March 31, 2014," the same date that the court received a copy of the instant petition, so that "there [wa]s no way until today that the law firm [could be] aware of the provisions and probable consequences of another Supreme Court Rule 224 petition [being] filed under like circumstances." The court, however, warned again that: "[c]ommencing today" it would impose such sanctions on the law firm if it chose to proceed forward with any Supreme Court Rule 224 petitions (Ill. S. Ct. R. 224 (eff. May 30, 2008)).

¶ 12 The petitioner now appeals the circuit court's dismissal of his Rule 224 discovery petition.

¶ 13 II. ANALYSIS

¶ 14 On appeal, the petitioner contends that the court erred both in dismissing the petition without a hearing, as is required pursuant to Supreme Court Rule 224 (Ill. S. Ct. R. 224 (eff. May 30, 2008)), as well as on the merits, since there exists, in the very least, a split in authority as to whether a Supreme Court Rule 224 discovery petition should be granted where the identity of at

least one of the defendants is known. See *Beale v. Edgemark Financial Corporation*, 279 Ill. App. 3d 242 (1996). The respondent, Boeing, on the other hand, contends that the circuit court was within its discretion to dismiss the petition without a hearing, given that the case had no merit, and that, nonetheless, we should follow that line of precedent affirming its judgment. Additionally, the respondent requests that we impose sanctions on the petitioner's attorneys for continuing to pursue this frivolous claim on appeal. For the reasons that follow, we reverse and remand.

¶ 15 We begin by noting that Supreme Court Rule 224 permits a person to file an independent action for discovery for the limited purpose of ascertaining the identity of one who may be responsible in damages. Ill. S. Ct. R. 224(a)(1) (eff. May 30, 2008). Specifically, Rule 224(a)(1) provides:

"(i) A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.

(ii) \*\*\* The order allowing the petition will limit discovery to the identification of responsible persons and entities \*\*\*." Ill. S. Ct. R. 224(a)(1) (eff. May 30, 2008)).

¶ 16 Rule 224 further explicitly sets forth the procedural steps, by which a discovery petition must be initiated, pleaded and served. See Ill. S. Ct. R. 224(a)(1), (a)(2) (eff. May 30, 2008)). First, the petition must be verified. See Ill. S. Ct. R. 224(a)(1) (eff. May 30, 2008)). Second, it must state the reason the proposed discovery is necessary. See Ill. S. Ct. R. 224(a)(1) (eff. May 30, 2008)). Finally, the petition must be served together with a summons upon the respondent. Ill. S. Ct. R. 224(a)(2) (eff. May 30, 2008)). With respect to service, Rule 224 unambiguously provides that "[u]nless a shorter period is fixed by the court, the summons shall be served at least

14 days before the date of *hearing*, in the manner provided for service of summons in other civil cases." (Emphasis added). Ill. S. Ct. R. 224(a)(1) (eff. May 30, 2008)).

¶ 17 Although we acknowledge that the ultimate question as to whether a Rule 224 petition should be granted or denied is complex since different districts of our appellate court seem to disagree as to the scope of Rule 224,<sup>1</sup> the procedural requirements of that rule are not, nor are the cases interpreting those requirements. In fact, the one thing our courts do agree on is that pursuant to the plain language of Supreme Court Rule 224, "[a] hearing *must be held* before the court can grant or deny a Rule 224 petition." (Emphasis added.) *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704, 711 (2010); see also *Kemelgard v. American College of Surgeons*, 385 Ill. App. 3d 675, 686 (2008) (holding that a petitioner is "entitled to a hearing before the trial court dismiss[e] his petition."); see also *Shutes v. Fowler*, 223 Ill. App. 3d 342, 346 (1991) ("[R]ule [224] requires a hearing on the petition for discovery \*\*\*").

¶ 18 While we acknowledge and fully sympathize with the trial court's frustration with the

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<sup>1</sup> See *e.g.*, *Guertin v. Guertin*, 204 Ill. App. 3d 527 532 (1990 (holding that a Rule 224 is inapplicable to any case where the identity of any potential defendant is already known); see also *Roth v. St. Elizabeth's Hospital*, 241 Ill. App. 3d 407, 413 (1993) (holding that once the identity of at least one defendant is learned the case should proceed with regular discovery and a petitioner should not be allowed to avail himself or Rule 224); *but see Beale*, 279 Ill. App. 3d at 253 (holding that "where the known connection to the injury is remote and does little or nothing to limit or define the universe of potential defendants, the petitioner should not be precluded from ascertaining additional connecting facts to further define the universe of defendants having potential liability so long as the attempted discovery does not seek to delve into any actual details of wrongdoing.").

petitioner's attorneys at repeatedly filing Supreme Court Rule 224 petitions even after being warned by the court that such petitions were outside the scope of Rule 224 and therefore frivolous,<sup>2</sup> the court was nonetheless without authority to deny or grant the Rule 224 petition, *sua sponte*, without first holding a hearing. See Ill. S. Ct. R. 224(a)(2) (eff. May 30, 2008)). *Maxon*, 402 Ill. App. 3d at 711 (2010) ("the trial court must hold a hearing at which it must determine that the unidentified person is 'one who may be responsible in damages' to the petitioner"); see also *Kemelgard*, 385 Ill. App. 3d at 686; *Shutes*, 223 Ill. App. 3d at 346. Accordingly, we must reverse and remand the court's dismissal of that petition on procedural grounds. Nevertheless, in doing so, we remind both the trial court and the petitioner's attorneys that, at this point, the petitioner's attorneys are on notice of the trial court's warning (with which we find no objection) that going forward with any potentially frivolous Rule 224 discovery petition may subject them to sanctions.

¶ 19

### III. CONCLUSION

¶ 20

For the aforementioned reasons we reverse and remand.

¶ 21

Reversed and remanded.

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<sup>2</sup> In this respect, we wonder what has happened to ethics in our profession.