

IT IS SO ORDERED.



Dated: July 18, 2007
04:26:08 PM

Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
RANDALL J. HAKE and	*	
MARY ANN HAKE,	*	CASE NUMBER 04-41352
	*	
Debtors.	*	
	*	
*****	*	
	*	
BUCKEYE RETIREMENT CO., LLC.,	*	
LTD.,	*	ADVERSARY NUMBER 06-4153
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
RANDALL J. HAKE and	*	
MARY ANN HAKE,	*	HONORABLE KAY WOODS
	*	
Defendants.	*	

ORDER GRANTING MOTION OF CHRISTOPHER R. HAKE
FOR PROTECTIVE ORDER AND DEEMING DEPOSITION
TO BE CONCLUDED
NOT INTENDED FOR NATIONAL PUBLICATION

The following order is not intended for national publication and carries limited precedential value. The availability of this opinion by any source other than www.ohnbuscourts.gov is not the result of direct submission by this Court. The opinion is

available through electronic citation at www.ohnb.uscourts.gov pursuant to the E-Government Act of 2002 (Pub. L. No. 107-347).

This cause is before the Court on Christopher R. Hake's Motion for Protective Order ("Motion") (Doc. # 108)¹ filed by Christopher R. Hake ("Chris Hake") on July 13, 2007. Chris Hake is not a party to the instant adversary proceeding. The Motion seeks a protective order from this Court to resolve a discovery dispute regarding the resumption of the deposition by Plaintiff Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye") of Chris Hake. Attached to the Motion is Notice of Resumption of Deposition ("Notice"), dated June 11, 2007, which provides that Chris Hake is to be produced for the "resumption and conclusion of his deposition" on June 20, 2007 at 10:00 a.m. at Buckeye's office in Newton Falls, Ohio. Also attached to the Motion are certain pages of a transcript of a Deposition of Christopher R. Hake taken on January 26, 2007 at 10:00 by F. Dean Armstrong, Esq. on behalf of Buckeye in the case ("Transcript"). The Motion seeks an order from this Court deeming the January 26, 2007 deposition to be concluded.

Neither Buckeye nor any other party has filed a response or objection to the Motion.

FED. R. CIV. P. 30, incorporated by FED. R. BANKR. P. 7030, governs Depositions Upon Oral Examination. Rule 30(d) provides in relevant part, as follows:

¹ The Motion was originally filed on July 13, 2007 at Doc. # 760 in debtors Randall J. Hake's and Mary Ann Hake's main case (Case No. 04-41352). On the same date the Motion was filed, the clerks' office docketed a corrective entry, which states, "Corrective Entry: Motion 760 Of Christopher R. Hake for Protective Order Filed In Main Case In Error; to File in Adversary 06-4153." Subsequently, Chris Hake filed the Motion in the adversary proceeding.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours.

Fed. R. Civ. P. 30(d) (West 2006). It is noteworthy that Rule 30 states that a deposition is "limited to one day of seven hours" rather than one day or seven hours. This Rule establishes a limitation rather than an entitlement on the time for a deposition. The limitation in Rule 30 is two-fold. A deposition is limited to "one day" and "seven hours." A deposing party cannot depose a person for twelve hours even if the deposition lasts only one day; neither does the Rule provide that a deposing party can depose a party for seven hours over several days. A deposition is limited to "one day of seven hours" "unless otherwise authorized by the court." Here, Buckeye has not sought any authorization from the Court regarding the deposition of Chris Hake.

The Transcript indicates that the deposition started at 10:00 a.m. on January 26, 2007 (Tr. at 1). The Transcript further indicates that the deposition ended at 4:05 p.m. Indeed, it appears that Mr. Armstrong, on behalf of Buckeye, terminated the deposition.

Mr. Armstrong: Okay. This would be an appropriate breaking point.

(WHEREUPON THE DEPOSITION OF CHRISTOPHER R. HAKE WAS ADJOURNED AT APPROXIMATELY 4:05 PM AND IT WAS AGREED BY AND BETWEEN COUNSEL AND THE PARTIES THAT THE DEPONENT WILL READ AND SIGN THE TRANSCRIPT OF SAID DEPOSITION)

(Tr. at 256, lines 17-23.)

Although the entire Transcript of 256 pages has not been provided to the Court, the relevant portions of the Transcript demonstrate that Chris Hake has been deposed for "one day" of more than six (6) hours. The deponent did not conclude the deposition or indicate that he was unwilling to continue for another hour. Instead, Mr. Armstrong terminated the deposition at 4:05 p.m., which can only be described as the end of the day.

The Court notes that Mr. Armstrong did not state that the deposition was concluded or that he did not have any further questions, but neither did Mr. Armstrong state that he had additional questions for Chris Hake or that he would seek resumption of the deposition. Indeed, had Mr. Armstrong indicated that he had further questions, the deponent and his counsel might have stated that they were available to conclude the deposition that day or that Chris Hake would not make himself available again without an order of the Court. Mr. Armstrong did not provide the deponent with this opportunity because he failed to indicate that Buckeye would seek to resume the deposition.

Based upon the plain language of Rule 30, this Court finds that it is appropriate to deem the January 26, 2007 deposition of Chris Hake to be concluded. As a consequence, Buckeye cannot depose Chris Hake further without an order of this Court. The Motion is granted. Chris Hake does not have to comply with the Notice.

IT IS SO ORDERED.

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