

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-22913-CIV-HUCK/SIMONTON
CONSENT CASE

LUIS A. PALMA, et al.,

Plaintiffs,

v.

SAFE HURRICANE SHUTTERS, INC., et al.,

Defendants.

ORDER ON DEFENDANTS' DEPOSITIONS

This matter is before the Court upon the joint Status Report filed by the Parties regarding the scheduling of certain depositions in this matter (DE # 98). On March 12, 2009, the undersigned entered an Order on the Parties' discovery motions related to the scheduling and taking of the Plaintiffs' depositions and the Depositions of Defendants Steve Heidelberger and Frank McCarroll (DE # 96). In that Order, the undersigned ordered all discovery to be completed by Friday, April 10, 2009 and directed the Parties to file a Joint Notice of Deposition Schedule setting forth the agreed upon dates and times of the depositions of the Plaintiffs and Defendants Steve Heidelberger and Francis McCarroll on or before March 17, 2009.

On March 17, 2009, the Parties filed a Joint Status Report indicating that the Depositions of four of the Plaintiffs had been scheduled and that Defendants Heidelberger and McCarroll were available to be deposed on March 27, 2009. However, the Status Report also stated that Plaintiffs' Counsel wanted to take the depositions of the two Defendants in Miami and Defendants' Counsel believed that their depositions should proceed by telephone as Mr. Heidelberger resides in Colorado and Mr. McCarroll

resides in New York (DE #98). Thus, despite the Court's admonition in its March 12, 2009 Order that if the Parties failed to resolve the issues related to the scheduling of the depositions, the Court would unilaterally set the dates and times for the depositions, the Parties have still failed to reach an agreement on where the depositions of the Defendants will occur.

Accordingly, to ensure that the discovery process in this matter is not delayed unnecessarily, the Court orders that the depositions of Defendants Steve Heidelberger and Frank McCarroll shall be conducted in this district for the following reasons. First, the Defendants have not filed a motion for protective order or sought other relief from this Court related to this issue. While in their Motion for Protective Order the Defendants challenged the date of the depositions selected by the Plaintiffs, the Defendants sought no relief related to the location of those depositions. Second, the Defendants have failed to demonstrate why they did not raise the issue earlier in the discovery process, but rather waited until less than a month before the close of discovery to bring this issue to the Court's attention. The Defendants have presented no good reason for the delay in raising this issue, and thus the Court is unwilling to entertain a request that may result in having to extend the discovery period for this reason. Finally, to the extent that the Defendants raised the issue in the March 17, 2009 Status Report, the Defendants' statement that they would suffer hardship if they were required to appear for their depositions in Miami because they live in other states falls far short of meeting the requisite showing of undue hardship sufficient to justify ordering the depositions to be taken telephonically.

Therefore, it is hereby

ORDERED AND ADJUDGED that the Defendants Steve Heidelberger and Frank McCarroll shall have their depositions conducted in this jurisdiction absent additional orders from this Court unless otherwise agreed to by the Parties.

DONE AND ORDERED in chambers in Miami, Florida, on March 23, 2009.



ANDREA M. SIMONTON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
All counsel of record

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