

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LOWE'S HOME CENTERS, INC.,

Plaintiff,

v.

Civil Action No. 1:12 cv 72

THF CLARKSBURG DEVELOPMENT TWO,  
LIMITED LIABILITY COMPANY and  
MICHAEL H. STAENBERG,

Defendants.

**MEMORANDUM OPINION AND ORDER**

Before the Court is Plaintiff Lowe's Home Centers, Inc.'s ("Lowe's") "Motion to Compel the Production of Floor Level Survey Data Considered by Defendants' Testifying Experts" filed on October 23, 2013 [DE 172] and THF Clarksburg Development Two, Limited Liability Company's ("THF") Response filed on November 6, 2013 [DE 178]. No Reply was filed.

In its Response, THF advised that on October 23, 2013, it filed and served a Second Supplemental Rule 26(a)(2)(B) disclosure, wherein it attached a disk containing the floor level survey data of Allegheny Surveys, Inc., which had been provided to Defendants' expert witnesses. In light of this Response, the Court inquired of both parties via email whether the motion to compel was rendered moot by the supplemental disclosure. Defendants responded via email that they believed the motion was rendered moot. Plaintiffs responded, also via email, as follows:

During a telephone conference today, Defendants' counsel confirmed that they will not object to Plaintiff conducting follow-up depositions of Defendants' experts, Stephen Conner and Patrick Gallagher, for the limited purpose of questioning them about the floor level survey results Defendants recently produced.

Based on that agreement, Plaintiff agrees that its Motion to Compel (Dkt. No. 172) is now moot.

Upon consideration of all which, Plaintiff Lowe's Home Centers, Inc.'s ("Lowe's") "Motion to Compel the Production of Floor Level Survey Data Considered by Defendants' Testifying Experts" [DE 172] is **DENIED as MOOT**.

It is so **ORDERED**.

The Clerk is directed to provide notice of electronic filing of this order to counsel of record.

Dated: November 19, 2013

*John S. Kaul*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE