

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

TRUMP OLD POST OFFICE LLC,)	Civil Action No: 2015 CA 006624 B
)	
Plaintiff/Counterclaim Defendant,)	Judge Jennifer A. Di Toro
)	Calendar 1
v.)	
)	Next Event: January 23, 2017
TOPO ATRIO LLC, <i>et al.</i> ,)	Initial Expert Reports
)	
Defendants/Counterclaim Plaintiffs.)	
_____)	

DEFENDANTS/COUNTERCLAIM PLAINTIFFS' MOTION TO COMPEL

Defendants ThinkFoodGroup LLC (“TFG”) and Topo Atrio LLC (collectively “Defendants”) respectfully move the Court, pursuant to Local Civil Rule 37, to compel Plaintiff Trump Old Post Office LLC (“Trump LLC”) to produce Donald J. Trump for a deposition in accordance with Local Civil Rule 30.

Trump LLC is the developer of the Trump Old Post Office Hotel (“Hotel”) in Washington. Defendants had agreed, in a sublease with Trump LLC, to establish a Spanish restaurant in the Hotel. But when Mr. Trump made statements in June and July 2015 that were widely perceived as anti-Hispanic, the risk associated with a Spanish restaurant greatly increased and Defendants terminated the lease. Trump LLC promptly sued Defendants.

Trump LLC had agreed to produce Mr. Trump for a deposition in accordance with the Local Civil Rules in the District of Columbia during the first week of January 2017. Then, suddenly, on Monday, December 5, Trump LLC demanded that the deposition of Mr. Trump be limited to two hours, that Defendants be prohibited from asking Mr. Trump the same questions asked of Mr. Trump in another case that Trump LLC filed, and that the deposition be conducted

in New York City for “security reasons.” It seems dubious that the President-elect cannot be afforded adequate security in the capital of the United States, but Defendants are willing to accommodate that demand. Defendants cannot, however, accept Trump LLC’s attempt to hamstring Defendants’ questioning of the man who directed the bringing of this lawsuit. This is particularly troublesome here, as Defendants’ defense is that Mr. Trump’s statements about Hispanics—and his refusal to moderate those statements at Defendants’ request—breached Trump LLC’s duties to Defendants, who had invested significant resources to establish a Spanish restaurant at the Hotel.

I. FACTUAL BACKGROUND

Trump LLC is a single-purpose entity the great majority of which is owned and controlled by Mr. Trump personally. Trump LLC entered into a Ground Lease with the Government Services Administration to redevelop the Old Post Office into a luxury hotel. On November 19, 2014, Trump LLC entered a Sublease with Defendant Topo Atrio LLC to open a high-end Spanish restaurant in the Hotel. Mr. Trump personally signed the Sublease on behalf of Trump LLC. Defendant TFG guaranteed the Sublease and deposited a \$258,171 letter of credit as security.

On June 16, 2015, when Mr. Trump made his presidential campaign announcement, he made a number of controversial statements about Hispanic immigrants. In part, he said:

The U.S. has become a dumping ground for everybody else’s problems. It’s true. And these aren’t the best and the finest. When Mexico sends its people, they’re not sending their best. . . . They’re sending people that have lots of problems and they’re bringing those problems with us. They’re bringing drugs, they’re bringing crime, they’re rapists, and some I assume are good people. But I speak to border guards and they tell us what we’re getting. And it only makes common sense, it only makes common sense. They’re sending us not the right people. It’s coming from more than Mexico. It’s coming from all over South and Latin

America and it's coming probably, probably, from the Middle East. . . .

These statements were widely perceived as anti-Hispanic, causing many enterprises to terminate their business relationships with Trump entities. Defendants sought moderation of these statements. Instead, on July 6, 2015, Mr. Trump confirmed the tenor of his June 16 statements. With no further moderation in Trump's position, Defendants' Hispanic restaurant in a conspicuous Trump building was a much riskier proposition than that for which they had bargained.

Defendants thus terminated the Sublease. Trump LLC cross-terminated the Sublease. On July 31, 2015, Mr. Trump personally signed two notices drawing down on the letter of credit. And, on August 27, 2015, Trump LLC filed the present lawsuit against Defendants in D.C. Superior Court. On October 7, 2015, Defendants filed their Answer and Counterclaim, explaining that the Sublease, like all contracts, has an implied duty of good faith and fair dealing, and Mr. Trump's statements had the effect of undermining the benefit of the deal that Defendants expected from the Sublease.

Discovery has since proceeded, and the parties have agreed on a date to depose Mr. Trump. In mid-November—after the election—Trump LLC agreed to hold the deposition of Mr. Trump in the first week of January in Washington, DC without any limitations on the deposition. Yet, on Monday, December 5, the Plaintiff abruptly emailed Defendants' counsel to say that Mr. Trump's deposition could only go forward if Defendants agreed that the deposition take place in New York, "in light of the security concerns," that Defendants agree not to ask questions duplicative of questions asked in a separate litigation, and that the deposition not exceed two hours. Exhibit A. In the same email, counsel for Plaintiff unilaterally cancelled the deposition of Donald Trump Jr., which was scheduled for December 7, two days later. *Id.*

Defendants have agreed to reschedule Donald Trump Jr.'s deposition. Moreover, Defendants have agreed to depose Mr. Trump at Trump Tower in New York City, even though Trump LLC brought this lawsuit in the District of Columbia and Defendants have a right to depose Mr. Trump in the District. Defendants, however, cannot agree to Plaintiff's remaining demands. Defendants' efforts to resolve these demands with Plaintiff's counsel have not been successful.

II. ARGUMENT

A. Trump LLC's Attempt to Limit the Deposition to Two Hours Must Be Rejected

There is no basis in the law or facts to limit the deposition of Mr. Trump to two hours. Under the Rules, a party has up to "one day of seven hours" to conduct a deposition. LCR 30(d)(2). The basis for Trump LLC's request to limit the length of Mr. Trump's deposition is that Mr. Trump has a busy schedule due to the fact that he is now the President-elect. However, as ruled by Judge Brian Holeman in the *CZ-National* case earlier this year, this does not excuse Mr. Trump from sitting for a deposition that conforms to the Local Civil Rules:

Mr. Trump personally made statements and decisions that other witnesses are simply not privy to. Further, any claim of mere inconvenience facially lacks merit in light of the fact that *Plaintiff*, a corporation owned by Mr. Trump, *initiated the instant action*. See *Eaton Corp. v. Weeks*, 2014 WL 700466 1, 7 (E.D. Mich. 2014) (permitting deposition of a top executive where the corporate entity employing that executive initiates the subject litigation).

Neither the Rules nor controlling authority create a special exception for individuals that 'may have a busy schedule' The information that Defendants may glean from questioning Mr. Trump is 'necessary to the preparation of its case for trial, including proving its own theories and rebutting those of [Plaintiff].' *Mampe [v. Ayerst Laboratories]*, 548 A.2d 798,] 803-04 [(D.C. 1998)]."

Order at 7-8, *Trump Old Post Office LLC v. CZ-National, LLC* (“*CZ National*”), Civil Action No. 2015 CA 005890 B (Feb. 11, 2016). A two-hour limitation does not guarantee Defendants the ability to conclude the questioning that is necessary to the development of their case and defense. Defendants will endeavor to keep the deposition under the seven hours permitted by the rules, but limiting the deposition to two hours is unreasonable and would amount to an abuse of discretion. *See Bagley v. Yale Univ.*, No. 13-1890, 2015 WL 1724115, at *2 (D. Conn. Apr. 15, 2015) (“In the totality of circumstances, I conclude that it would be an abuse of discretion to limit the deposition to two hours and enforce that limitation. Instead, the Court’s order will be that [the university president’s] deposition may, in case of need, consume the full seven hours authorized by the Rule.”).

B. Trump LLC’s Demand that Defendants’ Deposition Questions Not Be Duplicative of Those Asked in a Deposition in Another Case Must Also Be Rejected

Likewise, there is no basis in the law or facts to permit Trump LLC to impose a condition that Defendants limit their questioning to matters not covered in the deposition of Mr. Trump in *CZ National*—a separate case also brought by Trump LLC but to which Defendants are not parties. A party “may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, . . . including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” LCR 26(b)(1); *see also* LCR 30(a)(1) (“A party may take the deposition of any person, including a party, but deposition upon oral examination.”). “(T)he rules are . . . to be accorded ‘a broad and liberal treatment.’” *Dunn v. Evening Star Newspaper Co.*, 232 A.2d 293, 295 (D.C. Ct. App. 1967) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)).

There is no basis for preventing Defendants from inquiring on topics not covered in a deposition in another case. The Rules provide for no such carve out. It would be unfair for one party to control the course of discovery in such a matter, particularly where the party seeking to do so is the party that filed both lawsuits. Defendants respectfully ask the Court to overrule Plaintiff's demand.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant this Motion and order Trump LLC to produce Mr. Trump for a deposition not to exceed seven hours and to order Trump LLC to require Mr. Trump to answer questions, regardless of whether the same issue or topic was covered in other litigation.

Dated: December 7, 2016

Respectfully submitted,

/s/ Brigida Benitez

Filiberto Agusti (D.C. Bar No. 270058)

Brigida Benitez (D.C. Bar No. 446144)

Andrew J. Sloniewsky (D.C. Bar. No. 440474)

Jessica I. Rothschild (D.C. Bar No. 1009581)

STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
(202) 429-3000
(202) 429-3902 (fax)
fagusti@steptoe.com
bbenitez@steptoe.com

Counsel for Defendants

CERTIFICATION PURSUANT TO RULE 12-I

Undersigned counsel hereby certifies that she conferred with counsel for Plaintiff Trump Old Post Office LLC and that Plaintiff does not consent to the relief sought in this Motion.

Undersigned counsel had a telephonic meet and confer with Rebecca Woods, counsel for Plaintiff, on Wednesday, December 7, 2016, at 10:30 a.m. Counsel for Plaintiff did not agree to withdraw the restrictions for the deposition of Mr. Trump.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing to Motion to Compel was served by electronic mail this 7th day of December 2016 on:

Rebecca Woods, Esq. (D.C. Bar No. 468495)
SEYFARTH SHAW LLP
975 F Street, NW
Washington, D.C. 20004
rwoods@seyfarth.com
Counsel for Plaintiff

/s/ Brigida Benitez
Brigida Benitez

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[PROPOSED] ORDER

Upon consideration of Defendants' Motion to Compel and Plaintiff's opposition thereto,
it is this ____ day of _____, 2016, hereby

ORDERED that the Motion is GRANTED;

ORDERED that Plaintiff must produce Donald J. Trump for a deposition on the date
agreed by the parties in the first week of January at Trump Tower in New York City to last up to
7 hours on-the-record;

ORDERED that Mr. Trump must answer all questions posed regardless of whether they
were asked of him in separate litigation.

Honorable Jennifer A. Di Toro