

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

Dell Inc.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12C-01-223-JRJ CCLD
)	
James Merritt,)	
)	
Defendant.)	

ORDER

AND NOW TO WIT, this 6th day of September, 2012, the Court having heard and duly considered Plaintiff Dell Inc.’s Motion for a Protective Order Preventing the Deposition of Michael Dell, and Defendant’s opposition thereto,

IT APPEARS TO THE COURT THAT:

1. Pursuant to Superior Court Civil Rule 26(c), and “for good cause shown,” the Court “may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....”
2. Pursuant to Superior Court Civil Rule 26(b)(1), the frequency or extent of use of discovery “shall be limited by the Court” if it determines that the discovery sought is “unreasonably cumulative or duplicative, the party seeking the discovery “has had ample opportunity by discovery in the action to obtain the information sought,” or the discovery is “unduly burdensome.”
3. The defendant, James Merritt (“Merritt”), claims he requires the deposition of Michael Dell (“Dell”), the founder, Chairman and CEO of Dell Inc., to discover facts related to a meeting with Dell that occurred in Merritt’s home in February 2006. The

Court is not satisfied that Merritt has met his burden of proving that Dell has unique or special knowledge of the facts at issue in this case. Merritt memorialized the agreement he and Dell reached in an email, and Dell did not, and does not, dispute the accuracy of Merritt's memorialization.¹ Given this, Merritt has failed to persuade the Court that any information provided by Dell through deposition would not be cumulative or duplicative of the information already available through discovery.²

4. Merritt has not exhausted less burdensome means of obtaining the information he seeks. He has not propounded written discovery in the form of interrogatories or requests for admissions relating to Dell's purported representations or understanding of the agreement reached with Merritt, nor has he noticed the depositions of lower level employees such as Craig Briscoe, the Vice-President of Human Resources, with whom Merritt discussed, among other things, his future at Dell Inc. and his severance expectations, or Paul Bell, Merritt's former manager at Dell Inc. Nor has he deposed Kevin Rollins who was copied on Merritt's February 1, 2006 email to Dell regarding Merritt's "existing options" and the stock vesting schedule applicable if Merritt was terminated.³

WHEREFORE, for the reasons stated above, **IT IS HEREBY ORDERED THAT** the Motion for Protective Order Preventing the Deposition of Michael Dell is **GRANTED**, without prejudice. Merritt, after exhausting less burdensome means to obtain the information he seeks

¹ See Exhibit 2 to Plaintiff's Dell Inc.'s Motion for a Protective Order Preventing the Deposition of Michael Dell ("Mot."). [Trans. ID 45730238] at HP__Merritt 0000089-91; Transcript of August 30, 2012 Hearing on Motion for Protective Order ("Tr.") [Trans. ID 46289447] at 13-14.

² Merritt also claims he needs Dell's deposition to discover facts surrounding Merritt's resignation in December 2011. Emails included in Exhibit A to Dell Inc.'s Motion make clear that Dell's deposition, at this point, would be cumulative and duplicative, and the discovery is obtainable from other sources, namely Craig Briscoe and Paul Bell.

³ Exh. A to Mot. at 0000089-91.

(i.e., requests for admission, interrogatories, requests for production and/or depositions of lower level employees at Dell Inc.), may renew his request to take Dell's deposition.

Jurden, J.

cc: Prothonotary