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Order on Discovery Motions (O'Brien _ Conza et al)

Elizabeth E. Long
Superior Court Judge

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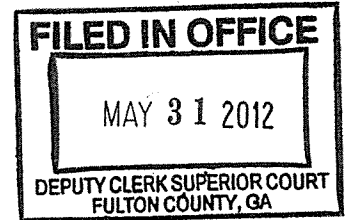
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



**JOY W. O'BRIEN, Executrix of the Estate
of Randy Pirotin, Deceased**)
)
)
Plaintiff,)
)
)
v.)
)
)
**JOSEPH CONZA, PAUL GWIN,
GEORGIA ENTERPRISES, INC., FINNA,
LP, NICKCO GENERAL, INC., and
PEACH STATE FRANCHISE
CONCEPTS, LP,**)
)
)
Defendants.)

**Civil Action File No.
2010-CV-188721**

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ORDER ON DISCOVERY MOTIONS

On May 31, 2012, this Court conducted a hearing over the telephone to address Plaintiff's Motion to Compel Finna LP to Answer Two of Plaintiff's First Interrogatories, Defendants' Motion for Protective Order, and Motion to Strike All Pleadings of Defendant, Joseph Conza. Upon consideration of the briefs, the record of the case, and the argument of counsel, this Court finds as follows:

1. Plaintiff's Motion to Compel Finna LP to Answer Two of Plaintiff's First Interrogatories

Plaintiff moves the Court for an order compelling Finna LP to fully answer Interrogatory 6 for the year 2008. Interrogatory 6 provides: "Identify each and every source of your income for 2008, 2009, 2010 and 2011 and give your name, address and zip code of each source and the amount received from each in 2008, 2009, 2010 and 2011."

In response, Finna LP provided Plaintiff with a copy of its income tax returns for the years 2003 through 2008. Plaintiff contends that the tax returns do not sufficiently identify the source of Finna LP's income for 2008. The Court agrees. Accordingly, Plaintiff's motion is **GRANTED** with respect to Interrogatory No. 6. Finna LP is ordered to provide responsive information regarding the sources of Finna LP's income for 2008 within 10 days. In her motion, Plaintiff also seeks answers to Interrogatory

12(C) regarding the percentage in Finna LP owned by each partner. Finna LP contends that Plaintiff has already been provided this information. If Finna LP has not provided this information, it is ordered also to provide this information within 10 days.

2. Defendants' Motion for Protective Order

Defendants seek a protective order with regard to the deposition of Defendant Joseph Conza, which was noticed one day before the close of the discovery period for a date to fall outside the discovery period. Based on the Court's ruling below, this motion is declared to be moot.

3. Plaintiff's Motion to Strike All Pleadings of Defendant Joseph Conza

Plaintiff moves the Court to strike Defendant Joseph Conza's pleadings and to enter default judgment against him due to his failure to appear at a deposition on May 3, 2012. Plaintiff served Defendant with notice of the deposition one day before the expiration of the discovery period. Defendants argue that such notice is legally defective because the date of the deposition was set to occur after the end of the discovery period.

The Court's Case Management Order, as amended, requires all parties to "initiate" discovery before April 2, 2012. It did not specify that such discovery had to be complete before April 2, 2012. Although the Court **DENIES** Plaintiff's motion with regard to her request to strike Defendant Conza's pleadings and enter default judgment, the Court hereby **ORDERS** Defendant Conza to sit for a deposition at a mutually agreeable date to be decided by the parties. See Toles v. G&K Services, Inc., 230 Ga. App. 452 (1998) (ordering a party to sit for a deposition set to occur after the discovery period when the deposition was noticed prior to the expiration of the discovery period).

SO ORDERED this 31st day of May, 2012.



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

Copies sent electronically to:

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