

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MEAUX SURFACE PROTECTION, INC.,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-07-0585
	§	
MIKE FOGLEMAN, <i>ET. AL.</i> ,	§	
<i>Defendants.</i>	§	

ORDER

This business dispute is before the court on defendant CleanBlast LLC’s motion to quash third party subpoenas (Dkt. 46), and plaintiff Meaux Surface Protections motion to quash deposition notices (Dkt. 49).¹

CleanBlast’s Motion. CleanBlast moves for the second time to quash twelve subpoenas because they purportedly seek confidential business information.² CleanBlast objects to the relevancy of the material, contests Meaux’s representation that the parties have a confidentiality agreement that covers the third-party document production, and also objects that Meaux has not agreed to allow it to review the documents prior to the productions.

This court previously ruled on February 12, 2008 (Dkt. 45) that documents dated after December 5, 2006 but otherwise responsive were relevant and subject to discovery.

¹ The court notified all counsel on March 11, 2008 that their motions did not contain adequate certificates of conference as required by Local Rule 7.1D. As of April 7, 2008, neither side had filed a certificate of conference or a response to the pending motions. After further notice from the court, Meaux filed a response to CleanBlast’s motion (Dkt. 51), and CleanBlast filed a reply (Dkt. 52). CleanBlast did not file a response to Meaux’s motion.

² The third-party recipients of the subpoenas have not filed motions to quash.

CleanBlast offers no basis for disturbing that ruling. CleanBlast now represents that the third parties are prepared to produce affidavits saying that they did not do business with defendants prior to December 4, 2006.³ Absent extenuating circumstances not present here, Meaux is not required to accept an affidavit as a substitute for permissible discovery. The court's February 12, 2008 ruling on relevancy stands, subject to Meaux's agreement to limit the time frame of its subpoenas to January 1, 2006 to June 30, 2007.⁴

Counsel for CleanBlast does not need Meaux's or this court's consent to review the third-party documents prior to production. It simply must do so timely without obstructing the production. CleanBlast does not have a right to withhold responsive documents from production,⁵ but may review them and designate specific material as confidential if appropriate.

This court previously noted that if specific documents require more protection than afforded by the parties' current agreement, and the issue cannot be resolved between counsel, CleanBlast could seek further protection from the court.⁶ The parties still have not brought any dispute regarding specific confidential documents to the court's attention. The parties have provided no explanation why the documents cannot be produced subject to a

³ Defendants' reply, ¶12.

⁴ Plaintiff's response, ¶5.

⁵ Documents in the possession of unaffiliated third parties are not subject to attorney-client or work product privileges.

⁶ Dkt. 45, n.3.

confidentiality agreement that reasonably restricts access to and use of material designated as confidential and provides a procedure for Meaux to challenge that designation if necessary. Apparently, counsel has simply not attempted to negotiate such an agreement.

CleanBlast's motion to quash the subpoenas in their entirety is denied. The subpoenas shall be returnable on or before 14 days from the date of entry of this order, subject to a mutually acceptable confidentiality agreement.⁷

Meaux's Motion. Meaux seeks protection from depositions noticed by CleanBlast for days (now past) on which plaintiff's counsel and the witnesses were not available. Meaux does not object to the depositions going forward, only to their timing.⁸ The court assumes the depositions did not go forward as noticed and plaintiff's counsel did not incur costs in connection with the canceled depositions.⁹ Thus, Meaux's motion (Dkt. 49) is denied as moot. The parties are ordered to cooperate to schedule depositions for mutually acceptable times before the close of discovery on July 1, 2008.

⁷ Identical subpoenas were originally issued on January 2, 2008. The third parties should have no trouble gathering the responsive material quickly. At least two of the producing parties have already provided documents to plaintiffs. Once a confidentiality agreement is in place, CleanBlast may also designate as confidential any appropriate documents from those parties.

⁸ Meaux does state that it does not believe three witnesses currently living in Hamburg, Germany have relevant information, but that is not the basis for this motion as the witnesses were simply not available on the date unilaterally noticed in any event.

⁹ Defendants did not respond to Meaux's motion, filed 4 days before the first scheduled deposition.

Signed at Houston, Texas on April 15, 2008.



Stephen Wm Smith
United States Magistrate Judge