

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

2975 NORTH HURON STREET	:	
INVESTOR, LLC,	:	Case No. 18CV000375
	:	
Plaintiff,	:	JUDGE WOODS
	:	
-v-	:	
	:	
EDWARDS ASSOCIATES	:	
PROSPECT PARK, LLC, ET AL.	:	
	:	
Defendants.	:	

**DECISION AND ENTRY DENYING DEFENDANT EDWARDS ASSOCIATES
PROSPECT PARK, LLC’S MOTION FOR PROTECTIVE ORDER
FILED MAY 10, 2019**

I. Introduction

This matter is before the Court on Defendant Edwards Associates Prospect Park, LLC’s (“Edwards”) Motion for Protective Order filed May 10, 2019. On May 24, 2019, Plaintiff 2975 North Huron Street Investor LLC (“Huron Investor”) filed a memorandum in opposition. On June 4, 2019, Edwards filed a reply. The Motion is ripe for decision.

Edwards’ Motion seeks to (1) require the rescheduling of the depositions of Dean Kissos and T.A. Ward to mutually agreeable dates, (2) require Huron Investor to properly subpoena Jon Wood, and (3) prevent Huron Investor from deposing Jefferey Edwards.

II. Standard of Review

Civ.R. 26(C) provides for the grant of a protective order as follows:

Upon motion by any party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; ***

Accordingly, Civ.R. 26(C) provides that a trial court may grant a protective order for good cause shown to protect a party from annoyance, embarrassment, oppression, undue burden or expense. This rule affirms Ohio's recognition of "the inherent power of a court to control discovery." See Staff Notes, Ohio Civ.R. 26(C). In determining whether to grant a protective order, the trial court balances the interest of the requesting party's need for the information against the potential harm and hardship on the party from whom discovery was requested. *Arnold v. American Nat'l Red Cross* (1994), 93 Ohio App.3d 564, 576; *Huebner v. Miles* (1993), 92 Ohio App. 3d 493, 501. Where a trial court can reasonably conclude that the objective of the discovery request is burdensome or harassing, the court can properly issue a protective order prohibiting the discovery. *Stegawski v. Cleveland Anesthesia Group, Inc.* (1987), 37 Ohio App.3d 78, 85-86.

III. Discussion

A. Edwards' motion to require Jon Wood to be properly subpoenaed is moot.

Edwards argues that Jon Wood cannot be compelled to testify through a Civ.R. 30 Deposition Notice on the grounds that Jon Wood is no longer employed by Edwards. Huron Investor agrees and states in its memorandum in opposition to Edwards' Motion for Protective Order that it will properly notice Jon Wood's deposition. Accordingly, the Court finds the issue to be moot.

B. Edwards' request for an order requiring the rescheduling of Kissos' and Ward's depositions.

On October 28, 2019, the Court conducted a discovery status conference wherein the Court discussed this pending motion. The Court instructed the parties to make an effort to schedule depositions after the Court's rulings on the pending discovery motions. In addition, the Court advised the parties that if there are issues related to the scheduling of depositions, the parties shall

contact the Court to schedule a telephone status conference. Therefore, at this juncture, this issue is moot.

C. Edwards' Motion to quash the deposition of Jeffery Edwards lacks merit.

As to the remaining issue, *e.g.*, Edwards' Motion to quash the deposition of Jeffery Edwards, the parties were unable to resolve this issue at the October 28, 2019 discovery status conference. Upon review, the Court finds that a protective order is improper. In the Court's December 17, 2018 Decision and Entry denying Huron Investor's Motion for Partial Summary Judgment, the Court found that "discovery regarding parol evidence is proper because the Addendum [to the First Amendment] is ambiguous." The central question in this dispute is the interpretation of the First Amendment to the Second Amended and Restated Operating Agreement. Jeffery Edwards is the sole signatory of the First Amendment. Jeffery Edwards signed the First Amendment four times in various corporate capacities.

Edwards argues that Jeffery Edwards' deposition should be precluded based on the apex doctrine. The "apex doctrine" is an analytical framework used by federal courts in assessing whether to permit the depositions of individuals at the "apex" of corporations and other entities. The doctrine recognizes that depositions of high-level officers severely burdens those officers and the entities they represent and that adversaries might use this burden to their advantage. For the following reasons, the Court finds Edwards' motion is improper.

First, the apex doctrine has never been recognized or adopted by an appellate level court in the state of Ohio. Second, even if it had been adopted, the Court finds that the doctrine is inapplicable to the facts of this case. The apex doctrine identifies four factors to consider when making a determination if an executive should be shielded from the burdens of a deposition:

- (1) that executive has no unique, personal knowledge of the issues central to the case;
- (2) the discovery sought can be obtained from other deponents;
- (3) the discovery sought can

be obtained through an alternative, less burdensome discovery method; or (4) due to severe hardship to that executive.

Black Card, LLC v. Visa U.S.A., Inc., D.Wyo. No. 15-CV-027-S, 2016 U.S. Dist. LEXIS 178271, at *6-7 (Dec. 12, 2016). In support of its position that the apex doctrine applies, Edwards points to the affidavit of Dean Kissos wherein he avers: “I do not believe that Mr. Edwards possesses any personal knowledge about the underlying facts of this case that would not otherwise be available through me or T.A. Ward.” (Affidavit of Dean Kissos at ¶ 4.) Kissos’ affidavit is speculative and fails to establish a foundation for his testimony about Jeffery Edwards’ knowledge. In addition, Edwards’ Motion fails to establish that Jeffery Edwards would suffer hardship from being deposed. As a result, the Court finds that even if the apex doctrine was recognized in the state of Ohio, Edwards failed to establish that it would be proper to preclude Jeffery Edwards’ deposition under the doctrine. Accordingly, Edwards’ motion is denied.

IT IS SO ORDERED.

Copies to all counsel via electronic filing system.

Franklin County Court of Common Pleas

Date: 11-30-2020

Case Title: 2975 NORTH HURON STREET INVESTOR LLC -VS- EDWARDS
ASSOCIATES PROSPECT PARK LLC ET AL

Case Number: 18CV000375

Type: ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read "W. H. Woods", is written over a circular blue ink seal. The seal contains the text "FRANKLIN COUNTY OHIO" and "ALL THINGS ARE POSSIBLE".

/s/ Judge William H. Woods

Court Disposition

Case Number: 18CV000375

Case Style: 2975 NORTH HURON STREET INVESTOR LLC -VS-
EDWARDS ASSOCIATES PROSPECT PARK LLC ET AL

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0003752019-05-1099970000
Document Title: 05-10-2019-MOTION FOR PROTECTIVE ORDER
- DEFENDANT: EDWARDS ASSOCIATES PROSPECT PARK LLC
Disposition: MOTION DENIED