

**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS, SPRINGFIELD DIVISION**

F.C. BLOXOM COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20-cv-3147
)	
TOM LANGE COMPANY)	
INTERNATIONAL, INC.,)	
d/b/a Seven Seas Fruit,)	
)	
Defendant.)	

OPINION

TOM SCHANZLE-HASKINS, U.S. MAGISTRATE JUDGE:

This matter comes before the Court on the Motion to Continue Deposition scheduled for January 27, 2022 (Deposition) filed by deponent Jason Laye (d/e 35) (Motion 35) and Plaintiff F.C. Bloxom Company’s (FC Bloxom) Motion for an Order Awarding It Attorneys’ Fees in Accordance with Fed. R. Civ. P. 37(a)(5)(B) (Motion 36). Motion 35 is DENIED as moot since the time for conducting the deposition has passed. For the reasons set forth below, Motion 36 is DENIED.

Defendant Tom Lange Company International, Inc., d/b/a/ Seven Seas Fruit (Seven Seas) filed a Motion for Protective Order or Motion to Require Deposition to Proceed Via Video Conference (d/e 30) (Motion 30). Motion 30 asked for the Deposition be conducted by telephone or

videoconference rather than in person. Motion 30, at 13-14. FC Bloxom opposed Motion 30. The Court denied Motion 30. Opinion entered January 25, 2022 (d/e 34). FC Bloxom now seeks attorney fees for opposing Motion 30.

This Court must award FC Bloxom attorney fees for opposing Motion 30 unless Motion 30 was substantially justified or other circumstances make an award of expenses unjust. Fed. R. Civ. P. 37(a)(5)(B). Seven Sea's position in Motion 30 was substantially justified if the position was "justified in substance or in the main"—that is, justified to a degree that could satisfy a reasonable person." Pierce v. Underwood, 487 U.S. 552, 565 (1988); see Knauf Insulation, LLC v. Johns Manville Corp., 2019 WL 3766094, at *1 (S.D. Ind. August 8, 2019).

In this case, Seven Seas' position was justified to a degree that could satisfy a reasonable person. Seven Seas did not ask to delay the deposition, but only asked that the deposition be conducted by telephone or videoconference. Seven Seas made this limited request to change the format of the deposition due to the surge in the Omicron variant of the COVID 19 virus. A reasonable person could find this request justified given the threat to public health from the COVID 19 pandemic, particularly since an in-person deposition would require several persons to be inside in close

quarters for several hours. The Court denied Motion 30 under the circumstances of this case, but a reasonable person could have been satisfied by Seven Seas' justification of its position. As a result, an award of attorney fees is not appropriate under Rule 37(a)(5)(B).

THEREFORE, IT IS ORDERED THAT Plaintiff F.C. Bloxom Company's (FC Bloxom) Motion for an Order Awarding It Attorneys' Fees in Accordance with Fed. R. Civ. P. 37(a)(5)(B) (d/e 36) is DENIED. Deponent Jason Laye's Motion to Continue Deposition (d/e 35) is DENIED as moot.
ENTER: February 22, 2022

s/ Tom Schanzle-Haskins
TOM SCHANZLE-HASKINS
UNITED STATES MAGISTRATE JUDGE