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Glover et al., v. Georgia Mining Ventures, LLC et al., Order Granting Plaintiffs' Motion to Compel GMV Defendants to Respond to Discovery

Kelly Lee Ellerbe

Judge, Superior Court of Fulton County, Metro Atlanta Business Case Division

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

ALEXANDER S. GLOVER, JR.,)	
LYNN GLOVER HOLLOWAY,)	
SAMUEL GLOVER, and THE GLOVER)	
FAMILY IRREVOCABLE INTER)	
VIVOS TRUST,)	
)	CIVIL ACTION FILE
Plaintiffs,)	NO. 2021CV345083
)	
v.)	
)	
GEORGIA MINING VENTURES, LLC,)	
RONALD REESER, MASON DRAKE,)	(Formerly Fulton State Court
and PATRICK MAHER,)	CAF No. 18EV004732)
)	
Defendants.)	

**ORDER GRANTING PLAINTIFFS’ MOTION TO COMPEL GMV
DEFENDANTS TO RESPOND TO DISCOVERY**

This matter is before the Court on Plaintiffs’ Motion to Compel GMV Defendants to Respond to Discovery, filed December 10, 2019 (the “Motion”). Defendants Georgia Mining Ventures, LLC (“GMV”), Mason Drake, and Patrick Maher (collectively, “GMV Defendants”) did not file a response to the Motion. Having reviewed Plaintiffs’ Motion and the record, the Court enters the following order.

1. BACKGROUND

- 1.1 Plaintiffs served discovery requests on GMV Defendants on May 2, 2019.
- 1.2 GMV Defendants served their responses on July 3, 2019. No documents

were produced initially.

- 1.3 GMV Defendants produced documents on September 4, 2019.
- 1.4 On August 7, 2019 Plaintiffs filed a Motion to Compel in a related Colorado case. The Colorado court entered its order granting Plaintiffs' Motion to Compel Discovery on September 24, 2019. It expressly found, "Defendants have committed multiple discovery violations... and [s]anctions... are appropriate." (Mot., Ex. A, p. 12.)
- 1.5 Plaintiffs filed the instant Motion on December 10, 2019 due to lingering deficiencies in GMV Defendants' document production and discovery responses. GMV Defendants failed to respond to the Motion.
- 1.6 GMV Defendants supplemented their responses to Plaintiffs' Interrogatories and Requests for Production on November 20, 2020 and produced some additional documents. (Rule 5.2 Certif., filed Nov. 20, 2020; Proposed Order, filed Mar.10, 2021, Ex. 1 & 2.) GMV Defendants did not supplement their responses to Plaintiffs' Requests for Admission. (Rule 5.2 Certif., filed Nov. 20, 2020.)
- 1.7 This case was transferred to the Metro Atlanta Business Case Division on February 2, 2021.

2. STANDARD OF REVIEW

- 2.1 O.C.G.A. § 9-11-26(b)(1) allows Plaintiffs to “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”
- 2.2 Plaintiffs are entitled to information “reasonably calculated to lead to the discovery of admissible evidence.” *Simon v. Murphy*, 350 Ga. App. 291, 296 (2019) (citation omitted).
- 2.3 “[D]iscovery [is] an integral and necessary element of our civil practice. Wide latitude is given to make complete discovery possible. The broad purpose of the discovery rules, under the Civil Practice Act, is to enable the parties to prepare for trial so that each party will know the issues and be fully prepared on the facts.” *International Harvester Co. v. Cunningham*, 245 Ga. App. 736, 738 (2000) (citation omitted).
- 2.4 Courts must liberally construe the discovery provisions in the Civil Practice Act to avoid “giv[ing] every litigant an effective veto of his adversaries’ attempts at discovery.” *DeLoitte Haskins & Sells v. Green*, 187 Ga. App. 376, 376 (1988) (citation omitted).
- 2.5 In responding to discovery, “[a]n evasive or incomplete answer is to be treated as a failure to answer.” *See* O.C.G.A. § 9-11-37(a)(3).

3. GMV DEFENDANTS' DISCOVERY RESPONSES

3.1 Requests for Production

3.1.1 Responses with complete answers

- 3.1.1.1 Plaintiffs' Motion argues GMV Defendants should produce additional documents in response to Requests for Production Nos. 1-3, 7, 24-30, 33-36, 41, 43-45.
- 3.1.1.2 Since the filing of Plaintiffs' Motion, GMV Defendants have supplemented their responses to Requests for Production Nos. 1-3, 7, 26, 29-30, 36, 43-45 to state that they are not in possession, custody, or control of any additional responsive documents.
- 3.1.1.3 The Court will not compel GMV Defendants to produce documents that do not exist. However, the Court observes that GMV Defendants' certification that no further responsive documents exist may have consequences for the remainder of the litigation, including but not limited to the possibility of sanctions if GMV Defendants have engaged in spoliation or concealment of responsive documents.

3.1.2 Responses with incomplete answers

- 3.1.2.1 In their supplemental responses to Requests for Production Nos. 24-25, 27-28, 33-35, 41, GMV Defendants refer Plaintiffs to documents already

produced but fail to state whether there were any additional responsive documents.

3.1.2.2 The Court therefore **ORDERS** GMV Defendants to, **within 14 days from this order**, produce any additional responsive documents in response to Requests for Production Nos. 24-25, 27-28, 33-35, 41 or to state that no further responsive documents are in GMV Defendants' possession, custody, or control.

3.2. Interrogatories

3.2.1 Plaintiffs' Motion argues GMV Defendants failed to give complete responses to Interrogatories No. 6-11, 13-16, 18-21, 24-33.

3.2.2 In some of their supplemental responses to Plaintiffs' Interrogatories, GMV Defendants provided additional information, but Plaintiffs claim GMV Defendants' responses are still lacking. GMV Defendants are **ORDERED** to, **within 14 days from this order**, fully respond to Interrogatories No. 6-10, 13, 18, 24, 28-30, 32, 33, or to state that no further information exists. GMV Defendants are also **ORDERED** to provide verifications for all supplemental responses.

3.2.3 In other of GMV Defendants' supplemental responses to Plaintiffs' Interrogatories, GMV Defendants simply refer Plaintiffs to the thousands of documents produced in discovery. However, GMV Defendants failed to

“specify the records from which the answer may be derived or ascertained” in making such reference as required under the Civil Practice Act. *See* O.C.G.A. § 9-11-33(c). GMV Defendants are **ORDERED** to, **within 14 days from this order**, respond fully to Interrogatories No. 11, 14-16, 19-21, 25-27, 31 or to specify the records from which the answer may be derived or ascertained.

3.2.4 The Court observes that GMV Defendants’ certification that no further information exists, if any, may have consequences for the remainder of the litigation, including but not limited to the possibility of sanctions if GMV Defendants have engaged in spoliation or concealment of information.

3.3 Requests for Admission

3.3.1 O.C.G.A. § 9-11-36 requires a party responding to requests for admission to make reasonable inquiry into the matters addressed by each request before giving lack of information or knowledge as a reason for failure to admit or deny. Any response that fails to admit or deny based on a lack of knowledge must include a statement that the party has “made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny.” O.C.G.A. § 9-11-36(a)(2). With regard to numerous requests to admit, GMV Defendants issued a denial based upon a lack of knowledge without this statutorily required certification. Plaintiffs’ Motion noted this deficiency but requested no specific relief. (Mot., p. 42.)

- 3.3.2 Should a court find that the response to a request to admit, “does not comply with the requirements of [O.C.G.A. § 9-11-36(a)], it may order either that the matter is admitted or that an amended answer be served.” O.C.G.A. § 9-11-36(a)(3).
- 3.3.3 Although GMV Defendants supplemented their responses to Plaintiffs’ Interrogatories and Requests for Production long after the Motion was filed, GMV Defendants failed to supplement or in any way modify their responses to Plaintiffs’ Requests for Admission. Because GMV Defendants have made no effort to cure this deficiency in the many months this Motion has been pending, the Court finds that their deficient denials shall be deemed as admissions. Id.
- 3.3.4 GMV’s responses denying the following Requests for Admission Nos. 14, 17, 24, 34, 35, 48, 53, 68, 94, 95, 96 were deficient and thus the Court **ORDERS** that these Requests for Admission are deemed admitted.
- 3.3.5 Drake’s responses to the following Requests for Admission Nos. 1-3, 6, 10-12, 14, 17, 19-26, 30, 33-34, 37-41, 45-48, 50-51, 53, 58-59, 61-63, 65, 68, 70-72, 87, 91-98, 101 were deficient and thus the Court **ORDERS** that these Requests for Admission are deemed admitted.
- 3.3.6 Maher’s responses to the following Requests for Admission Nos. 1- 3, 6, 10-12, 14, 17, 19-26, 30, 33-34, 37-41, 45-48, 50-51, 53, 58-59, 61-63, 65, 68,

70-72, 87, 91-98, 101 were deficient and thus the Court **ORDERS** that these Requests for Admission are deemed admitted.

4. AWARD OF ATTORNEY'S FEES

4.1 As the Colorado court recognized, GMV Defendants engaged in “gamesmanship” to subvert legitimate discovery. Here, GMV Defendants refused to answer legitimate interrogatories, failed to fully respond to requests for admission, failed or delayed in the production of documents, did not respond to the pending Motion and made a very belated and limited attempt at supplementation after the Motion had been pending for many months.

4.2 GMV Defendants have exhibited a blatant disregard of their discovery obligations, and the Court finds their deliberate obstruction of the discovery process was intended to and did result in delaying the forward progress of this action.

4.3 GMV Defendants’ failure to comply with their discovery obligations rendered this Motion necessary and the Court finds the circumstances merit an award of fees. *See* O.C.G.A. § 9-11-37(a)(4)(A).

4.4 Within **14 days** after entry of this Order, Plaintiffs’ counsel are **ORDERED** to file and serve GMV Defendants with an affidavit showing the reasonable expenses and fees incurred in obtaining this discovery order. GMV Defendants shall file a response no later than **14 days** after the filing and service of the

affidavit outlining, with specificity, any objections as to the reasonableness of the fees or the necessity of the work reflected in the affidavit.

4.5 It is further **ORDERED** that the failure of GMV Defendants to comply with this order may subject them to additional sanctions, including, but not limited to, an additional award of attorney's fees and costs of litigation.

IT IS SO ORDERED this 15th day of March, 2021.



JUDGE KELLY LEE ELLERBE
Superior Court of Fulton County
Business Case Division
Atlanta Judicial Circuit

Electronically served upon registered service contacts through eFileGA:

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