

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC,

Plaintiffs,

vs.

Case No. 2013-2742-CB

NARTRON CORPORATION, n/k/a GEN X MICROSYSTEMS and a/k/a OLDNAR CORPORATION, a Michigan corporation and UUSI, LLC, d/b/a NARTRON, a Michigan limited liability company,

Defendants,

and

UUSI, LLC, d/b/a NARTON, a Michigan limited liability company,

Defendant/Counter and Third-Party Plaintiff

vs.

JVIS-USA, LLC, a Michigan limited liability company and JVIS MANUFACTURING, LLC, a Michigan limited liability company, d/b/a, JVIS USA MANUFACTURING, LLC

Counter-Defendants,

and

FUTABA CORPORATION OF AMERICA, a foreign corporation, THOMAS J. GRONSKI, RANDY GRIFFIN, and GINA TERRY,

Third-Party Defendants.

OPINION AND ORDER

Plaintiffs have filed a motion for a protective order regarding the deposition of Larry Winget, an owner of Plaintiff JVIS-USA, LLC ("JUSA"). Defendants have filed a response and request that the motion be denied.

In addition, Plaintiffs have filed a motion to compel. Defendants have filed a response and request that the motion be denied.

I. Standard of Review

Discovery of information must be relevant and not privileged, MCR 2.302(B)(1). The rule allows discovery of matter that is relevant to the subject matter involved in the pending action or that appears reasonably calculated to lead to the discovery of admissible evidence. *Bauroth v Hammoud*, 465 Mich 375, 381; 632 NW2d 496 (2001). Michigan has a long established tradition of liberal, open, and far-reaching discovery policy. See *Sucoe v Oakwood Hosp Corp*, 185 Mich App 484; 462 NW2d 780 (1990), *aff'd in part, vacated in part on other grounds*, 439 Mich 919; 479 NW2d 637 (1992). The rules of discovery should be construed in an effort to facilitate trial preparation and to further the ends of justice, and the discovery process should promote the discovery of the facts and circumstances of a controversy, rather than aid in their concealment. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998). On motion by a party and for good cause shown, the Court may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. MCR 2.302(C).

II. Arguments and Analysis

A. Plaintiffs' Motion to Compel

The only remaining issues outstanding with respect to Plaintiffs' motion to compel relate to interrogatories 14 and 15 of Plaintiffs and Futaba's sixth set of interrogatories.

Interrogatory 14 provides: "Please describe and provide details (in terms of dollars and equipment) of the obsolescence claim filed by Nartron in connection with its work on the Fuel Pump Control Module." Interrogatory 15 provides: "Did Nartron ever request "product completion" costs from Chrysler in connection with its Fuel Pump Control Module obsolescence claim?" While the Court ruled on Plaintiffs' request to compel answers to the above-referenced requests, the parties' counsel dispute the scope of the Court's rulings.

With respect to interrogatory 14, the parties dispute (1) whether Nartron is required to identify the equipment by name and serial number that it submitted to Chrysler as part of its obsolescence claim on the fuel pump control program, and (2) whether Nartron is required to provide financial detail of that portion of its obsolescence claim that pertains to equipment, i.e. Nartron will disclose how much it paid for the claimed equipment and how much it is charging Chrysler for the equipment portion of its obsolescence claim.

With regard to the first issue, the Court is convinced that identifying the equipment at issue by name and serial number is appropriate as the identification of the equipment at issue in Nartron's claim against Chrysler is relevant in this matter on the issue of what, if any, equipment Nartron has already been compensated for by Chrysler.

Likewise, the Court is convinced that the cost of the equipment at issue in connection with Nartron's claim against Chrysler is relevant and should be produced.

The only outstanding dispute with respect to interrogatory 15 is whether Nartron is required to provide Plaintiffs with a copy of its "project completion" claim against Chrysler, if one exists. Plaintiffs' request seeks to find out whether Nartron's claim for project completion costs in its case against Chrysler, if one exists, seeks the same damages that Nartron seeks in this matter. The Court is satisfied that such information is relevant to this matter and should be produced.

B. Plaintiffs' Motion for a Protective Order

In their motion, Plaintiffs contend that JUSA's owner should not be forced to attend a deposition because he possesses no unique, superior or independent knowledge of the facts at issue in this case. Specifically, Plaintiffs object to Nartron's deposition request under the apex-deposition doctrine. The doctrine is set forth by the Court in *Alberto v Toyota Motor Corp*, 289 Mich App 328; 796 NW2d 490 (2010), which provides:

In adopting the apex-deposition rule, we recognize, as have other courts, that an apex corporate officer, like a high-ranking governmental official, often has no particularized or specialized knowledge of the day-to-day operations or the particular factual situations that lead to litigation, and has far-reaching and comprehensive employment duties that require a significant time commitment. And, therefore, to allow depositions of high-ranking governmental officials or corporate officers without any restriction or conditions could result in the abuse of the discovery process and harassment of the parties. Accordingly, our adoption of the apex-deposition rule should serve as a useful rule for trial courts to use in balancing the discovery rights of the parties.

While the rule provides protection for high ranking corporate officer in certain situation, the doctrine does not shift the burden to the moving party; rather, the party

opposing the deposition must first demonstrate, "by affidavit or other testimony, that the proposed deponent lacks personal knowledge or unique or superior information relevant to the claims in issue". *Id.* at 339. Only after that initial showing is made is the burden shifted to the moving party to demonstrate that the relevant information cannot be obtained absent the disputed deposition. *Id.*

Plaintiffs have only provided one exhibit in support of their motion: a partial transcript of the deposition of Jason Murar, one of its representatives. (See Plaintiffs' Exhibit 1.) Mr. Murar testified that Mr. Winget did not have anything to do with the creation of the contract between Plaintiffs and Nartron and that to his knowledge Mr. Winget did not take part in any meetings related the contract. (*Id.* at p. 43.) Further, Mr. Murar testified that Mr. Winget did not play any role in granting Nartron the WK-ICS project or in securing the work from Chrysler. (*Id.* at 183.) However, Mr. Murar also testified that he did not know if Mr. Winget played any role or have any activity in connection with the activities which are the subject of this case, and testified that Mr. Winget did attend a few meetings to introduce Nartron's ownership to his companies, meetings which Mr. Murar conceded he did not attend. (*Id.* at 62, 183-184.)

The Court is convinced that the above-referenced testimony does not demonstrate that Mr. Winget does not have any personal knowledge or unique or superior information relevant to the claims in issue. While Mr. Murar testified that Mr. Winget did not play a role in bring Nartron into the fold or in securing the WK-ICS project from Chrysler, Mr. Murar was not able to testify as to whether Mr. Winget had any involvement in the remaining activities at issue in this matter. Consequently, the

Court is satisfied that Plaintiffs have not met their initial burden under the apex-deposition doctrine. As a result, Plaintiffs' motion must be denied.

III. Conclusion

For the reasons discussed above, Plaintiffs' motion for a protective order is DENIED. Plaintiffs shall produce Mr. Winget for a deposition on the date and time, and at the location specified in the Order Re Plaintiffs' Motion for Protective Order Regarding the Deposition of Larry Winget and Nartron's Motion to Compel Deposition of Larry Winget dated February 29, 2016.

In addition, Plaintiffs' motion to compel more specific answers to interrogatories 14 and 15 of their sixth set of interrogatories is GRANTED. Specifically, within 21 days of the date of this Opinion and Order:

Nartron shall supplement its response to interrogatory no. 14 from Plaintiffs' and Futaba's sixth interrogatories to identify the equipment by name and serial number that it submitted to Chrysler as part of its obsolescence claim on the fuel pump control program a/k/a the Chrysler DS Program. Nartron shall also state whether and to what extent there is any overlap, i.e. whether there is any equipment in common, in the obsolescence claim Nartron asserted against Chrysler for the fuel pump control module (DS Program) and the obsolescence claim asserted in this case and, if so, identify in detail that overlap.

Nartron shall also provide the financial detail of that portion of its obsolescence claim that pertains to equipment i.e. Nartron will disclose how much it paid for the claimed equipment and how much it is charging Chrysler for the equipment portion of its obsolescence claim.

Finally, Nartron shall supplement its response to interrogatory no. 15 from Plaintiffs and Futaba's sixth interrogatories to state whether a 'project completion' claim has been asserted by Nartron against Chrysler regarding the fuel pump control module. If Nartron has requested 'project completion' damages from Chrysler, then Nartron shall provide Plaintiffs with a copy of that claim. Nartron must also identify whether there is any overlap in the project completion hours that Nartron seeks from Chrysler in the DS case and from Plaintiffs in this matter. If an overlap exists, Nartron must provide detail regarding the employees and hours that overlap.

Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: MAR 04 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge