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**BSL Holdings, LLC et al., Order on Plaintiff's Third Motion to
Compel Discovery**

Elizabeth E. Long
Fulton County Superior Court Judge

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

BSL HOLDINGS, LLC, and BSL)	
HOLDINGS, LLC Derivatively on Behalf of)	
Trinity Lifestyles Management, LLC and)	Civil Action File No.
Trinity Lifestyles,)	2016CV278256
)	
Plaintiffs,)	
)	
v.)	Bus. Case. Div. 2
)	
TRINITY LIFESTYLES MANAGEMENT,)	
LLC, et al.,)	
)	
Defendants)	
)	
v.)	
)	
R. BRADLEY BRYANT,)	
)	
Third-Party Defendant.)	

ORDER ON PLAINTIFF’S THIRD MOTION TO COMPEL DISCOVERY

The above styled action is before this Court on Plaintiff BSL Holdings, LLC (“BSL”) Third Motion to Compel Discovery (“Motion” or Motion to Compel”), wherein BSL asks the Court to compel discovery from Defendants Trinity Lifestyles Management, LLC and Trinity Lifestyles Management II, LLC (collectively the “Trinity Entities”) as well as from Non-Parties Speak Life Management – Decatur, LLC, Speak Life Management – Acworth, LLC, Speak Life Management – Woodstock, LLC and Speak Life Management, LLC (collectively the “Speak Life Entities”). Having considered the record, the Court finds as follows:

I. Scope of Discovery

With respect to the general scope of discovery, O.C.G.A. §9-11-26(b)(1) provides:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence...

The powers of the trial court to control the time, place, scope and financing of discovery are construed broadly for the protection of the parties and others from whom discovery is sought. *See Orkin Exterminating Co. v. McIntosh*, 215 Ga. App. 587, 589, 452 S.E.2d 159, 162 (1994), *disapproved of on other grounds by Chrysler Grp. LLC v. Walden*, No. S17G0832, 2018 WL 1323992 (Ga. Mar. 15, 2018); *Bicknell v. CBT Factors Corp.*, 171 Ga. App. 897, 899, 321 S.E.2d 383, 385 (1984).

II. Speak Life Entities

On July 11, 2017, BSL served Requests for Production of Documents on each of the Speak Life Entities. Those requests seek: (1) all documents that evidence or relate to any business relationship between any party to this lawsuit and any of the Speak Life Entities; and (2) all documents that refer or relate to any work or service performed by any of the Speak Life Entities in connection with certain enumerated projects or development.

The Speak Life Entities timely responded on August 10, 2017 and therein raised various objections, including that the requests: seek documents protected by the attorney-client privilege, work product doctrine, and/or the accountant-client privilege; seek confidential or proprietary

business information of the Speak Life Entities; are overbroad and vague; and impose an undue burden on them insofar as they seek information not relevant to this action and would interfere with the Speak Life Entities' current business opportunities, projects, and operations. The Speak Life Entities also object to the requests until Plaintiffs compensate them for their reasonable costs of preparing the requested documents.

In their response to Plaintiffs' motion, the Speak Life Entities ask the Court to defer consideration of the Motion to Compel for 60 days while the parties proceed through early depositions in order to better ascertain whether the requested documents are relevant and whether they can be obtained from the parties to this action. The Court agrees, particularly given that it appears these documents, to the extent relevant, should be obtainable from the parties to this lawsuit. The Court will reserve ruling as to the requests propounded on the Speak Life Entities for a period of 60 days so that other discovery may proceed. After that time and to the extent BSL deems it necessary to renew its Motion as to the Speak Life Entities, it should be prepared to address the relevance of the requested discovery, why the documents cannot be obtained from the parties to the action, and more articulately address the objections raised in the Speak Life Entities' discovery responses.

III. Trinity Entities

(a) Documents responsive to BSL's requests

In its motion, BSL asserts the Trinity Entities have failed to supplement their production of documents to include those responsive to Counts 1-9 of Plaintiffs' pleading and, although the Trinity Entities claim to have fully addressed any deficiencies in their prior production, BSL has reason to believe responsive documents exist but have not been produced. In particular BSL highlights the Dogwood Forest of Grayson development. Although the Trinity Entities claim to

have provided no services, advanced no funds, and paid no expenses on behalf of the entity that developed that project (Solomon Development Services – Grayson, LLC), CDH Partners, Inc., the architectural and engineering firm that facilitated the design and development of the project has produced documents reflecting that a Trinity Entity paid CDH for its work on that project. Given the foregoing, the Court orders that, if any Trinity Entity, has documents responsive to BSL’s discovery requests related to the Dogwood Forest of Grayson development, they must produce such documents within 10 days of the entry of this Order. If they do not have any responsive documents, they must affirmatively state so and will be held to that response.

BSL also notes that Trinity has previously denied providing management services or personnel in connection with projects in Sugar Hill, Woodstock or Decatur (Clairmont) but in filings with the Court acknowledged providing bookkeeping services to Solomon Development – Decatur, LLC, Solomon Development – Sugar Hill, LLC, Solomon Development – Acworth, IL, LLC or Solomon Development – Woodstock, LLC. Further, BLS asserts the Trinity Entities have failed to provide key information related to those projects or information related to how Trinity is being reimbursed for any financial or operational management its Chief Financial Officer (Diana Doty) or its Chief Operating Officer (Vicki Curl) is providing with respect to the Grayson project. Again, if any Trinity Entity, has documents responsive to BSL’s discovery requests related to any management services or personnel provided in connection with the projects in Sugar Hill, Woodstock or Decatur (Clairmont), responsive documents must be produced within 10 days of the entry of this Order. If the Trinity Entities do not have any responsive documents, they must affirmatively state so.

(b) Requested search terms

In its moving papers BSL references an attempt to agree to search terms to help narrow requests and assist the Trinity Entities in finding responsive documents. In their response, the Trinity Entities assert they have extracted over 125 gigabytes of data from Al Holbrook, Brad Bryant and Diana Doty alone and that Plaintiffs' requested search terms are too broad and would return 152,200 documents and related attachments.

The Court agrees that search terms would help to appropriately tailor and more efficiently narrow the number of documents being produced to those which are relevant to this action. However Plaintiffs' suggested search terms are too broad (*e.g.*, value, contract, promote, Acworth, etc.). The parties are directed to meet and confer in good faith within the next 30 days to determine appropriately tailored search terms and perhaps Boolean search terms. *See Master Mortg. Corp. v. Craven*, 127 Ga. App. 367, 370, 193 S.E.2d 567, 570 (1972) (citing *Horton v. Huiet*, 113 Ga. App. 166, 169, 147 S.E.2d 669, 672 (1966)) (“[N]o court should impose upon the opposite party the onerous task of producing great quantities of records which have no relevancy”).

(c) QuickBook backup files and updated financial documents

In Plaintiffs' First Request for Production to Defendant Trinity Lifestyles Management, LLC, Request No. 12, Plaintiffs request: “The Backup Detail from Quickbooks associated with Trinity's financial statements and accounting records for the past give [sic] (5) years.” Although capitalized, the term “Backup Detail” does not appear to be a defined term in the discovery request. In subsequent correspondence among counsel, Plaintiffs' counsel states:

To the extent that Trinity finds the term Backup Detail confusing, what BSL seeks is the data upon which Trinity's financial statements were created. This would include Trinity's general ledgers, reconciliations, bank statements, check registers, wire transfer confirmations, receipts, and

related materials...Please supplement Trinity's production with these documents without further delay.

However, in its moving papers, BSL appears to seek "native" backup files.

In response, the Trinity Entities have asserted they supplemented their production with the requested financial information—including providing the PDF version of a native Excel file produced to Plaintiffs as Bates No. TRINITY 03379 which apparently relates to a 7,217 page general ledger document BSL in its Motion to Compel complains is "all but impossible to read" given the pagination and columns. The Trinity Entities assert they have no other responsive documents.

Insofar as the Trinity Entities have affirmatively asserted they have no other responsive materials which, absent a showing to the contrary, the Court must take as true, and whereas the Court cannot compel the Trinity Entities to produce that which is not in their possession, custody, or control (*see* O.C.G.A. §9-11-34(a)(1)), the motion is DENIED as to this request at this time.

(d) Attorney's fees

Having considered the record, including the evolution of the pleadings, clarification in counsel's correspondence regarding discovery requests, and supplemental production, and given the rulings herein, the Court declines to award attorney's fees at this time.

SO ORDERED this 6 day of April, 2018.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

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