

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

MIAMI TOWNSHIP BOARD OF TRUSTEES,	:	CASE NO. 2019 CV 05444
	:	Judge: Richard Skelton
Plaintiff,	:	
	:	DEFENDANTS' MEMORANDUM IN
v.	:	OPPOSITION TO PLAINTIFF'S
	:	MOTION TO COMPEL and MOTION
DARREN POWLETTE, <i>et al.</i> ,	:	FOR PROTECTIVE ORDER
	:	
Defendant.	:	
	:	

Now come Defendants, Darren Powlette and Stoney Hill Rustic Weddings, LLC, by and through Counsel, and hereby submit the following Memorandum in Opposition to Plaintiff's Motion to Compel and Motion for Protective Order. Defendant's opposition and Motion are supported by Ohio Civil Rules 26, 33, and 34 and the following Memorandum.

Respectfully Submitted,

Gregory S. Page (0065264)
GREGORY S. PAGE CO., LPA
7501 Paragon Road
Dayton, OH 45459
Telephone: (937) 434-1908
Facsimile: (937) 436-0008
Email: greg@gsplaw.com
Attorney for Defendants

MEMORANDUM

Plaintiff's Motion to Compel should be denied or this Court should tailor the required responses so that only evidence, reasonably calculated to lead to the discovery of admissible evidence, be discovered, and that only those documents in the "possession, custody or control" of the Defendants be produced and the manner in which such documents or other evidence can be used by the Plaintiff.

I. Discovery Directed to Darren Powlette

Defendants shall address the November 18, 2020 letter from Edward Dowd to Gregory S. Page as these discovery responses appear to be the only responses in dispute.

Deficiency #1. Mr. Powlette's "income" that he receives, if any, from Stoney Hill Rustic Weddings, LLC is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. How much income he does, or does not, derive from an LLC of which he is the sole member does not have any relevance to whether the property or the barn on the property is being used for agritourism. Mr. Powlette also objected on the basis that the term "income" is not defined. However, based upon the definition provided in the deficiency letter, Mr. Powlette did not receive any "income" from Stoney Hill Rustic Weddings LLC.

Deficiency #2

Defendant provided all of the information in its possession, custody or control. The information supplied to the Plaintiff detailed who conducted an event at the property from May 1, 2018 to the present. Admittedly, Defendant did not create a list of customers. However, the documents provided detailed who the customers were and when they had an event at the property. Defendant does not have address or phone number of the customers. He has no

obligation under the rules of discovery to seek out information that is not in his “possession, custody or control.”

Deficiency #3

Defendant rightfully objected to the Interrogatory as being vague and confusing. The Interrogatory did not define “farmed”. Nonetheless, Defendant responded to the Interrogatory, subject to the Objection, and described how the property was being used. Whether the property is used for “agricultural purposes,” as that term is defined by the Ohio Revised Code, is of utmost importance. Whether the property is “farmed” is irrelevant to whether Powlette is using the barn for agricultural purposes, including agritourism. Nonetheless, Defendant responded to the Interrogatory.

Deficiency #4

Although these documents are readily available to the Plaintiff on the Ohio Secretary of State’s website, and despite the fact that the request was technically deficient because no articles of incorporation exist for a limited liability company, Powlette provided the Plaintiff with Stoney Hill Rustic Weddings LLC’s articles of organization prior to this motion being filed.

Deficiency #5, #6, #10, #14, and #15

Mr. Powlette has not produced the requested tax returns because, as of the date of the filing of this Memorandum, no such returns, or related schedules, have been prepared. Mr. Powlette cannot produce documents he does not have. When the returns are finalized and filed, the returns will be produced pursuant to the Agreed Protective Order in place.

Deficiency #7

Powlette has supplied all of the requested information in his possession, custody or control. Powlette has searched his residence and his computer and has produced all of the

documents responsive to this request.

Deficiency #8

This information is not relevant to whether the property is being used for agritourism purposes. The design of this information is to threaten Mr. Powlette and his potential customers and “scare” them into not using Mr. Powlette’s property for their event(s). The property has been used for agritourism purposes with all of the customers Mr. Powlette has already provided information about. Any information regarding future customers would be duplicative at best. If this information is produced, Defendant would move the Court to amend its Answer and assert a Counterclaim, and contemporaneously seek an Order of the Court requiring the Plaintiff to post a bond to the Court for any prospective loss of business due to Plaintiff’s conduct or use of this information in any way that interferes with Mr. Powlette’s business or contractual relations.

Deficiency #9

Defendant has searched his records and cannot locate any documents which are responsive to this request. In addition, Defendant does not “operate a venue.” There is a barn on his property and the property occasionally hosts an event(s).

Deficiency #11

Defendant is producing a copy of the insurance policy for the property.

Deficiency #12

Defendant has searched his records and cannot locate any documents which are responsive to this request. When the Defendant’s tax returns are complete, some information on the tax return may be related to revenue from farming operations (as Plaintiff has defined “farming”).

Deficiency #13

Defendant has searched his records and cannot locate any documents which are responsive to this request.

II. Discovery Directed to Stoney Hill Rustic Weddings, LLC

Of note, many, if not most, of the discovery requests submitted to Stoney Hill separately were previously submitted to Darren Powlette, which under the Plaintiff's definition of "You" could include Stoney Hill (and vice versa). Nonetheless, Defendant Stoney Hill provided separate responses to Plaintiff's redundant and duplicative requests.

Deficiency #1

Defendant responded to Plaintiff's request specifically identifying the "purpose" of the Company. The Plaintiff never defines what it means by "Nature of the business." Does Plaintiff mean "the overall activities of a company in their quest to create, market, and sell a service or a product?" Does the Plaintiff mean "an activity of interest undertaken by an individual with an intention to earn something out of the activity to offer him primarily the means of living and to some extent create wealth for expanding the said activity or indulging in some other activity?" Or does the Plaintiff mean "the type or general category of business or commerce you are engaged in." These are just a few of the definitions counsel obtained for the question. Each of these could have a different answer. To be sure, the Interrogatory itself begs a narrative response. To adequately and completely describe the "nature of a business" in an Interrogatory response is near impossible. However, in its simplest terms, Defendant is engaged in agritourism.

Deficiency #2

Defendant provided all of the information in its possession, custody or control. The information supplied to the Plaintiff detailed who conducted an event at the property from May 1, 2018 to the present. Admittedly, Defendant did not create a list of customers. However, the documents provided detailed who the customers were and when they had an event at the property. Defendant does not have an address or phone number of the customers. He has no obligation under the rules of discovery to seek out information that is not in his “possession, custody or control.”

Deficiency #3

Powlette identified who his insurance company was in his responses to discovery. He also indicated that he was unsure of who or whether he had an identifiable agent. He did advise Plaintiff that the insurance carrier was State Farm. He also indicated that he is attempting to secure a copy of the insurance policy for the property.

Deficiency #4

Initially, events take place at the property not the barn. The property, which includes the barn, *inter alia*, hosts agritourism activities.

As set forth above, this information is not relevant to whether the property for is used for agritourism purposes. The design of this information is to threaten Mr. Powlette and his potential customers and “scare” them into not using Mr. Powlette’s property for their event(s). The property has been used for agritourism purposes with all of the customers Mr. Powlette has already provided information about. Any information regarding future customers would be duplicative at best. If this information is produced, Defendant would move the Court to amend its Answer and assert a Counterclaim, and contemporaneously seek an Order of the Court

requiring the Plaintiff to post a bond to the Court for any prospective loss of business due to Plaintiff's conduct or use of this information in any way that interferes with Mr. Powlette's business or contractual relations.

Deficiency #5

Although these documents are readily available to the Plaintiff on the Ohio Secretary of State's website, and despite the fact that the request was technically deficient because no articles of incorporation exist for a limited liability company, Powlette provided the Plaintiff with Stoney Hill Rustic Weddings LLC's articles of organization prior to this motion being filed.

Deficiency #6, #7, #8, #11, #13

Stoney Hill has not produced the requested tax returns because, as of the date of the filing of this Memorandum, no such returns, or related schedules, have been prepared. Stoney Hill, as a single member limited liability company, may, or may not, have any obligation to any of the requested tax returns. Stoney Hill cannot produce documents he does not have. If any such returns are finalized and filed, the returns will be produced pursuant to the Agreed Protective Order in place.

Deficiency #9

Defendant provided all of the information in its possession, custody or control. The information supplied to the Plaintiff detailed who conducted an event at the property from May 1, 2018 to the present. Defendant does not have address or phone number of the customers. He has no obligation under the rules of discovery to seek out information that is not in his "possession, custody or control."

Deficiency #10

Stoney Hill has supplied all of the requested information in his possession, custody or

control. Powlette has searched his residence and his computer and has produced all of the documents responsive to this request. If any responsive documents are located, they will be produced at that time.

Deficiency #12

The insurance policy for the property will be produced.

Deficiency #14

Defendant has searched his records and cannot locate any documents which are responsive to this request.

Under the discovery rules, neither Defendant has an obligation to produce any documents or things that are not under his/its direct “possession, custody, or control.” In this case, Plaintiff’s seek a number of documents which it perhaps believes the Defendants should have but which the Defendants do not possess or control.

In Defense Counsel’s review of the requests, the only remaining issues appear to be (1) the insurance policy or policies, which we are seeking and which we will produce, (2) information regarding potential future customers, and possibly (3) the “nature” of Stoney Hill’s business.

Certainly, the insurance policy or policies should not give rise to a motion to compel. This information is tangential (at best) to the substantive issues in the case. If the Court orders the Defendant to produce information or contracts with future customers, of course, the Defendants will produce those documents without delay. However, Defendant will be seeking to amend its Answer and file a Counterclaim, or if necessary, file a separate lawsuit, regarding Plaintiff’s interference with his/its contractual and business relations with those customers. Finally, the nature of Stoney Hill’s business can be thoroughly and accurately ascertained in a

deposition of its member. But, in short, it is engaged in agritourism. Again, this discovery deficiency should not warrant a motion to compel.

For the foregoing reasons, Defendant respectfully requests that this Court overrule Plaintiff's Motion to Compel, or in the alternative, issue an Order of Protection on behalf of the Defendant's which narrowly tailors the documents and evidence that must be produced and the manner in which such documents or evidence can be used by the Plaintiff.

Respectfully Submitted,

/s/ Gregory S. Page

Gregory S. Page (0065264)

GREGORY S. PAGE CO., LPA

7501 Paragon Road

Dayton, OH 45459

Telephone: (937) 434-1908

Facsimile: (937) 436-0008

Email: greg@gsplaw.com

Attorney for Defendants

Certificate of Service

I hereby certify that the foregoing was served upon all Counsel of Record via the Montgomery County Clerk of Courts E-Filing System on this 5th day of January 2021.

/s/ Gregory S. Page

Gregory S. Page (0065264)

GREGORY S. PAGE CO., LPA