

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

**OLGA NIEVES and KEYRA JACOBS
As Mother and Next of Friend for
K'JANI CONNELL, a Minor,**

2005-CV-0024

Plaintiffs,

v.

KMART CORPORATION,

Defendant.

**TO: Lee J. Rohn, Esq.
Wilfredo A. Geigel, Esq.**

**ORDER DENYING PLAINTIFF'S EMERGENCY MOTION TO COMPEL
DEPOSITIONS**

THIS MATTER came before the Court upon Plaintiff's Motion to Compel Depositions (Docket No. 132). Defendant filed an opposition to said motion by the expedited deadline set by the undersigned. Because of the emergency nature of the motion, this order is issued without necessity of reply.

Plaintiff seeks to compel the depositions of three of Defendant's expert witnesses that were set for January 7, 2009. According to both parties, the time and date of these depositions were agreed to at the insistence of Plaintiff's counsel and based upon her schedule. In exchange for making its experts available at a date convenient for Plaintiff's

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counsel, Defendant conditioned the deposition date upon receipt of the expert witness deposition fees by December 29, 2008. When the deadline had passed and no fees had been advanced, counsel for Defendant informed counsel for Plaintiff that, pursuant to the terms of the agreement, they were canceling the depositions as scheduled.

The Court notes that the notices of deposition were filed and purportedly sent on December 30, 2008 (Docket Nos. 129, 130, and 131) and that the checks made payable to Orlando Fernandez and Haydee Costas are dated December 31, 2008 (copies of which were filed as Attachment #5 to said motion), after the December 29, 2008, deadline. Plaintiff filed her motion on January 5, 2009.

Plaintiff contends that the December 29, 2008, deadline was unreasonable. However, Plaintiff had from December 22, 2008, to December 29, 2008, an entire week, to oppose the condition or attempt to negotiate a different date. The Court finds that by not objecting to the condition of payment of fees by December 29, 2008, Plaintiff agreed to the condition. The Court further finds that Plaintiff's failure to fulfill the condition justified Defendant's cancellation of the depositions.

Accordingly, it is now hereby **ORDERED**:

1. Plaintiff's Emergency Motion to Compel Depositions (Docket No. 132) is **DENIED**.

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2. The depositions of Eduardo Soria, MD; Haydee Costas, MD; and Orlando Fernandez, MD, noticed for January 7, 2009, are **CANCELED**.

ENTER:

Dated: January 6, 2009

_____/s/_____
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE