

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

JAMES J. O'CONNOR : CIVIL ACTION
 :
 v. :
 :
 TRANS UNION CORPORATION : NO. 97-4633

MEMORANDUM AND ORDER

HUTTON, J.

May 11, 1998

Presently before this Court is the Motion by Defendant Trans Union Corporation for a Protective Order (Docket No. 6). For the reasons set forth below, the Defendant's Motion is **GRANTED in part and DENIED in part.**

I. BACKGROUND

On July 16, 1997, the plaintiff, James J. O'Connor, filed suit in the United States District Court for the Eastern District of Pennsylvania against the defendant, Trans Union Corporation ("TUC"), under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681, et seq. The plaintiff alleges that TUC produced and published a credit report concerning the plaintiff which incorrectly "included several items of 'adverse' credit information," when, in fact, that information pertained to the plaintiff's son. Pl.'s Mem. in Opp'n at 1. As a result, the plaintiff asserts that he "was denied credit by First Union Bank and has suffered embarrassment, humiliation and distress." Id. at 1-2. The plaintiff contends that TUC failed to "implement

and/or follow . . . reasonable procedures in preparing" the report, in violation of the FCRA. Id. at 2 (quoting Pl.'s Compl. ¶ 16).

In an attempt to obtain evidence demonstrating how TUC violated the FCRA, the plaintiff has sought and received discovery relating to the procedures TUC uses when a consumer claims that TUC mistakenly produced an incorrect credit report. Pl.'s Mot. in Opp'n at 3. TUC labels these discrepancies "mixed files," and performs various tests to determine the accuracy of its reports.

On March 24, 1998, plaintiff's counsel deposed TUC Group Manager Eileen Little ("Little").¹ Little testified that, as part of her duties at TUC, she supervised the Dispute Department and Priority Processing Department. Little further stated that TUC performed tests to ensure that its information concerning credit information is properly matched. Finally, Little explained that Cheryl Jackson ("Jackson") is a Data Analyst who has specific knowledge with regard to how these tests are conducted. Little Dep. at 22, 24.

On March 31, 1998, plaintiff's counsel sent notice of his intent to depose Jackson and Bill Stockdale ("Stockdale"), TUC's Manager of Quality Control who receives all reports

1. The plaintiff contends that "Ms. Little was the only person identified by TUC in its voluntary Section 4:01 Disclosure Statement of September 16, 1997 as having information that bears significantly on TUC's defense." Pl.'s Mot. in Opp'n at 3.

concerning mixed files. Def.'s Mot. at 1; Pl.'s Mot. in Opp'n at 4. In response, the defendant's counsel claimed that the plaintiff was not entitled to depose Stockdale and Jackson. Def.'s Mot. at 2-3. Accordingly, the defendant filed the instant motion on April 15, 1998, seeking a protective order precluding the plaintiff's proposed depositions.

II. DISCUSSION

A. Cheryl Jackson

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." Fed. R. Civ. P. 26(b)(1). In its self-executing disclosure, TUC identified only Little as a person reasonably likely to have information that bears significantly on plaintiff's claim. However, Little stated that Jackson had knowledge of TUC's procedures designed to prevent mistaken results. Accordingly, this Court finds that Jackson has information which may be relevant to the subject matter involved in the pending action.

Although the Jackson deposition is allowable under Rule 26(b), the defendant asserts that it should be precluded under Rule 26(c). "Rule 26(c) authorizes a court to issue a protective order where justice so requires and upon good cause shown. The party seeking a protective order bears the burden of demonstrating 'good cause' required to support such an order."

Trans Pac. Ins. Co. v. Trans-Pac. Ins. Co., 136 F.R.D. 385, 391 (E.D. Pa. 1991). To meet its burden, the defendant states that the deposition of Jackson "will cause annoyance, oppression, undue burden and expense," because her knowledge of material facts, if any, is limited. Def.'s Mot. at 3-4.

As stated above, this Court finds that the plaintiff has clearly shown that Jackson can provide relevant information that can "lead to admissible evidence." McClain v. Mack Trucks, Inc., 85 F.R.D. 53, 57 (E.D. Pa. 1979). The defendant cannot meet its burden of demonstrating good cause with its broad assertions of annoyance, oppression, and undue burden. Accordingly, this Court denies the defendant's motion with respect to Jackson's deposition.

B. Bill Stockdale

This Court will grant the defendant's motion with respect to Stockdale's deposition, but for different reasons than those set forth by the defendant. Rule 45 of the Federal Rules of Civil Procedure was amended in 1991 to clarify witnesses' rights. Fed. R. Civ. P. 45 advisory committee's notes. Together with Rule 26(c), Rule 45(c)(3)(A)(ii) limits a Court's power to compel depositions of out of state witnesses and provides protections to certain witnesses who reside or work more than 100 miles from the place of deposition. As Judge Waldman stated in Trans Pac. Ins. Co.:

If the person to be deposed is a party to the action, or an officer, director, or managing agent of a party to the action, a subpoena is not required and a notice is sufficient to require his attendance. C. Wright & A. Miller, Federal Practice & Procedure §§ 2107, 2112 (1970). If the deponent is not a party and does not consent to attend, then his attendance can be compelled only by a subpoena issued under Fed. R. Civ. P. 45.

A person under subpoena may be required to attend "at any place within 100 miles from the place where that person resides, is employed or transacts business in person, or is served, or at such other convenient place as is fixed by an order of court." Fed. R. Civ. P. 45(d)(2) [currently Fed. R. Civ. P. 45(c)(3)(A)(ii)]. If the deponent is a party, then the discovering party may set the place for deposition wherever he wishes subject to the power of the court to grant a protective order under Rule 26(c)(2) designating a different place. The general rule, however, is that the deposition of a corporate officer or agent should be taken at the corporation's place of business. Salter v. Upjohn Co., 593 F.2d 649, 651 (5th Cir. 1979); Oxford Industries, Inc. v. Luminco, Inc., 1990 WL 269728, 1990 U.S. Dist. LEXIS 17392 (E.D. Pa. Dec. 21, 1990); Farquhar v. Shelden, 116 F.R.D. 70, 72 (E.D. Mich. 1987); Zuckert v. Berkliff Corp., 96 F.R.D. 161, 162 (N.D. Ill. 1982); Mitchell v. American Tobacco Company, 33 F.R.D. 262 ([M.D. Pa.] 1963). See also Mill Run Tours[, Inc.] v. Khashoggi, 124 F.R.D. 547, 550 (S.D.N.Y. 1989); Work v. Bier, 107 F.R.D. 789, 792 n. 4 (D.D.C. 1985) (plaintiffs cannot complain if discovery at distant locations is required). The court has considerable discretion in determining the place of a deposition, may consider the relative expenses of the parties and may order that expenses be paid by the opposing party. Wright & Miller, supra, § 2112.

Trans Pac. Ins. Co., 136 F.R.D. at 392-93.

Under Federal Rules of Civil Procedure 26(c) and 45(c)(3)(A)(ii), this Court cannot require that Stockdale travel to Pennsylvania to be deposed. Stockdale is located in Chicago, Illinois. Def.'s Mem. Ex. 2. Neither party contends that he is an officer, director, or managing agent of the defendant. Thus, this Court concludes that a subpoena is necessary to compel his attendance. See M.F. Bank Restoration Co. v. Elliott, Bray & Riley, No.CIV.A. 92-0049, 1993 WL 512802, at * 2 (E.D. Pa. Dec. 7, 1993) (absent subpoena, only certain categories of corporate personnel are required to be produced without subpoena, including officers, directors, managing agents or other employees with authority to speak for the corporation).

Moreover, although the plaintiff has not subpoenaed Stockdale, an attempt to do so would be futile. Under Rule 45(c)(3)(A)(ii), "the court . . . shall quash or modify the subpoena if it . . . (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person." Fed. R. Civ. P. 45(c)(3)(A)(ii). The notice stated that the deposition would occur in Pennsylvania, clearly more than 100 miles from where Stockdale resides and is employed. Neither party argues that Stockdale regularly transact business in person within 100 miles from the proposed location. Considering Rule 45(c)(3)(A)(ii)'s

limitations, this Court would be forced to quash or modify any subpoena served on the deponents.

Accordingly, the defendant's motion is granted in part and denied in part.

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

JAMES J. O'CONNOR	:	CIVIL ACTION
	:	
v.	:	
	:	
TRANS UNION CORPORATION	:	NO. 97-4633

O R D E R

AND NOW, this 11th day of May, 1998, upon consideration of Defendant Trans Union Corporation's Motion for Protective Order (Docket No. 6), IT IS HEREBY ORDERED that the Defendant's Motion is **GRANTED in part and DENIED in part.**

IT IS FURTHER ORDERED that the Defendant **SHALL** produce Cheryl Jackson for deposition in the offices of plaintiff's counsel within fourteen (14) days of the date of this Order.

BY THE COURT:

HERBERT J. HUTTON, J.