

IN THE COUNTY COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

Judith Yesha Brill,

Plaintiff,

Case no.: 2012-CC-2725

Division V

vs.

Sonja Mullerin,

Defendant.

RESPONSE TO MOTION TO COMPEL DISCOVERY, AND OBJECTION TO NOTICE OF
DEPOSITION

Defendant Sonja Mullerin, for herself, responds to Plaintiff's "Motion to Compel Discovery" dated July 12, 2012, asks that the motion be denied, and objects to the notice of deposition, as follows:

1. Rule 1.310(a) states in pertinent part:

Leave of court, granted with or without notice, must be obtained ... if the plaintiff seeks to take a deposition within 30 days after service of the process and initial pleading upon any defendant ...

I was served with process and the initial pleading on July 3, 2012. The deposition, set for August 1, 2012, is thus within 30 days of service of process and the initial pleading. Because it may not go forward without leave of court, according to the rule, I do not plan to appear.

2. I was, moreover, never consulted about this setting. I had been trying to get an answer from Mr. Hayter about taking *his* deposition on August 1, in case 2012-SC-1152. Apparently to get out of giving his deposition he unilaterally set *my* deposition in *this* case at that very time. Now, in response to my request to take his deposition on August 3, he issues a "notice of nonavailability" on August 3. He is obstructing my right of discovery in 2012-SC-1152.

3. Orders compelling discovery are not handed out like candy, and Plaintiff has cited no rule or case supporting issuance of such an order. She has the burden. In her complaint, Plaintiff also showed no right to relief. She claims "damages," but did not describe what they were or how I caused them, or even state how much they amount to. The title of the complaint form also says "eviction for non-payment of rent"—but there was NO nonpayment of rent.



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4. Plaintiff's attorney seeks to make up for the deficiencies in his case by embarking on a fishing expedition, via this deposition.

Examination will not be permitted for the purpose of ascertaining whether applicant has a cause of action ...

[A] pretrial examination will not be permitted merely to afford an opportunity for a fishing expedition, and usually it will not be granted merely for the purpose of enabling one party to pry into the case of the opposite party to learn its strength or weakness, or to ascertain how the opposing party will or may establish his or her case...

27 C.J.S. *Discovery* (2009), Sec. 23, at 45-46; *Kirlin v. Green*, 955 So. 2d 28 (Fla. 3d DCA 2007); and see *Sugarmill Woods Civic Ass'n, Inc. v. Southern States Utilities*, 687 So.2d 1346, 1351 (Fla. 1st DCA 1997) (a trial court has authority to prevent discovery which it believes is a mere fishing expedition calculated for harassment).

Plaintiff must have a cause of action before discovery will be granted ... [Where the] insufficiency of the complaint is so obvious and free from doubt ... the parties should not be subject to the expense and trouble of the examination.

Id. at sec. 7, p. 17.

5. Since Plaintiff has no damages, the purpose of this deposition—as well as this case—appears to be to generate fees, and get the court to order me to pay them. The court should not permit itself to be used as an instrument for perpetrating fraud.

6. The fact that I have been a lawyer is irrelevant. However, if the court takes it into consideration, then I claim my *own* fees, at the rate of \$650/hr.

7. Hayter's claim that he "made a good faith effort to resolve this matter" is false. We have been communicating by email, and he did not confer before filing this motion to compel.

WHEREFORE, there being no basis for it in the law or the facts, Plaintiff's motion to compel must be denied.

Dated this 30th day of July, 2012.

BY THE DEFENDANT:

Sonja Mullerin
Sonja Mullerin
P.O. Box 358378
Gainesville, FL 32635
sonja1917@hotmail.com

CERTIFICATE OF SERVICE

I, Sonja Mullerin, hereby certify by my signature above that I have served the foregoing "Response to Motion to Compel Discovery, and Objection to Notice of Deposition" on the Plaintiff by emailing to the following email address this 30th day of July, 2012: John Hayter, Esq., john@johnhayter.com.