Voggenthaler, et al., v. Maryland Square, LLC, et al., Doc. 519

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PETER J. VOGGENTHALER, *et al.*,

Plaintiffs,

vs.

MARYLAND SQUARE, LLC., *et al.*,

Defendants

Case No. 2:08-cv-01618-RCJ-GWF

ORDER

This matter is before the Court on Third Party Defendant Sears Roebuck & Company's ("Sears") Request that Presentation of Testimonial Evidence be Permitted at Hearing of Motion to Compel (#514), filed on November 8, 2010.

Rule 43(c) of the Federal Rules of Civil Procedure states that when a motion relies on facts outside the record, the court may hear the matter on affidavits, or may hear it wholly or partly on oral testimony or on depositions. The Court does not rule out the possibility that an evidentiary hearing may be appropriate in regard to the Kishner Defendants' Motion to Compel Compliance with Subpoenas (#476). Sears' general statement that oral testimony will be helpful, however, does not provide a sufficient basis to conclude that an evidentiary hearing is necessary. Perhaps, the basis for an evidentiary hearing will become clear once Sears files its response to the Kishner Defendants' motion. Nor does Sears provide sufficient information as to the witnesses who will or should be required to appear at the hearing, or how much time should be allotted for the hearing. More specific information in this regard should also be provided. Accordingly,

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IT IS HEREBY ORDERED that Third Party Defendant Sears' Request that Presentation of Testimonial Evidence be Permitted at Hearing of Motion to Compel (#514) is **denied**, without prejudice.

DATED this 10th day of November, 2010.

George Foley Jr.

GEORGE FOLEY, JR.
U.S. MAGISTRATE JUDGE