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Gross Endowment Trust LLC, Roy Dickson Order on Plaintiffs' Motion to COMpel Second Deposition of Non-Party Fortress Investment Group, LLC

Alice D. Bonner

Fulton County Superior Court Judge

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**IN THE SUPERIOR COURT OF FULTON COUNTY
BUSINESS CASE DIVISION
STATE OF GEORGIA**

GROSS ENDOWMENT TRUST, LLC,)	
ROY DICKSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action File No. 2015CV261031
)	
BRAD INGLESBY, CRESCENT)	
INVESTMENT GROUP, LLC,)	
)	
Defendants,)	
)	

**ORDER ON PLAINTIFFS' MOTION TO COMPEL SECOND DEPOSITION OF
NON-PARTY FORTRESS INVESTMENT GROUP, LLC**

This matter is before the Court on Plaintiffs' Motion to Compel a Second Deposition of Non-Party Fortress Investment Group, LLC ("Fortress"). After consideration of the motions and briefs submitted the Court finds as follows:

On June 29, 2016 Plaintiffs emailed Fortress a notice of deposition pursuant to O.C.G.A. § 9-11-30(b)(6) purporting to schedule Fortress' deposition for July 21, 2016 (the "Original Notice"). The Original Notice identified seven topics for examination. Most notably, Topic Three sought testimony about transactions Fortress had closed that involved Defendants. Plaintiffs and Fortress then rescheduled the deposition for August 4, 2016 which caused Plaintiffs to serve an amended notice of deposition on July 14, 2016 (the "Amended Notice"). The Amended Notice identified the same seven topics included in the Original Notice. On August 2, 2016, two day prior to Fortress' deposition, Plaintiffs sent an email attaching a Second Amended Notice of deposition which broadened the scope of Topic Three. Specifically, Plaintiffs sought information concerning any transactions since May 5, 2014 of Fortress that

involved Defendants in any way, “even if never concluded or consummated.” Fortress objected and instructed their corporate designee not to answer any questions about unconsummated transactions that were presented after December 2014. The discovery deadline then ended on September 15, 2016 and Plaintiffs filed their Motion to Compel the Second Deposition of Fortress nearly six weeks later on October 28, 2016.

Under Uniform Superior Court Rule 5.1, a party seeking to employ the compulsory process under a Motion to Compel must establish that it commenced discovery promptly, pursued discovery diligently, and completed discovery without unnecessary delay. “Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action...” O.C.G.A. § 9-11-26(b)(1). In defining relevancy, the Supreme Court of Georgia recently stated “in the discovery context, courts should and ordinarily do interpret ‘relevant’ very broadly to mean any matter that is relevant to anything that is or may become an issue in litigation.” *Bowden v. Medical Center, Inc.*, 297 Ga. 285, 291 (2015) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)) (internal quotation marks omitted).

The Court finds that Plaintiffs failed to pursue discovery diligently as required by Uniform Superior Court Rule 5.1 (“Rule 5.1”). Under Rule 5.1, a party seeking to compel discovery must show that it pursued discovery diligently within the time period allowed by the Court for discovery. By the Court’s Amended Scheduling Order dated August 2, 2016, the discovery deadline was extended to September 15, 2016 and all dispositive motions were to be filed by October 15, 2016.¹ Plaintiffs then deposed Fortress on August 4, 2016 and the Fortress designee refused to answer most of the questions pertaining to the broadened scope of Topic

¹ The dispositive motion deadline was later extended to October 31, 2016 by the Court’s Second Consent Amended Scheduling Order dated October 11, 2016.

Three.² In the six weeks between the original deposition of Fortress and the discovery deadline, Plaintiffs did not file any motion to extend the discovery deadline or motion to compel with regard to the deposition of Fortress. However, on September 1, 2016, Plaintiffs filed a motion to extend the deposition deadline to address issues that arose in the deposition of a different party to the lawsuit. On October 28, 2016, nearly six weeks after the discovery deadline passed and two days prior to the dispositive motion deadline, Plaintiffs filed the Motion to Compel the Second Deposition of Fortress. Because Plaintiffs waited nearly six weeks after the discovery deadline to file the Motion to Compel, and because there was an additional six week window between the original deposition of Fortress and the discovery deadline where Plaintiffs could have sought to compel the discovery, it cannot be said Plaintiffs “pursued discovery diligently” as required by Rule 5.1.

For the foregoing reasons, Plaintiffs’ Motion to Compel the Second Deposition of Non-Party Fortress is hereby **DENIED**.

SO ORDERED this 9th day of February, 2017.

Alice D. Bonner
ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

² Plaintiffs claim Fortress failed to properly prepare their corporate designee for deposition under Rule 30(b)(6) because Fortress’ designee did not answer questions pertaining to the broadened scope of Topic Three contained in the Second Amended Notice. The Court finds that Plaintiffs did not provide Fortress with reasonable notice of the broadened scope, as required under O.C.G.A. § 9-11-30(b)(1), and Fortress fulfilled its duty to prepare a corporate designee for deposition in regards to the information contained in the Amended Notice.

Copies to:

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