

ELECTRONIC ENDORSEMENT IN PATELEY ASSOCIATES LLC ET AL. V. PITNEY BOWES, INC. V. CONOPCO, INC. ET AL., 08 CV 1607 (JBA)

3/2/10 – At issue in defendant’s Motion for Protective Order, filed 2/24/10 (Dkt. #191) are plaintiffs’ Notice of Depositions for the depositions of Michael Lemieux and Paul Robbertz, defendant’s employees, scheduled for 3/4/10 and 3/9/10, respectively. (Dkt. #192, at 2 & Exhs. 2-3). In light of defendant’s Third-Party Complaint, filed 2/22/10 (Dkt. #190), impleading an additional sixteen parties to this litigation, defendant has requested that the Lemieux and Robbertz depositions be “briefly postponed” until “in or about mid-April” so that the sixteen new parties have an adequate opportunity to participate in these depositions, “in order to avoid duplicative depositions” in the future, particularly when fact discovery in this case does not close until 9/30/10, and particularly when Lemieux already was deposed “for several hours, as [Pitney Bowes] corporate designee” in the Innis Arden Action. (Dkt. #192, at 2-4 & Exh. 4; Dkt. #196, at 2-3).

Plaintiffs argue in opposition that they filed a Motion to Strike Third Party Complaint on 2/25/10 (Dkt. #194), objecting to the “untimely addition of these parties ten months after the deadline and after a year of active discovery” so that “[i]t is unknown whether [these] third parties, if the Court permits the Third-Party Complaint, will seek to depose [Messrs.] Lemieux and ... Robbertz[,]” and that plaintiffs’ expert reports are due by March 31, 2010. (Dkt. #195, at 1-6 & Exhs. A-C; Dkt. #198, Surreply Brief at 1; see also Dkts. ##194, 199).

In light of the pending March 31, 2010 deadline, extension of which has not been sought, there is some logic to plaintiffs’ concern; the remainder of plaintiffs’ argument, however, assumes that their Motion to Strike Third Party Complaint (Dkt. #194) will be granted, such as defendant assumes that its Third Party Complaint (Dkt. #190) will remain in the case. Therefore, defendant’s Motion for Protective Order (Dkt. #191) is granted in part and denied in part as follows: plaintiffs are permitted to proceed with the Lemieux and Robbertz depositions on 3/4/10 and 3/9/10, as scheduled; if, however, plaintiffs’ Motion to Strike Third Party Complaint (Dkt. #194) is denied and if any of the third party defendants chose to redepose Lemieux and/or Robbertz, then plaintiffs shall be responsible for all of defendant’s expenses with respect to these resumed depositions.