

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

DAVID PEELER,

Plaintiff,

v.

Case No. 8:12-cv-1584-T-33TGW

KVH INDUSTRIES, INC.,

Defendant.

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ORDER

This matter comes before the Court in consideration of Plaintiff's Emergency Motion for Continuance of Trial and Reopening of Discovery for the Depositions of John Spaulding and Tom High (Doc. # 97), filed on January 16, 2014. Within the Motion, Peeler explains that, "[i]n the case at hand, leading up to the January 21, 2014 trial date, Senior Vice President of Marketing for Stag-Parkway, Inc., John Spaulding, and Purchasing Manager for Camping World, Inc., Tom High, voluntarily agreed to testify in this action." (Id. at 2). Peeler claims that the "testimony of these witnesses is critical in exposing KVH's material misrepresentation that it received periodic sales reports from its customers" (Id.).

However, Peeler states that "just days before the January 21, 2014, trial was to begin, both witnesses contacted [Peeler's counsel] indicating that they were no longer willing to testify following a conversation with KVH. These last-minute cancellations following undisclosed communications with KVH are completely unacceptable and warrant continuing the trial" (Id.).

Importantly, in addition to the request to continue the trial, Peeler's Motion requests that the Court reopen the discovery period so that Peeler may take the depositions of John Spaulding and Tom High. (Id. at 5). This is not the first time Peeler has sought such relief. On December 5, 2013, Peeler filed a Motion for Permission to Allow Deposition in Lieu of Live Testimony (Doc. # 69), in which Peeler argued that exceptional circumstances existed to justify a trial deposition in lieu of live testimony as to three witnesses, including Spaulding and High. Although all three witnesses had submitted signed declarations in this matter, none of the three had been deposed. Peeler thus sought to conduct a deposition of the relevant witnesses more than seven months after the close of discovery and only one month before the trial term in this case.

The Court denied Peeler's motion, explaining that such a request would impose a substantial burden on the opposing party. The Court additionally noted that "this burden seems particularly unnecessary in light of Peeler's own decision not to secure the deposition testimony of these witnesses during the discovery period despite his awareness at that time of the 'substantive content of their respective testimony.'" (Doc. # 80 at 6).

In the present Motion, Peeler alerts the Court that these voluntary witnesses are unwilling to testify at trial as scheduled, and once more requests to reopen the discovery period for the purpose of securing the witnesses' deposition testimony. The Court declines to do so. Delaying the trial at this late juncture so that Peeler may conduct additional discovery would be exceedingly burdensome to the Court as well as Peeler's opposing party and counsel. Notably, Peeler's Motion offers no explanation for Peeler's failure to depose these witnesses before the close of discovery.

However, to the extent Peeler's Motion implies that KVH engaged in inappropriate conduct in "dissuading" the relevant witnesses from testifying at trial, the Court takes this accusation very seriously. Thus, before the start of trial on January 21, 2014, both parties will have an opportunity to


state on the record their respective positions with regard to this alleged inappropriate conduct. At that time, if additional information reveals that KVH indeed improperly communicated with these witnesses, the Court will impose appropriate sanctions.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

Plaintiff's Emergency Motion for Continuance of Trial and Reopening of Discovery for the Depositions of John Spaulding and Tom High (Doc. # 97) is **DENIED**.

DONE and ORDERED in Chambers in Tampa, Florida, this 17th day of January, 2014.


VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel of Record