12-7-2021

Raybon et al., Order on Motion for Protective Order

John J. Goger
Senior Judge, Fulton County Superior Court

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

ROBERT S. RAYBON, GATEWOOD HOLDINGS, LLC, and AT LEGAL, LLC, Plaintiffs, v. CNH INDUSTRIAL AMERICA LLC, a foreign corporation doing business as Case IH, JAMES (JIM) WALKER, individually and in his capacity as Vice President of Case IH, and RICHARD H. CARVER, individually and as former Territory Sales Manager of Case IH, Defendants.	CIVIL ACTION FILE NO. 2017CV285048

ORDER ON DEFENDANTS' MOTION FOR PROTECTIVE ORDER AS TO PLAINTIFFS' DEPOSITION NOTICE TO EMILY LAWRENCE AND NOTICE OF RULE 30(b)(6) DEPOSITION OF CNH INDUSTRIAL AMERICA

Before the Court is Defendants' Motion for Protective Order as to Plaintiffs' Deposition Notice to Emily Lawrence and Notice of Rule 30(b)(6) Deposition of CNH Industrial America, filed November 30, 2021 (the "Motion"). Having

reviewed the record, considered the submissions of counsel, and heard argument during a December 7, 2021 hearing, the Court enters this order.

Plaintiffs recently served two deposition notices long after the conclusion of discovery and approximately two months prior to the start of trial. Plaintiffs filed the present request for a protective order under O.C.G.A. § 9-11-26(c), outlining various reasons why the requested discovery was "untimely, duplicative, oppressive, and harassing." (Motion, p. 1.)

A court may enter an order protecting a party from "annoyance, embarrassment, oppression, or undue burden or expense." O.C.G.A. § 9-11-26(c). Should the Court, in the exercise of its discretion, determine that good cause exists to enter a protective order, O.C.G.A. § 9-11-26(c) outlines a variety of protective measures the Court may impose with the most serious being a directive that the sought "discovery not be had." This is the relief that Defendants seek. They rely on Bicknell v. CBT Factors Corp., 171 Ga. App. 897, 899 (1984) which provides, "[w]here good cause is shown, such as insufficient time of notice, over burdensomeness of the record or amount and kind of testimony sought, or excessive expense or inconvenience, the trial court may . . . refuse a deposition altogether." However, as Bicknell expressly notes, this particular sanction applies only in "rare" cases.

Discovery in this matter has long been closed which does create a concern that the two depositions at issue are unduly burdensome and inconvenient to Defendants. However, there has been an extensive delay, largely pandemic-related, between the close of discovery and the anticipated trial. Further, Plaintiffs have represented to the Court that the deposition testimony they seek will be short and limited in scope. Accordingly, the Court finds that Defendants' concerns may be addressed through less restrictive measures than barring the discovery altogether.

Accordingly, the Court grants Defendants' Motion and enters a protective order that the discovery may be had on the following terms: (1) each deposition shall proceed at a time convenient to the deponent and (2) the two depositions together shall last no longer than two hours. See generally O.C.G.A. § 9-11-26(c)(2)(to protect against unduly burdensome discovery, a court may order" the discovery may be had only on specified terms and conditions").

SO ORDERED this 7th day of December, 2021.

John J. Goger, Senior Judge
Superior Court of Fulton County
Metro Atlanta Business Case Division
Atlanta Judicial Circuit

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