

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

PROPERTIES OF THE VILLAGES, INC.,

Plaintiff/Counter-Defendant,

v.

CASE NO. 5:19-cv-647-Oc-30PRL

JASON KRANZ, *et al.*,

Defendants/Counter-Plaintiffs,

and

KD PREMIER REALTY, LLC,

Defendant.

**PLAINTIFF/COUNTER-DEFENDANT'S RESPONSE IN OPPOSITION
TO DEFENDANTS/COUNTER-PLAINTIFFS' MOTION TO OVERRULE
OBJECTIONS AND COMPEL PRODUCTION OF DOCUMENTS**

Plaintiff/Counter-Defendant, Properties of The Villages, Inc. ("POV"), respectfully submits its Response in Opposition to Defendants/Counter-Plaintiffs' Motion to Overrule Objections and Compel Production of Documents ("Defendants' Motion") (Doc. 89). For the reasons stated below, Defendants' Motion should be denied.

INTRODUCTION

POV timely responded to the requests for production served on or about January 24, 2020, by Defendants Angela Kranz, Jason Kranz, Christopher Day, Angie Taylor, Cynthia Hughes and Nanette Elliot (the "Individual Defendants RFP"). (Doc. 89, Exs. A-F). Defendants' predecessor counsel did not challenge any of the objections or responses to

those requests. Thereafter, POV timely responded to a request for production served on or about June 5, 2020, by the above-mentioned Defendants, plus Defendants Kelly Shipes and KD Premier Realty, LLC (the “Defendants RFP”). (Doc. 89, Ex. G). Defendants’ predecessor counsel contacted the undersigned counsel for POV regarding various responses to the Defendants’ Requests on or about July 7, 2020 (a true and correct copy of which is attached hereto as Exhibit “A”). The undersigned responded to said letter with POV’s position on or about July 17, 2020 (a true and correct copy of which is attached hereto as Exhibit “B”). POV heard nothing further regarding its various responses until Defendants’ current counsel contacted the undersigned on September 14, 2020 – six days after POV sent a letter to Defendants pointing out the failure of several Defendants to serve responses to interrogatories and requests for production, as well as deficiencies regarding responses to interrogatories served by POV at that time.¹ Counsel for the parties thereafter engaged in discussions to resolve the issues raised by each side, resulting in resolution of most of the parties’ issues. As set forth below in more detail in Section I, *infra*, the parties were able to resolve all but two of Defendants’ issues prior to Defendants’ filing of the instant Motion.

¹ POV ultimately filed motions to compel regarding some of the issues raised in its deficiency letter. (Doc. 90, 91).

MEMORANDUM OF LAW

I. THE PARTIES' AGREEMENT WITH RESPECT TO VARIOUS DOCUMENTS TO BE PRODUCED.²

A. Training Materials/Agendas (Defendants' RFP #1 and 2).

Pursuant to the parties' agreement, POV has searched for documents responsive to Defendants' Request for Production Nos. 1 and 2 pre-dating January 1, 2017, and it has found documents going back to 2006. POV will produce those non-privileged responsive documents found promptly, but (in accordance with the agreement of the parties) no later than November 6, 2020. As was done with respect to the responsive documents already produced – which was not objected to by Defendants – POV will produce said documents with the designation of “Attorneys’ Eyes Only” pursuant to the parties’ Agreement Regarding Asserted Confidential Information.

B. Audio Recordings Regarding Individual Defendants (Defendants' RFP #3).

At the request of Defendants, POV went back to search for recordings responsive to Defendants' Request for Production No. 3. It was able to find audio files in folders not readily apparent when initially searched. Pursuant to the parties' agreement, POV will produce those non-privileged responsive documents found promptly, but (in accordance with the agreement of the parties) no later than November 6, 2020. POV will produce said documents with the designation of “Confidential” pursuant to the parties’ Agreement Regarding Asserted Confidential Information.

² Defendants appear to request that the Court overrule POV's objections regarding the requests that the parties have resolved. In light of the parties' resolution of their dispute as to said requests, the Court should decline addressing those objections as moot.

C. Attendance Records Regarding Meetings (Defendants' RFP #9).

Pursuant to the parties' agreement, POV has searched for additional meeting attendance records predating January 1, 2017. Pursuant to the parties' agreement, POV will produce those non-privileged responsive documents found promptly, but (in accordance with the agreement of the parties) no later than November 6, 2020.

D. Confidential Information (Individual Defendants' RFP #5 and 6).

Pursuant to the parties' agreement, POV has agreed to search for additional documents and, to the extent not already produced, POV will produce those non-privileged responsive documents found promptly, but (in accordance with the agreement of the parties) no later than November 6, 2020.

E. Information Concerning Access To Computer Information (Individual Defendants' RFP #9-11).

Pursuant to the parties' agreement, POV has agreed to search for additional documents and, to the extent not already produced, POV will produce those non-privileged responsive documents found promptly, but (in accordance with the agreement of the parties) no later than November 6, 2020.

II. ISSUES REGARDING WHICH THE PARTIES DISAGREE.

“Under Rule 26 . . . the Court has broad discretion to limit the time, place, and manner of discovery as required ‘to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *McArdle v. City of Ocala, FL*, 451 F. Supp. 3d 1304, 1308 (M.D. Fla. 2020) (Lammens, J.) (quoting Fed. R. Civ. P. 26(c)). “Relevancy and proportionality are the guiding principles” and “[i]n order to determine the scope of discovery the Courts and the parties must consider and evaluate ‘the importance of

the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.* (quoting Fed. R. Civ. P. 26(b)). Thus:

In order to frame and resolve [a] discovery dispute, it is essential to determine what the purpose of the discovery is. That will help determine what the parties need (or don't need) and hopefully the most cost and time effective way to get there. Indeed, as the commentary to Rule 26 informs us, “[a] party claiming that a request is important to resolve the issues should be able to explain the ways in which the underlying information bears on the issues as that party understands them.” *Id.* Then, of course, it is the “Court's responsibility, using all the information provided by the parties, . . .to consider these and all the other factors in reaching a case-specific determination of the appropriate scope of discovery.

McArdle, 451 F. Supp. at 1308.

A. POV's Objections To Production.

Contrary to Defendants' assertion, POV's objections were *not* simple boilerplate objections. POV did not simply assert that the requests were “vague,” “unduly burdensome” or outside the scope of permissible discovery” without further explanation. More specifically, POV asserted that the at-issue requests (Defendants Nos. 7 and 10) were “overly broad, vague and s[ought] information not relevant to any party's claims or defenses and/or not proportional to the needs of the case, *considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.*” Moreover, to the extent that Defendants' predecessor counsel (who did not raise the alleged “boilerplate”

objection issue) challenged POV's responses to the requests, POV elaborated on the objections – namely, (a) that Request No. 7 sought communications going back as far as 2004/2005 [i.e., when the longest-working Individual Defendant started with POV], concerning 10 different individuals,³ without identification of subject matter, and (b) that the persons identified as having sent out letters encouraging support for a candidate were not acting as representatives of POV. (See Exhibits “A” and “B” hereto.) In light of the foregoing, the Court should reject Defendants' claim that POV's objections should be overruled.

B. Any And All Documents, Emails, Text Messages, Letters Or Notes To Or From Any Of The Defendants And The Plaintiff Or Its Representatives (Defendants' RFP #7).

Even with their offer to “clarify” their request, Defendants want POV essentially to comb through all of its electronic files and other records, and the electronic data and records of every one of its employees and independent contractors, in the hopes of finding communications that may exist over a period spanning as long as 15 years regarding the Individual Defendants. Defendants do not (and indeed cannot) provide case law that compels such a wholesale production of documents. Moreover, combing through all of files and records to isolate those documents that deal with the Individual Defendants' “work” for POV (along with the other enumerated “categories” set forth in the Motion) would be wildly burdensome and disproportional, and – at least with respect to “elections, politics, campaigns, voting and donations” and “bonds and rebates” – are inappropriately vague and/or of questionable relevance. Lastly, to the extent that Defendants are seeking documents relating to Defendants' agreements, training, compensation, commissions, and restrictive covenants, as well as confidential

³ 3 of the original 10 Individual Defendants have since settled with POV and are no longer in the case.

information and misappropriation of trade secrets and other information from its computer systems, as stated *supra*, POV asserts that it has already produced or agreed to produce documents related to such subjects.

As such, the Court should not compel POV to engage in the massive undertaking that Defendants seek. Alternatively, POV is willing to produce Defendants' e-mails subject to search terms agreed by the parties.⁴

C. **Any And All Documents Dealing With Suggested Political Votes Or Political Contributions From 2008 To The Present Coming From Or On Behalf Of The Plaintiff Of [Sic] Any Representative Of The Plaintiff (Defendants' RFP #10).**

As set forth in the (non-boilerplate) objections to this Request, this request seeks information not relevant to this case. First, although Defendants reference their affirmative defense claiming that enforcement of the Individual Defendants' restrictive covenants is estopped because "POV required that Defendants make illegal and improper political contributions and donation," they present no legal support for this theory. *Hunter's Ridge Golf Co. v. Georgia-Pacific Corporation*, 233 F.R.D. 678, 680 (M.D. Fla. 2006) ("The party seeking production must demonstrate that the request is relevant, i.e., calculated to lead to admissible evidence, although the requested material need not itself be admissible at trial."); *see also Calloway v. Partners Nat. Health Plans*, 986 F.2d 446, 450-51 (11th Cir. 1993) ("[f]or a defendant to successfully avail itself of the doctrine of unclean hands, it...must demonstrate that the plaintiff's wrongdoing is directly related to the claim against which it is

⁴ POV suggested this resolution to Defendants during the pre-Motion discussions; however, Defendants insisted on production of all of Defendants' e-mails from January 1, 2017, though the present and searches based on agreed-upon terms for e-mails prior to that date.

asserted”). Moreover, to the extent that Defendants seek information regarding entities and persons other than POV, such an expansive definition goes beyond the affirmative defense, which focuses solely on POV. As stated in its response to the request for production, POV did not send correspondence to salespersons relating to political support or contributions.⁵ Without indicating that Defendants’ affirmative defense on this issue is in any way viable, the documents sought are not relevant, and no order should be issued compelling production of such documents.

III. DEFENDANTS ARE NOT ENTITLED TO AN AWARD OF EXPENSES INCURRED WITH THIS MOTION.

Even if this Court grants Defendants’ Motion to Compel (in full or in part), POV’s alleged “nondisclosure” or objections are substantially justified in this case. See Fed. R. Civ. P. 37(a)(5)(A). Specifically, as Defendants indicate in their Motion, during the conferral process prior to Defendants filing the instant Motion, POV agreed to produce non-privileged documents responsive to nine (9) of the eleven (11) requests raised in the Motion. Moreover, with respect to POV’s responses and objections to Request Nos. 7 and 10, its objections were made in good faith and with a reasonable basis, as explained in more depth *supra*. Thus, given that POV promptly agreed to resolve most of Defendants’ issues, and its continued nondisclosure and objections are substantially justified under the present circumstances, the

⁵ POV denied that the documents attached to the Request for Admissions served on POV (referenced at page 12 of the Motion), were from it. To the extent that Defendants allege that this is “an incomplete answer,” they failed to object to said response.

Court must not award Defendants their fees in connection with bringing the Motion. See Fed. R. Civ. P. 37(a)(5)(A)(ii).⁶

CONCLUSION

POV timely and fully responded to Defendants' requests for production. When Defendants raised issues concerning a number of those responses, POV engaged in substantive discussions with Defendants and promptly resolved almost all of the issues by Defendants without the need for the Court's intervention. As to the two requests still at issue, POV's objections and responses are correct and appropriate. Accordingly, based on the foregoing, this Court should deny Defendants' Motion to Compel.

Dated: October 15, 2020

Respectfully submitted,

s/Patrick M. Muldowney

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⁶ Should the Court decide to award expenses, Defendants have agreed to defer consideration of the amount of such expenses until the end of the case. Meanwhile, POV has agreed to withdraw its request for fees with respect to its motions to compel (Doc. 90 & 91) in light of the post-filing resolution of the several remaining issues.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of October, 2020, a true and correct copy of the foregoing has been served via ECF to all counsel of record on this action:

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s/Patrick M. Muldowney

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