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Order on Motions to Strike (O'Brien_ Conza)

Elizabeth E. Long
Superior Court Judge

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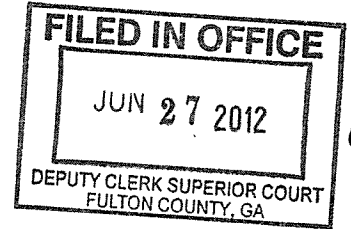
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

COPY



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

ORDER ON MOTIONS TO STRIKE

This matter is before the Court on Plaintiff's Motion to Strike the Answer of Defendant, Joseph Conza, Second Motion to Strike the Answer and Counterclaim of Finna LP, and Motion to Strike the Answer of Georgia Enterprises, Inc. Upon consideration of the briefs submitted on the motions and the record of the case, the Court finds as follows:

On March 28, 2012, Plaintiff served Finna, LP with Plaintiff's Second Interrogatories and Second Request for Production of Documents. On March 30, 2012, Plaintiff served Mr. Conza with Plaintiff's Third Interrogatories and Third Request for Production of Documents. On April 2, 2012, Plaintiff served Georgia Enterprises, Inc. with Plaintiff's First Interrogatories and First Request for Production of Documents. Plaintiff moves the Court to strike the answer, and in some cases, the counterclaim, of each Defendant due to its alleged failure to respond to Plaintiff's discovery requests.

In their responses to Plaintiff's motions to strike, Defendants attach as exhibits what they contend are Defendants' responses to each of the discovery requests at issue in Plaintiff's motions, reflecting a service date of May 7, 2012. Plaintiff contends that she did not receive said responses, and Defendants failed to file Uniform Superior Court Rule 5.2 certifications in the record evidencing proof of such filing. Plaintiff also takes issue with the verification attached to Defendants' responses based on language in the introductory paragraphs that references Defendants' reliance on third parties, such as attorneys, for assistance in formulating responses to Plaintiff's discovery requests.

A trial court has wide latitude in fashioning sanctions for discovery violations. See Mayer v. Interstate Fire Ins. Co., 243 Ga. 436 (1979). The Georgia Supreme Court has "cautioned against the use of [dismissal and default] except in extreme cases, and have held that the trial court must find wilfulness as a predicate to imposing the sanctions." Schrembs v. Atlanta Classic Cars, Inc., 261 Ga. 182, 182-183 (1991).

The Court has warned Plaintiff against filing motions to strike seeking the harshest sanctions for perceived discovery abuses rather than making efforts in good faith to seek appropriate resolutions to discovery issues. Once again, it is clear that Plaintiff has opted to fire off multiple motions seeking sanctions before engaging Defendants in a dialogue that would be more efficient in the long run in achieving the discovery she seeks. Regardless of when discovery was first served, it is undisputed that Plaintiff has now been provided with Defendants' discovery responses. Plaintiff's motions to strike are **DENIED**.

However, the Court of Appeals has held that language, such as that contained in the introductory paragraphs of Defendants' discovery responses¹ amounts to a "disavowal of

¹ "[T]he responses [to these interrogatories] are not based solely on the knowledge of the executing party.... Furthermore, the word usage and sentence structure in these discovery responses may be that of the attorney

authorship” to render the verification as required by O.C.G.A. § 9-11-33 ineffective. Johnson v. Hames Contracting, Inc., 208 Ga. App. 664, 668 (1993). Accordingly, Defendants are **ORDERED** to supplement their discovery responses in 5 business days to reflect the sworn answers of each Defendant to whom the discovery was directed and to provide full responses to the extent they made untimely objections to Plaintiff’s discovery requests. Additionally, Plaintiff is invited to submit a petition for attorneys’ fees setting forth the amount she seeks, which the Court will take up at another time.

SO ORDERED this 27 day of June, 2012.


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

Copies sent electronically to:

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assisting in the preparation of the answer and does not necessarily purport to be the precise language of the executing party.”

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