

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROSHANAK AMELI-TEHRANI,

Plaintiff/Counter-Defendant,

vs.

L. KENT WHITEMAN,

Defendant/Counter-Plaintiff.

CIVIL ACTION NO. 09-cv-14126

DISTRICT JUDGE GERALD E. ROSEN

MAGISTRATE JUDGE MONA K. MAJZOUB

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION TO
QUASH OR ISSUE PROTECTIVE ORDER IN RELATION TO SUBPOENA,
PORTIONS OF SECOND SET OF INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS, AND SECOND NOTICE OF TAKING DEPOSITION
AND REQUEST TO MODIFY SCHEDULE AND REQUEST FOR SANCTIONS
(DOCKET NO. 19)**

AND

**DISPOSING OF DEFENDANT/COUNTER-PLAINTIFF L. KENT WHITEMAN’S
MOTION FOR PROTECTIVE ORDER CONCERNING THE RE-NOTICE OF TAKING
DEPOSITION OF L. KENT WHITEMAN AND REQUEST FOR EXPEDITED
HEARING (DOCKET NO. 21).**

These matters are before the Court on two motions. The first is Plaintiff/Counter-Defendant’s (Plaintiff) Motion To Quash Or Issue Protective Order In Relation To Subpoena, Portions Of Second Set Of Interrogatories And Requests For Production Of Documents, And Second Notice Of Taking Deposition And Request To Modify Schedule And Request For Sanctions filed on August 9, 2010. (Docket no. 19). Defendant/Counter-Plaintiff (Defendant) filed a Brief in Opposition and Request For Expedited Hearing on August 16, 2010. (Docket no. 20). The second motion, partially resolved by the Court’s August 25, 2010 text order, is Defendant/Counter-Plaintiff’s Motion For Protective Order Concerning The Re-Notice of Taking Deposition of L. Kent

Whiteman and Request For Expedited Hearing filed on August 16, 2010. (Docket no. 21). Plaintiff/Counter-Defendant filed a Response in Opposition on September 2, 2010. (Docket no. 27). These matters were referred to the undersigned for determination pursuant to 28 U.S.C. § 636(b)(1)(A). (Docket no. 22). The matters being fully briefed the Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(f). (Docket nos. 25, 26).

A. *Defendant's Motion For Protective Order Concerning the Re-Notice of Taking Deposition Of L. Kent Whiteman and Request For Expedited Hearing (Docket no. 21)*

On August 25, 2010 the Court resolved the issues raised in Defendant's motion related to the deposition of Defendant L. Kent Whiteman as set forth in a bench order dated August 25, 2010. The Court granted in part and denied in part Defendant's motion. (Docket no. 21). Defendant's deposition did not go forward on August 18, 2010 and the Court ordered that the deposition of Plaintiff will go forward and be completed on September 7, 2010 and the deposition of Defendant will go forward and be completed on September 8, 2010 at the office of Defendant's counsel in Michigan. Defendant's accompanying request for expedited hearing on that issue is therefore moot. (Docket no. 21).

B. *Plaintiff's Motion To Quash Or Issue Protective Order In Relation To Subpoena, Portions Of Second Set Of Interrogatories And Requests For Production Of Documents, And Second Notice Of Taking Deposition And Request To Modify Schedule And Request For Sanctions*

Defendant's Request for Production no. 54 dated April 23, 2010 asked Plaintiff to "[p]roduce all your federal, state and local income tax returns, including all schedule K-1s, from 1998 to present." (Docket no. 19-2). Plaintiff objected to this request as irrelevant. Defendant filed a motion to compel on July 19, 2010 seeking to compel answers to interrogatories and responses to requests for production including seeking to compel documents responsive to Request for

Production No. 54. (Docket no. 17). The District Court denied in full Defendant's Motion to Compel as untimely. (Docket no. 18). Defendant, apparently in an attempt to circumvent the Court's July 20, 2010 Order, promulgated new discovery, including Requests for Production dated July 23, 2010 which ask for the *same* material requested in the prior discovery requests and the subject Defendant's July 19, 2010 Motion to Compel, which was denied. The Court will grant Plaintiff's Motion in part and will strike Request for Production Nos. 61-72 dated July 23, 2010.

Plaintiff's request to quash subpoena or for protective order will be granted. Defendant's subpoena to Heinz G. Schmidt, HGS Corp., Plaintiff's accounting firm, was issued on August 4, 2010 and asks HGS to produce

All documents from 2004 to present, concerning Roshanak Amelia-Tehrani or any other entity which she has an ownership interest: all communications (including email) to or from her or to which she is a recipient; all documents or other information pertaining to her business or real estate interests, including S. University Properties, LLC; and all of her tax returns, financial statements or personal net worth statements. (Docket no. 19-4).

While the argument of whether Plaintiff has standing to seek to quash the subpoena pursuant to Fed. R. Civ. P. 45(c)(3) is not well developed, a party may seek to preclude discovery sought from a non-party by virtue of a motion for protective order based upon Fed. R. Civ. P. 26(c). *See White Mule Co. v. ATC Leasing Co., LLC*, 2008 U.S. Dist. LEXIS 51344 at *13 (N.D. Ohio June 25, 2008) ("In contrast to its motion to quash, [defendant] has standing to seek a protective order to preclude discovery though subpoenas issued on third parties."). For this reason the Court will treat this motion as seeking a protective order.

The subpoena includes yet another request for the tax returns, in an attempt to circumvent the Court's prior order. The remainder of the subpoena is overly broad and requests documents that

are not limited to the relevant agreements, property and alleged transfers at issue in the claims, counter-claims and defenses in this action. Fed. R. Civ. P. 26(b)(1). The Court will grant Plaintiff's motion for protective order with respect to the August 4, 2010 subpoena to Heinz G. Schmidt, HAS Corporation. Fed. R. Civ. P. 26(b)(2)(C) and (c)(1)(A).

Plaintiff's request for a protective order or to quash Defendant's second notice of deposition of Plaintiff was resolved by this Court's bench order dated August 25, 2010. Plaintiff's deposition will go forward through completion on September 7, 2010 and Defendant's deposition will go forward through completion on September 8, 2010 at Defendant's counsel's office in Michigan, prior to the close of discovery. Accordingly, Plaintiff's request to modify the scheduling order to accommodate depositions will be denied as moot. (Docket no. 14).

Plaintiff's request for sanctions and attorneys fees will be denied. Fed. R. Civ. P. 37(a)(5)(A)(iii).

IT IS THEREFORE ORDERED THAT Plaintiff's Motion To Quash Or Issue Protective Order In Relation To Subpoena, Portions Of Second Set Of Interrogatories And Requests For Production Of Documents, And Second Notice Of Taking Deposition And Request To Modify Schedule And Request For Sanctions (docket no. 19) is granted in part and denied in part as follows:

- a. Defendant's Second Set Of Interrogatories And Requests For Production of Documents Nos. 61-72 are **STRICKEN**;
- b. Plaintiff's Request For Protective Order preventing production of material sought by Defendant's August 4, 2010 subpoena to Heinz G. Schmidt, HGS Corporation is **GRANTED**;
- c. Plaintiff's request to modify scheduling order is **DENIED**; and

d. Plaintiff's request for sanctions and attorneys fees is DENIED.

Nothing in this Order should be construed to preclude the depositions of Plaintiff and Defendant from proceeding and being completed on September 7 and 8, 2010, respectively, as ordered by this Court on August 25, 2010. Failure to comply with this Court's orders, including the bench order dated August 25, 2010 for the completion of the parties' depositions, may result in sanctions. Fed. R. Civ. P. 37(b), (d).

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: September 2, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: September 2, 2010

s/ Lisa C. Bartlett
Case Manager