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Nancy Johnson et al., Order on Discovery Dispute

Kelly Lee Ellerbee
Fulton County Superior Court

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**NANCY JOHNSON, individually,
as Executor of the Estate of Dennis L.
Johnson, and as Beneficiary of the Nancy
Johnson Family Trust, SHANNON
JOHNSON, as Beneficiary of the Dennis
Johnson Family Trust, THE DENNIS
AND NANCY JOHNSON CHARITABLE
REMAINDER UNITRUST, THE DENNIS:
L. AND NANCY S. JOHNSON FAMILY
FOUNDATION, INC., and DNJ
INVESTMENTS, LLC,**

Plaintiffs,

v.

**KEVIN TAYLOR, individually, and
as Trustee of the Nancy Johnson Family
Trust, and Trustee of the Dennis Johnson
Family Trust, and NICOLE TAYLOR,
individually, and as Trustee of the Nancy
Johnson Family Trust, and Trustee of the
Dennis Johnson Family Trust,**

Defendants.

**CIVIL ACTION
FILE NO. 2017CV296139**

ORDER ON DISCOVERY DISPUTE

On February 14 2019, counsel appeared before the Court to present oral argument pertaining to ongoing discovery disputes following the Court's December 17, 2018 Order. In the December 17, 2018 Order, the Court provided the parties with its ruling on a number of discovery-related Motions, and it instructed the parties to

confer in good faith prior to seeking further relief from the Court. The Court also reserved ruling on the Plaintiffs' request for attorneys' fees and expenses. Upon consideration of the briefs filed on all Motions, the record of this case, and arguments of counsel, the Court finds as follows:

The Defendants failed to comply with the Court's December 17, 2018 Order. The Court's Order instructed the Defendants to complete several items within fifteen days of the Order, none of which were completed. Specifically, in its Order, the Court directed the Defendants to organize their production to specifically identify which documents are responsive to which requests, and to provide a privilege log where a privilege is being asserted. However, the Defendants did not organize their production as instructed, and no privilege log was provided. Also, the Court instructed the Defendants to supplement their production to RPDs 3-11. However, the Defendants did not provide any supplemental production other than QuickBooks (discussed below). While the Defendants did file supplemental written responses to RPDs 3-4 and 6-11, they did not file supplemental written responses to RPD No. 5, and they did not produce any additional documents other than QuickBooks (discussed below).

This Court is aware of the Plaintiffs' attempts to resolve these disputes in January 2019. On January 8, 2019, the Plaintiffs emailed the Court and requested a hearing because they alleged that the Defendants were obstructing their discovery

efforts. The Plaintiffs noted that boxes had been manipulated in discovery, the Defendants required three weeks' notice before a document review, the Defendants refused to provide a table, chair and light in their storage unit for an inspection, the Defendants removed sticky notes from boxes, and the Defendants required an armed guard to accompany the copy service handling the Defendants' documents. In the email, the Plaintiffs specifically noted that the Defendants failed to produce a native copy of QuickBooks and the point of sale system, along with their activity logs. In response, the Defendants stated that they were addressing all of the issues in the Plaintiffs' email, and they planned to have everything completed by January 11, 2019. The Court agreed to delay the hearing to allow the Defendants time to respond.

On January 14, 2019, Plaintiffs informed the Court that the Defendants did not respond on January 11, and they again requested a hearing. In response, the Defendants advised that they had been working diligently and they requested 24 hours to respond. Again, the Court delayed the hearing to allow the Defendants additional time to respond.

However, the Defendants failed to respond on January 15 and 16, and on January 16 the Court set a hearing for January 18. On January 17, Plaintiffs advised the Court that they had received supplemental responses from the Defendants, and they requested that the hearing be delayed.

Accordingly, the Court delayed the hearing while the Plaintiffs reviewed the responses. After the review, Plaintiffs informed the Court on February 5 that while the Defendants supplemented their production with QuickBooks, they failed to advise as to which system (online or desktop) was needed to access the information. Also, the Plaintiffs alleged that while the Defendants reorganized their discovery, the Plaintiffs had asked for three specific categories of documents (company emails, Eagle Investigative Services documents, and the point of sale system), and the Defendants refused to respond. Accordingly, the Court set a hearing for February 14.

At the February 14 hearing, the Court learned that the Defendants still had not organized their production to specifically identify which documents are responsive to which request. Also, the Defendants' answers to questions about specific documents were inconsistent. For example, the Court asked the Defendants which version of QuickBooks their client uses. In response, the Defendants stated that this was the first time they were hearing this request, then they stated that the information was not needed, and then finally they stated that they did not know the answer.

Also, at the hearing, the Defendants stated that the Plaintiffs had access to the point of sale system in the Dothan Alabama location when Nancy Johnson took possession of the building in January 2019. However, the Plaintiffs explained that this was inaccurate: according to Plaintiffs, Kevin Taylor had disconnected the point of sale system in Dothan before the sheriff arrived at the building with a restraining

order. In response, the Defendants next alleged that the Plaintiffs received the log in information for the point of sale system. However, the Plaintiffs explained that the log in information provided related to social media accounts. The Defendants did not respond, and they did not provide any log in information to the Court.

Also, at the hearing, the Court asked the Defendants about the 2016 business valuation completed for Welcome to Paradise, LLC, and why that was not produced. The Defendants initially stated that the document does not exist, then they stated that it may exist, then they stated that it had been produced, but then when questioned as to where it was found in the production, stated that it was not in the production.

These types of answers also occurred in the written responses. For example, initially, the Defendants alleged in their written discovery responses that documents related to Eastbeck Wealth Management, LLC (“Eastbeck”) were irrelevant. (Order, p. 9). The Court disagreed and ordered their production. In their filed supplemental written responses, the Defendants now take the position that “no documents relating to Eastbeck Wealth Management, LLC are in Defendants’ possession or control.” (RPD No. 2). If there were no responsive documents, the Defendants should have stated so initially instead of stating and maintaining a relevance objection.

Finally, the Plaintiffs sent the Defendants Interrogatories and Requests for Admissions on November 16, 2018. The Defendants provided deficient answers on December 17, 2018. The Plaintiffs attempted to resolve the discovery dispute and

obtain full and complete responses by sending a Uniform Superior Court Rule 6.4 Good Faith Letter on January 8, 2019, which letter was emailed to the Court on February 5, 2019. To date, the Defendants have not responded.

The Court finds that the Defendants have not engaged in discovery in good faith and have not complied with the Court's December 17, 2018 Order.

Accordingly, it is hereby **ORDERED AND ADJUDGED:**

- 1) By February 22, 2019, the Defendants will produce the following documents to the Plaintiffs:
 - a. The Welcome to Paradise, LLC Point of Sale system in native form with all activity logs;
 - b. The Welcome to Paradise, LLC business valuation;
 - c. The Welcome to Paradise, LLC emails;
 - d. All Eagle Investigative Services documents.
- 2) By February 22, 2019 the Defendants will advise the Plaintiffs as to which QuickBooks system is needed to open the QuickBooks thumb drive previously produced.
- 3) By February 22, 2019, the Defendants will fully and completely respond to the Interrogatories and Requests for Admissions served on November 16, 2018 and itemized in the Plaintiffs' January 8, 2019 letter.

- 4) By February 22, 2019, the Defendants will provide a privilege log to the Plaintiffs, if a privilege objection is maintained.
- 5) Plaintiffs are hereby awarded a judgment of \$10,080 against the Defendants for Plaintiffs' counsel's time spent drafting the Motion to Compel, inspecting the January 2019 attempted production, and preparing for the February 14, 2019 hearing, interest to accrue at the legal rate.
- 6) Plaintiffs are ordered to file their attorney's fees billing records which were testified to and subjected to cross-examination at the February 14, 2019 hearing.
- 7) The Court reserves ruling on the Plaintiffs' request to shift the cost of organizing the documents produced to date to the Defendants. The Court orders the Plaintiffs to take over the organization of the documents produced, and the Court orders that the Defendants provide the Plaintiffs with reasonable access to the documents so that they may organize the production. The Plaintiffs are instructed to keep track of their time and efforts and submit a request for their reasonable costs and fees at a later date, at which point the Court will consider the Plaintiffs' request.
- 8) The Parties are directed to work together and provide the Court with a proposed Case Management Order by March 14, 2019.

IT IS SO ORDERED, this, the 21st day of February, 2019.

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(KSE)



The Honorable Kelly Lee Ellerbe, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

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