

related case filed in the Superior Court on June 27, 2016, but waited until the day of the fact discovery deadline, September 2, 2016, to file another motion to extend the deadlines,² which the Court denied on September 23, 2016, but ordered the parties to complete mediation by October 14, 2016, with a report to the Court by October 17, 2016. On October 4, 2016, Plaintiff filed a motion to compel Defendant to attend mediation, but then on October 20, 2016, the parties filed a mediation report indicating that the parties reached a total impasse. Additionally, on October 7, 2016, Plaintiff filed a motion for a two week extension of time to file expert disclosures. On October 28, 2016, Defendant filed a notice of deposition for Samer Salem and Tamer Salem and on the same date Plaintiff filed a Motion for Protective Order and to quash the notices.

STANDARD

Under Fed. R. Civ. P. 26(c)(1), a party may move for a protective order “for good cause ... to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”³ Further, the Court must limit discovery if “the party seeking discovery has had ample opportunity to obtain the information by discovery in the action...[and determine] the importance of the discovery in resolving the issues.” The “party or person from whom discovery is sought may move for a protective order ... on matters relating to a deposition, in the court for the district where the deposition will be taken.”⁴ “When a motion for protective order is related to an oral

² See *Guardian Ins. Co. v. Naser Salem et al.*, ST-16-CV-359.

³ See Super. Ct. R. 39 (In the absence of a local statute, case law, or Superior Court rule addressing the issue adequately, the Federal Rules of Civil Procedure are applicable to the Superior Court); Fed. R. Civ. P. 26(c)(1); see *Molloy v. Indep. Blue Cross*, 56 V.I. 155, 169 n.3 (V.I. 2012) (Recognizing that “[t]he Superior Court Rules make the Federal Rules of Civil Procedure 26 through 37 applicable for the purposes of discovery in all civil cases.”).

⁴ *Id.*

deposition, the parties are not required to confer or file a written certification prior to seeking court intervention.”⁵

ANALYSIS

Plaintiff seeks a protective order quashing notices of depositions for depositions to occur after the discovery deadline on November 10, 2016. Specifically, on October 28, 2016, Defendant issued Notices for depositions of Tamer Salem, a minor, and his father Samer Salem, set to occur in St. Thomas, Virgin Islands.⁶ Here, Plaintiff has properly filed his Motion for a Protective Order in the district where the deposition would be taken under Fed. R. Civ. P. 26(c)(1). Plaintiff argues Defendant had ample time to take these depositions by the September 2, 2016, extended factual deadline, and the depositions would severely prejudice the Plaintiff because the litigation has been ongoing since July 2014, and Plaintiff is eager to try his case.

Defendant contends Plaintiff has failed to show good cause for the protective order and maintains that the deposition of Tamer Salem is crucial to the case because he is the child that allegedly discharged the toy that allegedly caused the injuries to Plaintiff. Defendant first filed a notice for deposition of Tamer Salem in April 2016, but decided not to proceed because Tamer Salem was a minor and Defendant believed the necessary testimony could be elicited from other depositions. Although Defendant indicated his desire to depose Tamer Salem again on June 24,

⁵ See also *Barton v. V.I. Port Auth.*, 2015 V.I. LEXIS 59, *3-5 (V.I. Super. Ct., June 3, 2015). While FED. R. [*4] Civ. P. 26(c)(1) requires the motion include “a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action,” LRCi 37.1 excludes motions related to depositions from the requirement for counsel to meet and confer.

⁶ The Court notes that in Plaintiff’s November 9, 2016, Reply, Plaintiff indicates that Samer Salem and Tamer Salem are both minor children who allegedly shot the BB gun that allegedly injured Plaintiff, and are related to the owners of Defendant, Fashion Source.

2016, allegedly noticing the depositions for both Tamer and Samer Salem for June 28, 2016,⁷ the fact remains that Defendant noticed the current depositions after the discovery deadline without leave of Court.⁸ Defendant explains that on June 28, 2016, although counsel for both parties and the court reporter appeared, the witnesses did not appear due to alleged confusion over a time change, which moved the depositions to the morning. While the witnesses indicated their willingness to appear at the original time, Defendant claims Plaintiff's counsel preferred to move the deposition to another day. However, based on a religious day of mourning the witnesses were unavailable on the new date, after which Defendant's counsel was off-island working remotely from mid-July to August, but attempted to arrange for the deposition of Samer Salem to occur at the end of August.⁹

The Court recognizes that Defendant filed a motion on September 2, 2016, to extend the scheduling order deadlines, in part to complete these depositions, which the Court denied in part because Defendant sought a ninety (90) day extension for all of the dates in the current Scheduling Order. The parties then proceeded to mediation, which was unsuccessful. Defendant maintains that the depositions will have no impact on the current trial schedule for April 2017, and given the length of time, Plaintiff will not be prejudiced by allowing these depositions to proceed on November 10, 2016.

⁷ See Def.'s Nov. 4, 2016, Response, Ex. C, Notices of Depositions for June 28, 2016. The Court notes the notices of depositions are for Samir Salem and Tamir Salem.

⁸ Superior Court Rule 10, allows a party to move for a period to be enlarged, and the Court "for cause shown may at any time in its discretion ... order the period enlarged. ..." "The purpose of Super. Ct. R. 10(a), much like the necessity to meet and confer, is to encourage parties to resolve their own differences without bogging down the limited resources of the Court, and, failing mutual resolution, to alert the Court in a timely matter to any excessive discovery requests or vexatious behavior."

⁹ Def.'s Nov. 4, 2016, Response, Exhibit F, email correspondence between Defendant's Counsel and Plaintiff's Counsel requesting deposition dates.

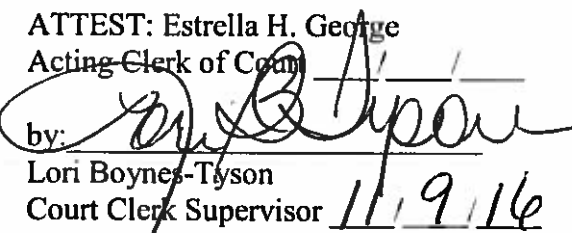
The purpose of a protective order is “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Notably, while the Court does not consider a scheduling order to be a mere suggestion for the parties, upon review of the remaining deadlines from the Court’s April 12, 2016, Order, the dispositive motion deadline of November 25, 2016, with the case to be scheduled for trial by April 2017, it does not appear allowing the depositions will cause any delay or prejudice to either party. Although the Court believes Defendant has had ample opportunity to obtain the information or to schedule the depositions prior to the September 2, 2016, deadline, the Court is unable to find that the individuals will be embarrassed or under an undue burden by allowing the depositions to proceed. Defendant should have requested an enlargement of time before serving the October 28, 2016, notice of deposition, but a protective order is not warranted since both individuals have been on notice for their depositions and since Plaintiff has not previously objected to their depositions on other grounds. Additionally, based on Defendant’s representations to the Court regarding issues of liability hoped to be resolved through these depositions, it is likely the witnesses will be called to testify at trial. Since the other deadlines in the scheduling order will not be effected, the Court finds good cause to grant this limited violation of the discovery deadline.

CONCLUSION

For the forgoing reasons, Plaintiff's October 28, 2016, Motion for Protective Order and Motion to Quash Notices of Deposition on October 28, 2016, is denied. An Order consistent with this Memorandum Opinion shall issue.

Dated: November 9, 2016

ATTEST: Estrella H. George
Acting Clerk of Court

by: 

Lori Boynes-Tyson

Court Clerk Supervisor

11/9/16


HON. MICHAEL C. DUNSTON
JUDGE OF THE SUPERIOR COURT
OF THE VIRGIN ISLANDS