

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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BIG DADDY GAMES, LLC,

Plaintiff,

v.

REEL SPIN STUDIOS, LLC, *et al.*,

Defendants.

ORDER

12-cv-449-bbc

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On November 28, 2012, this court granted plaintiff's motion to compel defendant George Simonis, a citizen of Australia, to come to the United States to be deposed in Milwaukee, Wisconsin on December 4, 2012. *See* *dk.* 115. Apparently the parties negotiated a postponement to December 28, 2012, *see* *dk.* 119 at 1. Now plaintiff has moved to compel Simonis to provide responses to plaintiff's previously-served requests for written discovery prior to his deposition. *Id.*; *see also* brief and statement in support, *dk.*s. 120-21. Simonis has filed a document that he titles as both an opposition to plaintiff's motion to compel and a motion to quash plaintiff's interrogatories and requests for production of documents. *See* *dk.* 124. Plaintiff is *not* seeking to compel responses to its 40 unanswered requests for admission because it contends that, pursuant to F.R. Civ. Pro. 36(a)(3), Simonis is deemed to have admitted every request because he never responded to any of them. *See* *dk.* 120 at 2, n.1. Simonis did not respond to this contention.

According to plaintiff, on October 18, 2012, it mailed and also e-mailed its 19 interrogatories and 51 requests for production of documents to Simonis in Australia. On November 8, 2012, Simonis responded via e-mail with an omnibus objection to this attempt at discovery, contending that it had not been served in the manner required by the Hague Convention, the number of questions posed exceeded the limit imposed by the Federal Rules of Civil Procedure, plaintiff's inquiries regarding John Jones and "Pokies4fun"<sup>1</sup> were inappropriate because neither was a party to this lawsuit, and plaintiff's discovery requests regarding Simonis's communications with other defendants about a previous lawsuit in this court (Case No. 11-cv-600-bbc) were not relevant

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<sup>1</sup> In its motion, plaintiff states that "Pokies4fun is . . . merely a registered business name under which Simonis sells video amusement games on his website, [www.podies4fun.com](http://www.podies4fun.com)." *Dkt.* 120 at 5.

because that lawsuit is over (those plaintiffs, including the plaintiff in this lawsuit, voluntarily dismissed their complaint on May 2, 2012). Plaintiff claimed that it attempted to meet and confer with Simonis about his objections but that Simonis would not commit to this.

In his December 11, 2012 response, Simonis confirms that he is objecting to answering plaintiff's discovery requests on the ground that they have not been served properly; also they lack a seal and they do not state a time frame for a response. Simonis further contends that any information from the 11-cv-600 lawsuit already is in plaintiff's possession and is "available to the public." Simonis states that most of plaintiff's interrogatories and requests for document production related to John Jones, who is not a party to this lawsuit; Simonis claims that on November 11, 2012, he asked plaintiff's attorneys to answer his requests for information about the instant lawsuit, but they have not; Simonis suspects that the attorneys are messing with him because he is a pro se litigant.

Switching gears, Simonis contends that production of the requested information would impose an undue burden on him. Simonis claims that any documentation he possesses that he has not already disclosed is stored on hard drives dating back to 2004 that are not in computers. Simonis claims that any attempt to recover this data would cost thousands of dollars that he cannot afford and take "a very long time," which he also cannot afford. Simonis asserts that plaintiff engaged in a fraudulent concealment conspiracy with John Jones and Toccata Gaming, International (TGI) which resulted in this lawsuit; Simonis resents that because Jones and TGI are not parties in this suit, "the burden of proof has been pushed towards me." Dkt. 124 at 2.

This court already has held that plaintiff was not required to comply with Hague Convention protocols to obtain discovery in this lawsuit. That order, entered November 28, 2012, was in the file and had been read by Simonis before he filed his December 11, 2012 objection to plaintiff's instant motion to compel. The number of plaintiff's interrogatories is within the limit imposed by F.R. Civ. Pro. 33(a)(1), and there is no numerical limit on the number of requests for production of documents. Discovery request do not need to be presented with a seal, and they need not state the response deadline because the rules already do so: pursuant to F.R. Civ. Pro. 33(b)(2), interrogatory

responses are due within 30 days after being served; pursuant to F.R. Civ. Pro. 34(b)(2)(A), responses to requests for production of documents are due in writing within 30 days after being served.

Next, *Simonis* brought Jones and Pokies4fun into this lawsuit as integral components of his three counterclaims (filed on October 14, 2012 after his default was vacated) for tortious interference with a business partnership. *See* dkt. 103 at 24-25. Plaintiff is entitled to take discovery about Jones and Pokies4fun as long as Simonis's counterclaims remain in this lawsuit.<sup>2</sup> As for the absence of Jones and TGI from this lawsuit as parties, Simonis certainly is entitled to take discovery from them if he thinks it would help establish who is really responsible for what's going on in this dispute. That said, Simonis probably finds this course unattractive as an unwanted and perhaps unaffordable expenditure of his time and money; but this would not a basis to quash plaintiff's discovery demands of Simonis.

Which segues to Simonis's proffer that whatever additional information he has beyond that already in the public record is buried in ancient hard drives. Pursuant to F.R. Civ. Pro. 26(b)(2)(C), this court must balance the cost of obtaining particular information against its likely benefit to the lawsuit. Simonis's terse proffer paints a bleak picture in this regard, but the proffer is not nearly detailed enough for the court to rule in Simonis's favor on this point. At this juncture, the court is going to remove itself as the middleman on this issue: the court will grant plaintiff's motion to compel responses to its discovery requests of Simonis and leave it to Simonis forthwith to meet and confer with plaintiff's attorneys and provide them with complete, specific information about his stored information and the actual cost of retrieving it. If the parties cannot agree on what happens next, then one side or the other had better file a motion with the court immediately so that this dispute can be refereed before Simonis's December 28, 2012 deposition.

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<sup>2</sup> Plaintiff has moved to dismiss Simonis's counterclaims, (dkt. 109). If that motion is granted, then the relevance of Jones and Pokies4fun to this lawsuit might evanesce, it's hard for the court to predict at this juncture.

As a final substantive point, this court tries not to look for trouble, but if Simonis in fact disputes plaintiff's assertion regarding his constructive admissions, he is running out of time and opportunities to say so.

Closing with plaintiff's request for cost-shifting under F.R. Civ. Pro. 37(a)(5), although cost-shifting is virtually automatic, I will reserve a decision until every card in this hand has been dealt and played, including the completion of Simonis's deposition. At that point, the court will be in a better position to determine, under subsection (a)(5)(iii), whether "other circumstances make an award of expenses unjust." Toward this end, now that the court has clarified the rules, Simonis would be best served by putting all of his cards face up on the table.

#### ORDER

IT IS ORDERED that:

(1) Plaintiff's motion to compel defendant George Simonis to respond to plaintiff's first set of interrogatories and requests for production of documents is GRANTED;

(2) Plaintiff's request for cost-shifting on this motion is STAYED until the completion of defendant Simonis's deposition; and

(3) Defendant Simonis's motion to quash plaintiff's discovery requests is DENIED without prejudice.

Entered this 12<sup>th</sup> day of December, 2012.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge