

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

MEMBER WILLIAMS, et al

Plaintiffs,

v.

KISLING, NESTICO & REDICK, LLC,
et al.,

Defendants.

Case No. CV-2016-09-3928

Judge James Brogan

**Dr. Sam Ghoumbrial's Motion to Quash
and Motion for Protective Order re:
Deposition of Julie Ghoumbrial**

Now comes Defendant Sam Ghoumbrial M.D. ("Dr. Ghoumbrial"), by and through undersigned counsel, pursuant to the Ohio Rules of Civil Procedure, and hereby respectfully moves this Honorable Court for a Protective Order and/or Motion to Quash to preclude the deposition of Julie Ghoumbrial from moving forward on April 18, 2019. Specifically, Dr. Ghoumbrial seeks to preclude the deposition of Julie Ghoumbrial from going forward on April 18, 2019, for the same bases asserted by Attorney Pattakos in his objection to Brittany Holsey's deposition:

1. Plaintiffs seek testimony from Ms. Ghoumbrial that is wholly unrelated to issues regarding class certification¹. *See* Brittany Holsey objection to subpoena, attached as Exhibit 1.
2. Any subpoena issued to compel Ms. Ghoumbrial's appearance is untimely, as the discovery deadline for class certification was April, 15, 2019. *See Id.*

¹ Please note Defendants do NOT agree with Attorney Pattakos' position re: the relevance of Ms. Holsey's testimony to class certification issues. In fact, Attorney Pattakos first raised Ms. Holsey's importance as a witness on these issues in September, 2018. Specifically, Attorney Pattakos identified Ms. Holsey as an eyewitness relating to the identify of Ms. Norris's treating physician and the conversations therein re: TENS units, since Ms. Holsey was in the examination room with Ms. Norris and Dr. Gunning (or, Dr. Ghoumbrial, as Ms. Norris improperly states). Moreover, Ms. Holsey was on the telephone with KNR and Ms. Norris when Ms. Norris personally requested contact information for a "loan" company, at which time KNR provided the names of two companies, not just Liberty Capital. This goes directly against Plaintiffs' Class "C" claims. Moreover, Ms. Holsey went with the other recommended company, Oasis Financial, for her loan, contrary to Ms. Norris's testimony it was Liberty Capital for both. Ms. Holsey was also present for Ms. Norris's meeting with the MRS Investigations, Inc. and was on the phone with KNR and Ms. Norris on one or more other occasions discussing issues directly relevant to class certification.

Notably, Dr. Ghoubrial is not moving the Court to preclude the deposition of Julie Ghoubrial in perpetuity. Rather, this Motion requests the Court to issue an Order staying the deposition if and until classes relative to Dr. Ghoubrial are certified. In sum, until a class with allegations against Dr. Ghoubrial is certified, no valid basis exists to depose Ms. Ghoubrial. Critically, Attorney Pattakos and witness Brittany Holsey recently relied on these precise grounds when objecting to and failing to appear at a properly-subpoenaed deposition yesterday (and they apparently are going to ignore the subpoena for Ms. Holsey's attendance tomorrow as well).

Plaintiffs are currently attempting to depose Julie Ghoubrial over objection from undersigned counsel and despite actively contradicting numerous arguments Plaintiffs previously asserted. Specifically, after making numerous empty promises to schedule and carry out the deposition of non-party witness Brittany Holsey, Attorney Pattakos and Ms. Holsey ultimately failed to appear yesterday at the properly-subpoenaed deposition of Ms. Holsey, based on the objection contained in Exhibit 1. Attorney Pattakos did not file a Motion to Quash Ms. Holsey's subpoena. Attorney Pattakos did not file a Motion for Protective Order. Attorney Pattakos simply forwarded a short objection and then instructed Ms. Holsey not to appear. According to Attorney Pattakos, he has advised her not to appear for tomorrow's properly noticed and subpoenaed deposition either.

Given this conduct, Plaintiffs cannot simply turn around and compel Julie Ghoubrial's deposition to go forward, literally days later, when the same objections apply to preclude Ms. Ghoubrial's appearance. Discovery is a two-way street. Plaintiffs' continued roadblocks must be met with equal redress. This is especially true when, as the Court can see by the Motions to Compel re: Thera Reid and Brittany Holsey, Plaintiffs' attorney dangled the carrot of his two clients' availability for months, stating he would produce the witnesses voluntarily and that they could easily fit in due the flexibility in their scheduling, only to then refuse to provide a date and not show when the

depositions were properly noticed for a date certain (and secured with a subpoena as it relates to Ms. Holsey).

Thus, Dr. Ghoumbrial is entitled to an Order quashing the subpoena to Julie Ghoumbrial and a Protective Order precluding the deposition of Julie Ghoumbrial from going forward on April 18, 2019 because the deposition is: (1) untimely, as the discovery deadline has elapsed, and (2) unduly burdensome, as any testimony sought is wholly unrelated to issues of class certification.²

Additionally, Dr. Ghoumbrial requests that the Court issue a Protective Order precluding privileged information protected by the spousal immunity from being disclosed at any deposition of Julie Ghoumbrial, as Dr. Ghoumbrial is asserting spousal immunity and understands that Ms. Ghoumbrial intends to do the same. *See* R.C. 2317.02(D) ("The following persons shall not testify in certain respects: (D) Husband or wife, concerning any communication made by one to the other, or an act done by either in the presence of the other, during coverture, unless the communication was made, or act done, in the known presence or hearing of a third person competent to be a witness; and such rule is the same if the marital relation has ceased to exist").

Overall, no basis exists for Julie Ghoumbrial's deposition to go forward on April 18, 2019. First, the deposition of Julie Ghoumbrial would pertain exclusively to matters unrelated to class certification. Second, the passing of the applicable discovery deadline renders the deposition untimely (an objection Defendants would not have raised but for Plaintiffs' reliance on same to

² To protect a party from "annoyance," "oppression or undue burden or expense," a court may issue a protective order under Civ.R. 26(C) that "discovery not be had" or "discovery may be had only on specified terms and conditions." Civ. R. 26(C). Under Civil Rule 30(D), upon motion, a party may seek to limit the scope and manner of the taking of a deposition as provided in Rule 26(C), and the remedy for objecting to the taking of a deposition is a protective order under Rule 26(C). *Provident Bank v. Spagnola*, 2006 Ohio App. Lexis 513, *15 (8th Dist. 2006); *E.I. DuPont De Nemours & Co., Inc. v. Thompson*, 29 Ohio App.3d 272 (8th Dist. 1986).

renege his promises to produce Ms. Reid and Ms. Holsey). Third, issues of spousal privilege preclude the deposition from going forward.

Furthermore, as stated above, Plaintiffs' counsel and his clients objected and failed to appear for properly noticed depositions of Thera Reid and Ms. Holsey for the very same reasons (other than spousal immunity) at issue with Ms. Ghoubrial. Thus, equity and fairness dictate that Attorney Pattakos be held true to his stated position regarding the proper scope and time for witness depositions.

Defendant's counsel and counsel for KNR have attempted on multiple occasions to resolve this matter with the Court. KNR's counsel even offered, to which the undersigned agrees, to brief the issues with the Court, request a quick ruling from the Court re: the depositions of Julie Ghoubrial, Monique Norris, Thera Reid, and Brittany Holsey, agree to appear within approximately one week after the Court rules (if the Court orders the depositions to go forward before class certification is briefed), and agree the parties can submit supplemental briefs within another week or two after the depositions on the class certification issues, without being subjected to a timeliness objection. Attorney Pattakos refused.

Based on the foregoing, and in the interests of justice, Dr. Ghoubrial respectfully requests this Court to enter a Protective Order and Order quashing the subpoena, precluding the deposition from going forward at this time. Plaintiffs can certainly notice the deposition if a class is certified, and Ms. Ghoubrial, through counsel, has agreed to appear is so noticed.

Respectfully Submitted,

/s/ Bradley J. Barmen

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CERTIFICATE OF SERVICE

The foregoing motion on behalf of Defendant Sam Ghoumbrial, M.D. has been filed on this 17th day of April, 2019 using the Court's electronic filing system and sent via electronic correspondence to all counsel listed below. Notice of this filing will also be sent to all parties by operation of the Court's electronic filing system.

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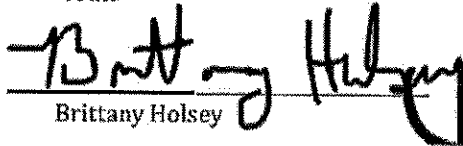
/s/ Bradley J Barmen

Bradley J. Barmen (0076515)

Counsel for Defendant Dr. Sam Ghoubrial

April 16, 2019

I, Brittany Holsey, object to the subpoena that the KNR Defendants served on me on April 11, 2019 in Summit County Case No. CV-2016-0 as unduly burdensome under the circumstances, given the relative unimportance of my testimony to class-certification issues. Further, I understand that the discovery deadline for class-certification is April 15, 2019, and that the subpoena served on me is untimely as a result.


Brittany Holsey

