

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

WHITNEY INFORMATION NETWORK, INC., a
Colorado corporation,

Plaintiff,

-vs-

Case No. 2:04-cv-47-FtM-34SPC

XCENTRIC VENTURES, LLC., an Arizona limited
liability company; BADBUSINESSBUREAU.ORG,
an Arizona limited liability company and ED
MAGEDSON, an individual,

Defendants.

ORDER

_____ This matter comes before the Court on the Plaintiff, Whitney Information Network, Inc.'s Motion for Leave of Court to Conduct Additional Discovery and to Thereafter Supplement Its Response to Defendant's Motion for Summary Judgment (Doc. #159) filed on October 31, 2007. The Defendant filed its Response (Doc. # 163) on November 14, 2007. The Motion is therefore, ripe for review.

The Plaintiff states that during the deposition of Ed Magedson, that Magedson testified he did not author e-mails encouraging an individual to publish information regarding policies at Energy Automation Systems, Inc. (EAS). (Doc. # 159, Exhibit 1, pp. 2-4). Magedson later filed an errata sheet stating that he did indeed author the e-mails encouraging the individual to publish the information about EAS on RipoffReport.com. The Plaintiff argues that the change goes to the heart of the Magedson's defense that he and Xcentric ventures are protected by the 47 U.S.C. § 230(c)(1), the Communications Decency Act. However, the Plaintiff's argument lacks merit. As noted in the deposition, the e-mails related to EAS, and not to Whitney Information.

Under the Federal Rules, discovery must be relevant to the instant case. Fed. R. Civ. 26 states

in pertinent part:

[u]nless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) In General. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

Fed. R. Civ. P. 26(b)(1). The errata sheet is not relevant to the case at hand. Under Rule 26 “for good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.” Here, there is no good cause shown because the errata sheets correct information that does not apply to this litigation.

Accordingly, it is now

ORDERED:

The Plaintiff, Whitney Information Network, Inc.’s Motion for Leave of Court to Conduct Additional Discovery and to Thereafter Supplement Its Response to Defendant’s Motion for Summary Judgment (Doc. #159) is **DENIED**.

DONE AND ORDERED at Fort Myers, Florida, this 20th day of November, 2007.


SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies: All Parties of Record