

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAZZY INVESTMENTS,

Plaintiff

v.

Case No. 2:16-CV-10879
District Judge Nancy G. Edmunds
Magistrate Judge Anthony P. Patti

CITY OF DEARBORN, et al.,

Defendants.

ORDER ADDRESSING PLAINTIFF'S MOTIONS TO COMPEL
(DEs 32, 34 and 36)

Pursuant to the Court's June 1, 2017 scheduling order, discovery in this case concluded on October 1, 2017. (DE 28.) This matter is before the Court for consideration of Plaintiff's above-described September and October 2017 discovery motions and the related responses. (DEs 32, 34, 36, 39 & 40.) Judge Edmunds referred these motions to me for hearing and determination, and a hearing was noticed for November 27, 2017.

On the date set for hearing, attorneys Alexander V. Lyzohub and Laurie M. Ellerbrake appeared in my courtroom. Not having complied with the Undersigned's "Discovery" and "Motion Practice" guidelines, counsel were directed to meet and confer in my jury room. Thereafter, I entertained oral argument.

For the reasons stated from the bench, all of which are incorporated herein by reference, Plaintiff's October 4, 2017 motion to compel discovery of Plaintiff's first interrogatories to Defendants and Plaintiff's first request to produce documents and tangible things, or to enter onto land under Rule 34 (DE 36) is **GRANTED**. No later than **Thursday, January 4, 2018**, Defendants shall serve upon Plaintiff answers and responses to these September 1, 2017 discovery requests. Any objections were waived by Defendant's failure to file timely answers and responses, Fed. Rules Civ. P. 33(b)(2) and 34(b)(2)(A), although defense counsel also indicated on the record that Defendants would provide answers and responses without objection.

Moreover, Plaintiff's September 29, 2017 motion to compel discovery depositions of five individual defendants and two defendant city personnel and to enlarge Plaintiff's time for discovery (DE 32) is **DENIED AS MOOT**. Plaintiff's same-day first amended motion to compel discovery depositions of five individual defendants and two defendant city personnel and to enlarge plaintiff's time for discovery (with exhibits) (DE 34) is **GRANTED**. Defendants' attorneys, who confirm that they will be representing each of these deponents, shall make Stephen Gedert, Glen Green, Kenneth Gusfa, Gerald Stockwell, and Chris Sickle, and Defendants' representatives Mayor O'Reilly and Councilman Sareini available for deposition on or before **January 25, 2017**. Defendants will provide for Mayor

O'Reilly's deposition during normal business hours and will make their best efforts for the other deponents to be deposed during the daytime, particularly where the deponent is a full-time employee of the City of Dearborn; however, *if necessary*, such depositions may occur between the hours of 5 p.m. and 10 p.m. The parties are to make their best efforts to mutually agree upon the times, dates and locations of these depositions; however, *while not advisable but if necessary*, the parties may request a conference call through my chambers, at which time the Court will choose the dates, times and locations for the parties.

Finally, no costs are awarded. Although Plaintiff prevailed in large part on the instant motions, Defendants' October 16, 2017 responses thereto are at least somewhat understandable, given Plaintiff's counsel's September 29, 2017 representation that he had been terminated by his client. (*See* DE 33 ¶ 3a.) Moreover, as outlined above, counsel for the parties failed to comply with the Undersigned's "Motion Practice" guidelines, namely by failing "to continue to discuss resolution of their dispute after the motion is filed[,]" failing "to meet and confer face-to-face; i.e., in person, in advance of the hearing," and, failing to file a "Statement of Resolved and Unresolved Issues" prior to coming to Court. *See* www.mied.uscourts.gov. As such, "circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(B).

IT IS SO ORDERED.

Dated: November 27, 2017

s/Anthony P. Patti
Anthony P. Patti
UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to parties of record on November 27, 2017, electronically and/or by U.S. Mail.

s/Michael Williams
Case Manager for the
Honorable Anthony P. Patti