

CAUSE NO. 2018-42734

ABG General Construction, Plaintiff,	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
3S Real Estate Investments, LLC – Series 3 Defendant.	§	269th JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO COMPEL PLAINTIFF TO APPEAR AT A DEPOSITION
AND RESPONSE TO PLAINTIFF’S MOTION TO COMPEL**

Defendant, 3S Real Estate Investments, LLC – Series 3, asks the Court to compel Plaintiff, Silvia Victoriano d/b/a ABG General Construction, to appear at a deposition and to deny Plaintiff’s motion to quash.

INTRODUCTION

1. Plaintiff, ABG General Construction, sued Defendant, 3S Real Estate Investments, LLC – Series 3, to foreclose on a mechanic’s lien and a variety of related causes of action.
2. Discovery in this suit is governed by a Level 2 discovery-control plan. The discovery period will end on May 22, 2019.
3. This case is not yet set for trial.
4. Plaintiff has repeatedly refused to fully comply with previous discovery requests and as a result Defendant sent a Notice of Deposition to depose Plaintiff. Instead of providing alternate acceptable dates to the deposition date in that Notice, Plaintiff instead filed a motion to quash. Defendant merely seeks an order from the Court denying Plaintiff’s defective motion to quash and an order compelling Plaintiff’s appearance at the deposition.

BACKGROUND

5. On September 18, 2018, Defendant served Plaintiff with notice to appear at a deposition scheduled on October 4, 2018. *See Exhibit A.*
6. Plaintiff responded by sending an email to counsel for Defendant complaining that acceptable dates were not requested of Plaintiff prior to the issuance of the Notice. *See Exhibit B.*
7. In response, Defendant requested acceptable dates from Plaintiff, but instead of providing alternate, acceptable dates, Plaintiff filed a facially defective motion to quash. *See Id. and Plaintiff’s Motion to Quash.*

ARGUMENT & AUTHORITIES

8. The purpose of discovery is to seek the truth so that disputes may be decided by what facts are revealed, not by what facts are concealed. *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 555 (Tex. 1990). A party may seek discovery of any matter that is relevant to the subject matter and proportional to the needs of the case. *See* Tex. R. Civ. P. 192.3(a), 192.4(b); *In re State Farm Lloyds*, 520 S.W.3d 595, 607 (Tex. 2017). Discovery can include evidence that may be inadmissible as long as it “appears reasonably calculated to lead to the discovery of admissible evidence.” Tex. R. Civ. P. 192.3(a).

9. A court may compel a party to appear at a deposition the party previously refused to attend. Tex. R. Civ. P. 215.1(b)(2)(A). Plaintiff was served with notice to appear at a deposition on October 4, 2018. Plaintiff filed a motion to quash the deposition, instead of providing alternate dates, as requested by Defendant. *See* Exhibit B. Defendant’s notice of deposition provided adequate notice of the deposition date and the motion to quash was unnecessary as an agreement between counsel could have (and still can be) reached to reschedule the noticed deposition date. Therefore, the Court should compel Plaintiff to appear at a deposition on the noticed date.

10. A motion to quash based on an objection to time and place must identify a reasonable time and place for the deposition with which the party or witness will comply. TRCP 192.6(a); *Grass v. Golden*, 153 S.W.3d 659, 662 (Tex.App.—Tyler 2004, orig. proceeding). Plaintiff’s motion to quash fails to provide a reasonable time and place for the deposition. Therefore, the Court should deny Plaintiff’s motion to quash and compel Plaintiff to appear at a deposition on the noticed date.

11. A movant must make a genuine and good faith effort to contact opposing counsel and try to resolve the item in dispute before filing a motion. *See* Judge Dan Hinde’s Court Procedures, 269th District Court, Harris County, Texas, p. 3; TRCP 191.2; and, Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS. After Defendant’s request that he do so, counsel for Plaintiff refused to provide alternate dates for a deposition prior to filing its motion to quash. Further, Plaintiff’s motion to quash fails incorporate a certificate of conference. Therefore, the Court should deny Plaintiff’s motion to quash and compel Plaintiff to appear at a deposition on the noticed date.

EXPENSES OF MOTION

12. Defendant has incurred expenses in preparing and filing this motion to obtain relief. Under Texas Rule of Civil Procedure 215.1(d), {party} is entitled to reasonable expenses incurred in obtaining the order, including attorney fees.

CONCLUSION


13. Defendant fully complied with the Rules in sending a notice of deposition that provided appropriate notice for Plaintiff’s deposition. Plaintiff failed to conference prior to filing its motion and then proceeded to file a motion that is defective in two respects: it neglects to provide a reasonable alternate time and place for the requested deposition and it

does not incorporate a certificate of conference. Therefore, the Court should deny Plaintiff's motion to quash and compel Plaintiff to appear at the deposition as noticed by Defendant.

PRAYER

13. For these reasons, Defendant asks the Court to set this motion for hearing and, after the hearing, to compel Plaintiff to appear at a deposition and order both Plaintiff and Plaintiff's attorney to pay Defendant \$500 for reasonable expenses incurred in filing this motion, including attorney fees.

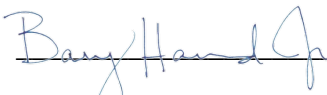
Respectfully submitted,

By: 
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**ATTORNEY FOR DEFENDANT 3S
REAL ESTATE INVESTMENTS,
LLC**

CERTIFICATE OF CONFERENCE

On September 18, 2018, counsel for Defendant responded to an email from counsel for Plaintiff and requested alternate dates for the deposition to which Plaintiff objects. Plaintiff refused to comply with the request and instead unnecessarily filed a motion to quash. Defendant files this motion having attempted to comply with TEX. R. CIV. P. 191.2 and Rule 3.3.6 of the LOCAL RULES OF THE CIVIL TRIAL DIVISION OF THE HARRIS COUNTY DISTRICT COURTS.

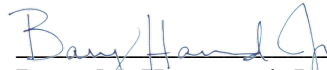

Barry M. Hammond, Jr.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served upon the following as outlined below on this 18th day of September 2018.

Javier Marcos, Jr.
228 Westheimer Road
Houston, Texas 77006
(713) 528-7711 Telephone
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Attorney for Plaintiff

Via e-file



Barry M. Hammond, Jr.