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FOR PUBLICATION



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

JOHN D. ARRIOLA, individually and on)	CIVIL CASE NO. 13-0021
behalf of N.C.A., a minor child, as her)	
guardian and next friend, and)	
ELENITA K. ARRIOLA,)	
)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS'
)	MOTION TO COMPEL DEPOSITION
v.)	
)	
LIN, JIN SONG and LIN'S)	
INVESTMENTS CORPORATION,)	
)	
Defendants.)	

I. INTRODUCTION

THIS MATTER came before the Court on October 24, 2013 at 1:30 p.m. upon the motion of Plaintiff. Plaintiff requests an order compelling the deposition of Mr. Lin, Jin Mu. Jennifer Dockter appeared on behalf of Plaintiffs John D. Arriola, individually and as guardian and next friend of N.C.A, a minor, and Elenita K. Arriola (“Plaintiffs”). Colin Thompson appeared on behalf of Defendants Lin, Jin Song (“Lin”) and Lin’s Investments Corporation (“the Corporation”). Based on a careful review of the filings, oral argument and applicable law Plaintiff’s motion for an order compelling the deposition is granted.

II. PROCEDURAL HISTORY

On July 9, 2012 Defendant Lin was arrested for an incident that allegedly occurred at the LF Market where he works. On January 31, 2013, Plaintiffs brought this civil suit based on the same set of facts as the criminal charges. On April 1, 2013, Plaintiffs served each defendant with a set of interrogatories, request for production of documents and noticed their intent to take the

1 Corporation's deposition on May 6, 2013. On April 11, 2013, Defendant Lin filed a motion to stay
2 the proceedings in the current case in order to protect his rights against self-incrimination. On May
3 1, 2013, Defendants filed a motion for a protective order to limit discovery. On May 15, 2013, the
4 Court ruled on Defendant Lin's motion requesting a stay of proceedings, and granted the stay of
5 proceedings as to Lin but denied the stay of proceedings as to the Corporation. On August 21,
6 2013, the Court denied Defendants' request for a protective order. On August 28, 2013, Plaintiffs
7 filed an Amended Notice of Deposition of Lin, Jin Mu, the President, Treasurer, Director and
8 Shareholder of the Corporation pursuant to Rule 30(b)(1) of the Commonwealth Rules of Civil
9 Procedure. Mr. Lin, Jin Mu did not attend the deposition set for September 6, 2013. On September
10 13, 2013, Plaintiffs filed this motion for an order compelling his deposition.

11 In this motion, Plaintiffs request an order compelling the deposition of Mr. Lin, Jin Mu as
12 an individual in his capacity as President, Treasurer, Director and Shareholder of the Corporation,
13 pursuant to Rule 30(b)(1) of the Commonwealth Rules of Civil Procedure. Defendants oppose the
14 motion, arguing that Mr. Lin, Jin Mu should not be compelled to attend the deposition because he is
15 not a party to the case, does not maintain his principal residence or place of business in the
16 Commonwealth, and was not provided with a round-trip ticket to attend the deposition.

17 **III. LEGAL STANDARD**

18 Under the Commonwealth Rules of Civil Procedure, there are two different ways to obtain
19 information about a corporation through deposition. The first is by selecting the individual to be
20 deposed and deposing that individual pursuant to the procedures of Rule 30(b)(1). The second is by
21 deposing the corporation pursuant to Rule 30(b)(6). Under Rule 30(b)(6), the corporation to be
22 deposed designates persons to testify on its behalf.

23 Subject to the exceptions set forth in Rule 30(h)(1), a person who principally resides outside
24 the Commonwealth is not required to attend a deposition unless the deposing party provides that

1 person with a round-trip economy-class plane ticket to attend the deposition. *See* NMI R. Civ. Pro.
2 30(h)(2). Parties to the litigation, however, are required to attend depositions in the Commonwealth
3 unless there is a stipulation that the deposition may take place at a different location. NMI R. Civ.
4 Pro. 30(h)(1). A party to the litigation “includes individuals, partnerships, associations or
5 corporations. In the case of a party required to make a designation under Rule 30(b)(6), the word
6 ‘party’ shall also include individuals designated to testify on behalf of a party pursuant to that rule.”
7 *Id.*

8 **IV. DISCUSSION**

9 Discovery matters are within the sound discretion of the trial court. *Muna ex rel. Lacy v.*
10 *Commonwealth*, 2007 MP 16 ¶6 (citing *Reyes v. Ebetuer*, 2 NMI 418, 423 (1992)). Rule 30(h) is
11 unique to the Commonwealth and the issue of whether a corporate officer residing outside the
12 Commonwealth must provide his own transportation to a deposition is an issue of first impression.
13 The Amended Notice of Deposition of Lin, Jin Mu, (the “Amended Notice”) filed by Plaintiffs on
14 August 28, 2013, requested Mr. Lin, Jin Mu’s presence at the deposition pursuant to Rule 30(b)(1).
15 By choosing to depose an officer under Rule 30(b)(1), the Plaintiffs request the deposition of a
16 particular individual, Mr. Lin, Jin Mu, who is not a party to this litigation. Plaintiffs cite *Cadent*
17 *Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 628 n.1 (C.D. Cal. 2005) for the proposition that a party
18 corporation must produce officers whose deposition is noticed, rather than subpoenaed, under Rule
19 30(b)(1) of the Federal Rules of Civil Procedure. However, there is nothing in Rule 30(h)(2) of the
20 Commonwealth Rules of Civil Procedure limiting its application to nonparty witnesses who have
21 been subpoenaed.

22 The Court agrees with Defendants’ assessment of the law. Pursuant to Rule 30(h)(2), a non-
23 party who does not maintain a principal residence or place of business in the Commonwealth is not
24 required to attend a deposition unless the deposing party provides a round-trip plane ticket in

1 advance of the deposition. Furthermore, Rule 30(h)(1) clearly states that while a party is required to
2 attend a deposition in the Commonwealth, when that party is a corporation, it is the designee of the
3 corporation who is required to attend. Thus, when an officer or director of a party corporation has
4 neither a principal residence or place of business in the Commonwealth, the deposing party may:
5 (1) specifically identify the individual officer or director as the person to be deposed under Rule
6 30(b)(1) and be responsible for the cost of transporting the officer or director to the
7 Commonwealth; (2) depose the corporation under Rule 30(b)(6) and leave the designation of
8 corporate representative and cost of transportation to the corporation; or (3) pursue both options.
9 The deposing party cannot, however, notice an individual officer's deposition under Rule 30(b)(1)
10 and expect the Defendant corporation to pay for transportation costs.

11 While the Defendants' assessment of Rule 30(h)(2) is correct, there is no evidence before
12 the Court to support Defendants' assertion that Mr. Lin, Jin Mu does not have his principal
13 residence or principal place of business in the Commonwealth.¹ See Def.'s Opp'n at 3. Thus, the
14 Court cannot find that Rule 30(h)(2) applies. The Court does find that, by itself, the fact that Mr.
15 Lin, Jin Mu is an officer and director of the Corporation does not establish that his principal
16 residence or place of business is the Commonwealth.

17 The Court has broad discretion when it comes to settling discovery disputes, and discovery
18 in this case must proceed quickly as a jury trial is scheduled to begin on November 18, 2013. As
19 such, the Court grants Plaintiffs' motion subject to the following conditions:

- 20 1. To secure the desired deposition, Plaintiffs must file an amended notice of
21 deposition clearly stating whether Plaintiffs seek a deposition of the Corporation
22

23 ¹ Defendants note that, in his deposition, Mr. Raymond Falcon testified that he had not seen Mr. Lin, Jin Mu in the
24 Commonwealth since 2000. However, that evidence does not support a finding that Mr. Lin, Jin Mu's residence and
place of business are not in the Commonwealth.

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pursuant to Rule 30(b)(6), a deposition of Mr. Lin, Jin Mu pursuant to Rule 30(b)(1), or both.

- 2. Counsel for the parties shall confer within 48 hours of the filing of the amended deposition notice to ensure that the deposition process moves forward smoothly.
- 3. If the individual deposition of Mr. Lin, Jin Mu is sought pursuant to Rule 30(b)(1), the parties shall either: (1) stipulate to whether or not Mr. Lin, Jin Mu has his principal residence or place of business in the Commonwealth; or (2) if there is a dispute, both parties shall submit supplemental briefs and affidavits to support their positions. In the event of such a dispute, supplemental briefs and affidavits shall be filed no later than 5 calendar days after the date the Plaintiffs file their amended deposition notice.
- 4. If the individual deposition of Mr. Lin, Jin Mu is sought pursuant to Rule 30(b)(1), and the parties stipulate, or the Court finds, that Mr. Lin, Jin Mu does not have a principal residence or place of business in the Commonwealth, Plaintiff must provide a round-trip plane ticket for Mr. Lin, Jin Mu’s deposition pursuant to Rule 30(h)(2).

V. COSTS

Plaintiffs have requested that Defendants pay all expenses incurred in relation to this motion. Pursuant to Rule 37(a)(4), the Court will set a hearing on that matter.

VI. CONCLUSION

Defendants’ Motion for an Order Compelling Deposition is **GRANTED** subject to the conditions above.

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IT IS SO ORDERED this 25th day of October, 2013.

/s/
JOSEPH N. CAMACHO
Associate Judge