

FOR PUBLICATION

**IN THE SUPERIOR COURT OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**GUERRERO FAMILY TRUST,
CARMEN DELEON GUERRERO
BORJA, JOSE C. TENORIO TRUST,
ESTATE OF SANTIAGO C.
TENORIO, JUAN T. GUERRERO,
JESUS T. GUERRERO, AND AJT
TRUST,**

Plaintiffs,

v.

**KINKI NIPPON TOURIST, LTD.,
SAIPAN HOTEL CORPORATION,
PACIFIC DEVELOPMENT, INC.,
PEDRO J.L. IGITOL, in his official
capacity of Secretary of Saipan Hotel
Corporation, MORGAN STANLEY
JAPAN LIMITED, and MARIANAS
HOLDINGS, LLC,**

Defendants.

CIVIL ACTION NO. 04-0574D

**ORDER GRANTING KNT'S
MOTION TO QUASH AND
DENYING PLAINTIFFS'
MOTION TO COMPEL AND
FOR SANCTIONS**

This matter was last before this Court on November 28, 2006 for Plaintiffs' Com. R. Civ. Proc. 37 motion to compel the 30(b)(6) deposition of Defendant Kinki Nippon Tourist Co., Ltd. ("KNT"), and for monetary sanctions. Also before the Court was KNT's Com. R. Civ. P. 26(c) motion to enter a protective order quashing the Plaintiffs' Com. R. Civ. P. 30(b)(6) notice of deposition and preventing further depositions until the case is at issue, and the Court has entered a comprehensive scheduling order.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. BACKGROUND

This case involves nine causes of action against nine corporate defendants. Document discovery began in December 2004 with Plaintiffs serving their first requests. KNT served discovery in March 2005. SHC and PDI served discovery in March 2006 and July 2006, respectively. To date, the parties have not completed their document review and translation. The case is not yet at issue, and several motions to dismiss and for summary judgment are pending.

In the fall of 2005, Plaintiffs indicated their intent to begin depositions, stating they would notice the deposition of KNT's custodian of records. KNT agreed to hold a deposition of its custodian of records in January 2006. Based on the inadequacy of this deposition, parties agreed that KNT would produce additional documents.

On May 23, 2006, Plaintiffs served a notice for the depositions of fourteen individuals associated with KNT during the times relevant to this lawsuit, set for a two-month period of June 15 to August 16, 2006. The parties agreed to work out a deposition schedule, and Plaintiffs' counsel agreed to provide KNT a Rule 30(b)(6) notice by the end of the week so that KNT could determine whom KNT would produce.

In August 2006, after the filing of the Second Amended Complaint, Plaintiffs received a large number of documents from KNT. Plaintiffs subsequently provided a Rule 30(b)(6) notice on September 12, 2006. Plaintiffs set depositions for October 21 to 31 (the only dates available for the remainder of 2006) at the Embassy in Osaka. KNT objected to the timing and the location of the proposed depositions, as well as their scope. Plaintiffs did not accept KNT's

1 suggestion to hold the depositions in April 2007. Plaintiffs reissued the Rule 30(b)(6) notice a
2 week later, this time setting the depositions in Saipan for the same October dates. KNT
3 continued to object to the timing and the scope of the deposition. KNT indicated that it would
4 not be ready to produce witnesses until November 13, 2006. KNT initially agreed to produce one
5 of its responsive witnesses, Mr. Fukuda, but later moved for a protective order. Plaintiffs moved
6 for a motion to compel.

7
8 **II. APPLICABLE PROCEEDURAL RULES**

9 Commonwealth Rule of Civil Procedure 16(c)(6) provides that the Court has the
10 authority to enter orders regarding “the control and scheduling of discovery, including orders
11 affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37.” Rule 26(c)
12 allows the Court to grant for protective orders, for good cause. Prior to a motion for a protective
13 order, the movant must have, in good faith, conferred or attempted to confer with other affected
14 parties in an effort to resolve the dispute. *Id.*

15
16 “Good cause,” within the meaning of Rule 26(c), contemplates a “particular and specific
17 demonstration of fact, as distinguished from stereotyped and conclusory statements.” *Gulf Oil v.*
18 *Bernard*, 452 U.S. 89, 102 n. 16 (1981). Absent good cause, failure to appear at a deposition
19 violates Rule 37 and entitles the opposing party to compel the deposition and to move for
20 sanctions. *See* Com. R. Civ. Proc. 37(a)(2), 37(a)(4).

21
22 Rule 30(b)(6) provides that the party shall “describe with reasonable particularity the
23
24
25
26

1 matters on which examination is requested.”¹ The purpose of Rule 30(b)(6) is to ensure that a
2 party produces a witness prepared to testify, such that the matters set forth in the notice
3 constitute the minimum, not the maximum, about which deponent must be prepared to speak.
4 *Detoy v. City and County of San Francisco*, 196 F.R.D. 362, 366 (N.D. Cal. 2000).² If the scope
5 of a deposition notice is proper, and the witness cannot answer questions described therein, then
6 the deponent has failed to comply with its obligations under rule and may be subject to
7 sanctions. *King v. Pratt & Whitney, a Div. of United Technologies Corp.*, 161 F.R.D. 475, 476
8 (S.D. Fla.1995). If the examining party asks questions outside scope of matters described in
9 notice, however, and the deponent does not know the answer, then that is the examining party's
10 problem. *Id.*

11 12 **III. ANALYSIS**

13 **A. Appropriate Scope**

14 The Rule 30(b)(6) notice in this case sets forth ten areas for examination, with various
15 sub-parts listed under each. KNT argues that Plaintiffs’ Rule 30(b)(6) notice is overly broad, as
16 it refers to all matters concerning “PDI and SHC Board of Directors and Shareholders Meetings
17 from 1993 to the present,” “SHC’s and PDI’s debts and loan obligations from 1980 to the
18 present,” “KNT’s control and management of PDI and SHC,” and all of KNT’s responses and
19
20

21 ¹ This language is identical to the federal counterpart, and authority construing the federal rules is
22 persuasive. *See, e.g., Ishimatsu v. Royal Crown Insurance Corp.*, 2006 MP 9 ¶ 7 fn3.

23 ² This view seems to prevail over an older view that would limit the scope of a deposition to that which is
24 specifically stated in the notice. As a rule, instructions not to answer questions at a deposition are improper. *See*

[Footnote continued on next page]

1 defenses to Plaintiff's complaints. The language "including but not limited to" follows the
2 quoted items. The words "without limitation" appear throughout the notice.

3 In *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000), the court quashed a Rule
4 30(b)(6) notice with *including but not limited to* language since the "outer limits of the areas of
5 inquiry" could not be determined. *Reed* dealt with a 30(b)(6) notice that listed certain categories
6 but stated that the topics were not exclusive and questions would not be limited to those
7 categories.

8
9 The court in *Tri-State Hosp. Supply Corp. v. U.S.*, 226 F.R.D. 118 (D.D.C. 2005)
10 followed the *Reed* court's example. In that case, plaintiff's notice contained a list of 19 specific
11 categories, each with the phrase "including but not limited to." The court held that, "Listing
12 several categories and stating that the inquiry may extend beyond the enumerated topics defeats
13 the purpose of having any topics at all." *Id.* at 124.

14
15 By virtue of their status as shareholders, Plaintiffs in the instant case have a right to be
16 apprised of the financial status of their corporation (provided they have given the corporation a
17 proper request). In light of the alleged inability of Plaintiffs to view these records, a request for
18 comprehensive financial records is not overbroad. For the purposes of the instant case, however,
19 Plaintiffs are required to fit their requests to the Rule 30(b)(6) format. The Court agrees with
20

21
22 _____
[Footnote continued from previous page]

23 *Paparelli v. Prudential Ins. Co. of America*, 108 F.R.D. 727 (D.Mass.1985).
24
25
26

1 KNT that the words “without limitation” are overbroad, and must be eliminated.³ Further, the
2 requests for “all matters concerning” topics are overbroad. The requests must be limited to those
3 matters identified in the subsections.

4 Plaintiffs argue that the SHC and PDI board and shareholder meetings are relevant to
5 Plaintiffs’ allegations of breach of fiduciary duty and their allegations that KNT violated
6 Commonwealth corporate law and controlled and mismanaged both corporations. The Court
7 agrees that information about the KNT/SHC/PDI loans and KNT’s control and management of
8 PDI and SHC may relate to Plaintiffs’ breach of fiduciary duty claim. “Relevancy is to be
9 broadly construed for discovery purposes and is not limited to the precise issues set out in the
10 pleadings or to the merits of the case.” *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121,
11 124 (M.D.N.C. 1989).

12
13 Nevertheless, discovery is not limitless, and plaintiff’s deposition topics need to be
14 geographically and temporally constrained. *See McDougal v. Goodyear Tire and Rubber*
15 *Company*, 232 F.R.D. 246, 249 (E.D.N.C. 2005). Information on recurring events that occurred
16 years before the present causes of action arose is unlikely to lead to the discovery of admissible
17 evidence. The request in Item 2(a) for information on all matters relating to the preparation of
18 minutes of all PDI and SHC Board of Directors and Shareholder Meetings from 1993 to the
19 present is too broad and must be eliminated. The request for information relating to all SHC
20
21

22 ³ This is particularly so if the items in the notice are considered the “minimum” about which a deponent is
23 expected to testify. *King v. Pratt & Whitney, a Div. of United Technologies Corp.*, 161 F.R.D. 475, 476 (S.D.

24 [Footnote continued on next page]

1 loans since 1980 in 6(a) is also too broad. Finally, the requirement that KNT be prepared to
2 speak on “any of its responses to Plaintiffs’ discovery served in this matter” in Item 10 must be
3 eliminated. Many of the documents supplied by KNT are beyond the scope of the current
4 dispute. KNT should be prepared to speak, however, on its written responses to discovery.

5 **B. Appropriate Time and Location**

6 KNT argues that it needs time to prepare itself for the depositions, and that Plaintiffs
7 should have coordinated with KNT and other defendants prior to issuing a notice. *See Seabrook*
8 *Medical Systems, Inc. v. Baxter Healthcare Corporation*, 164 F.R.D. 232 (S.D. Ohio 1995)
9 (depositions should only be noticed following adequate consultation with all of the parties in a
10 case); MANUAL FOR COMPLEX LITIGATION, FOURTH ED., § 10.21. (counsel in complex cases have
11 a heightened duty to work with other counsel, including to “accommodate professional and
12 personal schedules” of others and to consider the “burdens of extensive travel.”)

13
14
15 The extent to which counsel consulted prior to the notice is disputed. Plaintiffs assert that
16 all defendants were properly notified, while KNT asserts that they were not. A forthcoming
17 scheduling order will resolve these issues.

18 **C. Appropriate Sequence**

19 Parties have not completed reviewing documents produced in discovery. KNT argues
20 that its deponents will not be prepared adequately because they will not have had the opportunity
21

22 _____
[Footnote continued from previous page]

23 Fla.1995).
24
25
26

1 to review all of the applicable documents. The Manual for Complex Litigation advises courts to
2 “manage the litigation so as to avoid unnecessary depositions, limit the number and length of
3 those that are taken, and ensure that the process of taking depositions is as fair and efficient as
4 possible.” MANUAL FOR COMPLEX LITIGATION, FOURTH ED. § 11.45. The Court agrees that
5 allowing time for review and translation of documents would increase the efficiency of taking
6 depositions.

7
8 KNT notes that there are several pending motions that could dispose of many of the
9 issues in this case. If certain motions are granted, there will be no need for depositions to explore
10 facts pertaining to some of the allegations. Plaintiffs counter that the current motions to dismiss
11 have nothing to do with KNT’s 30(b)(6) deposition because they do not challenge any of the
12 core allegations in the complaint. PDI’s motion challenges the standing of PDI’s shareholders
13 (and not SHC’s shareholders) to bring a few of the claims against PDI. SHC’s motion only
14 challenges one of the injunctive relief claims. Nevertheless, if the resolution of a motion will
15 eliminate a party or an issue, the scope of the deposition should be reduced. Holding the
16 deposition in advance would be inefficient.

17 18 **IV. CONCLUSION**

19 The court hereby quashes Plaintiff’s 30(b)(6) notice in its current form for overbreadth.
20 Document discovery shall continue, but depositions shall be not be taken until the outstanding
21 motions have been resolved. At that time, the Court will issue a scheduling order. Following this
22 order, Plaintiffs shall issue a Rule 30(b)(6) notice in accordance with this order.
23
24
25
26

SO ORDERED this 4th day of December, 2006.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

/S/ _____
Juan T. Lizama
Associate Judge, Superior Court