

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

September 21, 2009

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Wilmington, DE 19899

Re: ***Reserves Development LLC v. R.T. Properties, LLC et al. v. The Reserves  
Development Corporation et al.***  
C.A. No. 07C-11-034-RFS

Dear Counsel:

Upon reflection, I will not order that the overdue discovery responses in this case should result in waiver or loss of objections. I am well aware of the negative consequences that ordinarily follow from a failure to respond. *See Spanish Tiles, Ltd v. Hensey*, 2007 WL 1152159 (Del. Super.).

Our legal system, however, is premised in part on Super. Ct. Civ. R.1, which calls for a just determination of every proceeding. Justice would not be served by permitting a harsh result for the following reasons:

(a) This case is complex, and discovery could not be completed within the 30-day periods. No reasonably competent lawyer could do so, especially considering that much of the information had to be procured from another law firm engaged in litigation that has yet to be resolved.

(b) Both parties were content to wait, possibly to learn the outcome of that litigation. Mr. Casarino filed the discovery at the tail end of the period established in the Scheduling Order with the ensuing Motion to Compel. The almost last minute filings have contributed to the delay of obtaining necessary information that the parties should have known would take more time than the 30-day periods.

(c) Mr. Schwartz made a good faith effort but was not able to complete a response.

Objectively no one in his position could have done so.

(d) The March trial date has to be continued because I have a capital murder case scheduled during that time which takes priority. The result is that the Scheduling Order will have to be amended in any event.

Under these circumstances, good cause does not exist to apply Civil Rules 33 and 34 in a mindless way. As indicated in *Spanish Tiles*, the Court retains authority to control discovery and to have cases proceed on the docket both inherently and under Civil Rule 1. The Court takes this opportunity to remind the lawyers that they should manage most day-to-day discovery matters for themselves. As another court has put it:

[T]he discovery system depends absolutely on good faith and common sense from counsel. The courts, sorely pressed by demands to try cases promptly and to rule thoughtfully on potentially case dispositive motions, simply do not have the resources to police closely the operation of the discovery process. The whole system of Civil adjudication would be ground to a virtual halt if the courts were forced to intervene in even a modest percentage of discovery transactions. That fact should impose on counsel an acute sense of responsibility about how they handle discovery matters. They should strive to be cooperative, practical and sensible, and should turn to the courts (or take positions that force others to turn to the courts) only in extraordinary situations that implicate truly significant interests.<sup>1</sup>

The parties shall contact Kendra Mills for another trial date. The parties shall thereafter submit a stipulated Scheduling Order.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary

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<sup>1</sup>*Cable & Computer Technology, Inc. v. Lockheed Sanders, Inc.*, 175 F.R.D. 646, 652 (C.D.Cal 1997)