

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GORDON ROY PARKER, : CIVIL ACTION
Plaintiff, :
 :
v. :
 :
LEARN THE SKILLS CORP., et al., :
Defendants. : No. 03-6936

MEMORANDUM AND ORDER

J. M. KELLY, J.

OCTOBER 25 , 2004

Presently before the Court is Defendant Learn the Skills Corporation's ("Defendant") Motion to Stay Discovery and to Quash Subpoenas ("Motion") (Doc. No. 15) and Plaintiff Gordon Roy Parker's ("Plaintiff") Response in opposition thereto (Doc. No. 18). For the reasons set out below, Defendant's Motion is **DENIED IN PART** and **GRANTED IN PART**.

I. INTRODUCTION

On December 30, 2003 Plaintiff filed the instant action against Defendant, Thomas Geiger, and over one-hundred anonymous defendants who Plaintiff alleges submitted postings to internet message boards that related to Plaintiff. Due to the fact that only the online pseudonyms of many of these defendants were known to Plaintiff, Plaintiff sought to serve several subpoenas duces tecum on the defendants' various internet service providers in order to discover the defendants' identities.¹ In response to

¹ It appears that a total of eight subpoenas were issued by the United States District Courts for the Eastern District of

its receipt of one of Plaintiff's subpoenas, Defendant petitions this Court to quash all of Plaintiff's outstanding subpoenas and to stay discovery until the Court conducts a scheduling conference.²

II. DISCUSSION

A. Jurisdiction

As six of the eight subpoenas that Defendant's Motion seeks this Court to quash were issued by United States District Courts outside the Eastern District of Pennsylvania, we must consider whether the Court's jurisdictional power may be extended to quash a subpoena duces tecum issued by another court located in another jurisdiction. The text of Federal Rule of Civil Procedure 45 provides that a subpoena duces tecum shall be issued "from the court for the district in which the production is to be made." Fed. R. Civ. P. 45(a)(2). It follows, that this Court, which sits in the Eastern District of Pennsylvania, may quash subpoenas issued by the United States District Court for the Eastern District of Pennsylvania. See Fed. R. Civ. P. 45(c)(3)(A).

Virginia, the Middle District of Georgia, the Eastern District of Arkansas, and the Eastern District of Pennsylvania.

² Defendant requests that Plaintiff provide it with "any subpoenas issued already." While Plaintiff opposes Defendant's Motion, Plaintiff does attach copies of subpoenas issued by United States District Courts to his Response papers in an effort to satisfy Defendant's request.

However, in the absence of statutory authorization, this Court does not have the authority to meddle with, enforce, or quash a subpoena issued by another court in another jurisdiction. See In re Seal Case, 141 F.3d 337, 341 (D.C. Cir. 1998) (explaining that “[o]nly the issuing Court has the power to act on its subpoenas . . . and nothing in the rules even hints that any other court may be given the power to quash or enforce them”). This Court, therefore, has no jurisdictional authority to quash the six subpoenas issued by United States District Courts outside the Eastern District of Pennsylvania. Accordingly, Defendant’s request that the Court quash Plaintiff’s subpoenas duces tecum issued by the United States District Courts for the Eastern District of Virginia, the Middle District of Georgia, and the Eastern District of Arkansas is denied.

B. Standing

Having decided the jurisdictional boundaries of this Court’s ability to quash subpoenas, the focus shifts to whether Defendant has standing to challenge the remaining two subpoenas duces tecum issued by the United States District Court for the Eastern District of Pennsylvania. Generally speaking, “a party does not have standing to quash a subpoena served on a third party.” Castle v. Crouse, 2004 U.S. Dist. LEXIS 9950, at *3 (E.D. Pa. May 25, 2004); See also, 9a Charles Alan Wright & Arthur R. Miller,

Federal Practice and Procedure: Civil § 2459 (2d ed. 1987). If, however, a party claims a property right or privilege in the subpoenaed documents, then an exception to this general rule may arise and provide that individual or entity with standing. See id.

The first of the remaining two subpoenas was served on the University of Pennsylvania. (Pl.'s Resp., Ex. H.) Defendant seeks to quash this subpoena without claiming that it has any affiliation with the University of Pennsylvania. Defendant also fails to assert a property right or privilege claim to the subpoenaed documents, which seek the identity of University of Pennsylvania students. Therefore, Defendant is not excepted from the general rule that a party does not have standing to quash a subpoena served on a third party, here, the University of Pennsylvania. Accordingly, Defendant's request that the Court quash the subpoena served on the University of Pennsylvania is denied.

The second subpoena issued by the United States District Court for the Eastern District of Pennsylvania was served on Defendant's registered agent, Business Filings Incorporated, in Plaintiff's effort to "identify all officers and shareholders" of Defendant. (Pl.'s Resp., Ex. I.) Plaintiff admits that Business Filings Incorporated is the registered agent of Defendant and, for that reason, does not contest Defendant's standing to

challenge this subpoena. (Pl.'s Resp., Ex. I.) Relying on the facts before us at this procedural juncture, we agree that Defendant has standing to challenge the subpoena served on its registered agent, Business Filings Incorporated.

C. Motion to Quash

The issue now remains whether the subpoena duces tecum served upon Business Filings Incorporated should be quashed. A subpoena duces tecum is a formal method of discovery governed by the timing mechanisms set forth in Federal Rules of Civil Procedure 45, 34, and 26. See Frilette v. Barnes, 508 F.2d 205, 214 (3d Cir. 1974). Federal Rule of Civil Procedure 26(d) instructs that "a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f)."³ Fed. R. Civ. P. 26(d). Rule 26(d) also affords courts some

³ Rule 26(f) provides, in pertinent part:

The parties shall meet as soon as practicable and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b) meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case, to make or arrange for the disclosures required by subdivision (a)(1), and to develop a proposed discovery plan.

Fed. R. Civ. P. 26(f). This is known as the "meet and confer" requirement of Rule 26(f). See 8 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure: Civil § 2051.1 (2d ed. 1987).

latitude to depart from the "meet and confer" process of Rule 26(f) in special circumstances. See Fed. R. Civ. P. 26(d). However, such latitude should be premised upon a motion by one of the parties to secure expedited discovery or to be exempt from the "meet and confer" requirements. See Fed. R. Civ. P. 26(d) (stating that a court "upon motion" may allow another sequence of discovery); see also, Equidyne Corp. v. Does 1-21, 279 F.Supp. 2d 481, 483 (D. Del. 2003) (granting a "Motion to Exempt Plaintiff From Compliance with the Meet and Confer Requirements of Fed. R. Civ. P. 26(d) and 26(f) for Limited Third Party Discovery" where the identity of the defendants was unknown to Plaintiff due to their internet anonymity).

Here, the parties have not held a Rule 26(f) conference nor have they asserted an inability to hold such a conference. Plaintiff has not filed any motions to exempt himself from the "meet and confer" requirement imposed by Rule 26(f). Therefore, Plaintiff's subpoena duces tecum served on Business Filings Incorporated constitutes a premature discovery request prohibited by Rule 26(d).⁴ Accordingly, Defendant's request that the Court

⁴ Plaintiff's Response attempts to argue that a subpoena duces tecum does not constitute a "discovery" for purposes of Rule 26. Plaintiff presumes that Rule 26(a)(5) defines the term "discovery" for the purposes of Rule 26. Accepting this premise, Plaintiff hampers his argument considerably by pointing out that Rule 26(a)(5) includes in its definition of discovery "the production of documents... under Rule 34 or 45(a)(1)(C)." Fed. R. Civ. P. 26(a)(5). Plaintiff apparently failed to examine Rule 45(a)(1)(C) which describes the

quash the subpoenas duces tecum served upon Business Filings Incorporated is granted.⁵

production of documents through a subpoena duces tecum. See Fed. R. Civ. P. 45(a)(1)(C). Therefore, a subpoena duces tecum is a method of discovery governed by Rule 26's "meet and confer" requirements.

⁵ Consistent with this opinion, Plaintiff may seek to subpoena Business Filings Incorporated at a later date.

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O R D E R

AND NOW, this day of October 2004, in consideration of Defendant Learn the Skills Corporation's ("Defendant") Motion to Stay Discovery and to Quash Subpoenas ("Motion") (Doc. No. 15) and Plaintiff Gordon Roy Parker's ("Plaintiff") Response in opposition thereto (Doc. No. 18), it is **ORDERED** that Defendant's Motion is **DENIED IN PART** and **GRANTED IN PART** to the extent that:

1. Defendant's request to have Plaintiff account for all issued subpoenas relating to the instant litigation is dismissed as moot.
2. Defendant's request to quash the subpoena duces tecum issued upon Business Filings Incorporated is granted.
3. Defendant's request to quash all other outstanding subpoenas duces tecum served at the request of Plaintiff is denied.
4. Defendant's request to stay Discovery until the Court conducts a scheduling conference is denied.
5. Defendant's request to schedule a scheduling conference is denied as premature.

BY THE COURT:

JAMES MCGIRR KELLY, J.