

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

Case No. 5:12-CV-7-OC-32TBS

LOUISE PRIVITERA,

Plaintiff,

v.

ELIZABETH MANDARINO AND AMBER HILL
FARM, LLC,

Defendants.

PLAINTIFF'S MOTION TO COMPEL THE DEPOSITION OF MANDARINO

Comes now, Plaintiff, LOUISE PRIVITERA, by and through her undersigned counsel and pursuant to the Federal Rules of Civil Procedure and Middle District Local Rule 3.01, files this Motion to Compel the Deposition of Defendant, Elizabeth Mandarino, and in support thereof, states as follows:

1. The Plaintiff has conferred, pursuant to the Middle District Local Rules, with counsel for the Defendants, to the filing of this Motion to Compel the Deposition of Mandarino and advises Mandarino cannot make time for her deposition until after mid-April.
2. Defendants have previously stated in their Motion to Transfer the case to New Jersey that Defendants leave Florida in April, thus the request to provide dates after mid-April is further suspect of delay and trying to avoid a deposition in this jurisdiction. [D.E. 6 ¶11, 6-1 ¶11].
3. This case involves, among other matters, the possession and use of three equines known as Fresh Prince, L'Esperado and Cyrus, that are being wrongfully retained by Defendants against the Plaintiff. [D.E.5].

4. Plaintiff wishes to dissolve the partnership because Defendants are making unilateral and costly decisions to the detriment of the Plaintiff. [D.E. 5 ¶19].
5. Plaintiff wishes to move for an injunction to stop the use of the equines at competitions and the escalating costs associated with doing so, however, is unable to do so until the deposition of Defendant Mandarino is secured¹. [D.E. 5 ¶114-119].
6. Plaintiff was served her Notice for Videotape Deposition by process server December 28, 2011 for her deposition to take place January 30, 2012 at 10:00am in Ocala, Florida.
7. Counsel for the Defendants came into the case on or about January 5, 2012.
8. On January 19, 2012, for the first time, counsel for the Defendants advises that she had a conflict for January 30, 2012 and requested cancellation and would provide new dates and location for the deposition in consideration of the cancellation. Moreover, she demanded Plaintiff submit to her deposition **the day following Defendant, Mandarino**.
9. On January 20, 2012, in the spirit of cooperation and recognizing this case involves living animals, Defense counsel was advised Plaintiff had a preplanned vacation from February 3-19, 2012 but could sit anytime thereafter and after the deposition of Mandarino.
10. On January 23, 2012 the undersigned requested the new dates promised by Defense counsel on the 19th of January.
11. On January 25, 2012, again the request was made of Defense counsel requesting dates for the deposition as Plaintiff counsel did not want to cancel the January 30, 2012 deposition without confirmed dates for future deposition.
12. Defense counsel noted January 25, 2012 that her client could not find the dates to attend her deposition as she was too busy with the Winter Circuit and requested two dates to consider.

¹ As well as securing outstanding discovery subject to a separate motion before this Court.

13. On January 26, 2012, the dates of February 27 and 28, 2012 were provided. These again were rejected by Defendants. Plaintiff counsel suggested Defense counsel provide dates as promised on January 19, 2012 and none were provided. This request was reiterated January 30, 2012 to no avail.
14. On February 15, 2012 counsel for the Plaintiff left a voicemail and email to Defense counsel requesting again dates for deposition of Mandarin.
15. On February 16, 2012, counsel for the Defendants advised her client had no time available to sit for her deposition (nor a date to attend the deposition of Plaintiff) and advised her client would not be available until after mid-April. **Now for the first time Defense counsel claims she requested Plaintiff sit for deposition BEFORE the Defendant Mandarin, which was never previously requested nor discussed.**
16. This is woefully inadequate as the Defendant Mandarin was served for her deposition and same was cancelled as a professional courtesy with the understanding new dates would be promptly provided. Never were those dates to be 90 days in the future.
17. It is the position of the Plaintiff that the Defendants are doing no more than delaying the proceedings in an attempt to utilize the use of the equines in question; profiting from the delay by continuously billing the Plaintiff for services rendered to the equines without her approval and consent, to wit entering the horses in competitions that are grossly expensive (in fact, in direct opposition of Plaintiff's desire); and effectively running up the charges in an attempt to profit from the delay. The Defendants are failing to allow the Plaintiff the use of the equines or the documents necessary to bring this matter to conclusion.

18. Defendants claim they cannot sit for deposition because “they” (Amber Hill and Mandarino) are trying to sell the three equines that are subject to this lawsuit which is impermissible because the ownership is in dispute as Amber Hill has no ownership in said horses in the eyes of the Plaintiff and the partnership she joined. Further, Defendant Mandarino refuses to provide information on how the horses are priced; when they can be made available for Plaintiff’s clients to try for sale; and other pertinent issues that preclude a lawful sale under Florida law.

19. It is for these very reasons the testimony must be secured and soon.

20. Plaintiff is being severely prejudiced by Defendant Mandarino not being produced for deposition.

Wherefore, Plaintiff seeks an order from this Court instructing Defendant to provide dates for her deposition to be taken in the first two weeks of March 2012.

/s Bonita Herrmann Navin

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2012, I electronically filed a true and correct copy the foregoing with the Clerk of the Court by using the CM/ECF system on all counsel parties or parties of record on the attached Service List in the manner specified.

/s Bonita Herrmann Navin
Bonita Herrmann Navin

Rate My Horse PRO

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