

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

KATHY HOLT WEEDMAN, JACK)
SANDERS HOLT, JANELLE HOLT,)
JUDY BAUMAN and DONNA)
ETHRIDGE,)
)
Plaintiffs,)
)
VS.) NO. 16-464-BC
)
SANDERS MANUFACTURING)
COMPANY, OWEN SANDERS,)
JAMES J. SANDERS III, ERIC O.)
SANDERS, and LOREN G.)
KIRKPATRICK,)
)
Defendants.)

**ORDER: (1) DENYING SANCTIONS; (2) ENTERING
LIMITATION ON EVIDENCE; (3) GRANTING SOME ASPECTS OF
REQUESTED PROTECTIVE ORDER; AND
(4) DENYING MOTION TO COMPEL DEPOSITION RESPONSES**

After watching the audio/video recorded deposition of Defendant Owen Sanders and reading the case law cited by Counsel,¹ the Court finds that the conduct of Attorney Catalano

¹The cases cited by Counsel are as follows: *MMR Constructors*, 2009 WL 10679316 (awarding sanctions after defense counsel continued to behave inappropriately during depositions in direct opposition to the court's order for all counsel to conduct themselves in a professional manner); *Grochocinski v. Mayer Brown Rowe & Maw LLP*, 452 B.R. 676, 686 (N.D. Ill. 2011), *aff'd*, 719 F.3d 785 (7th Cir. 2013) (imposing sanctions when counsel repeatedly insulted opposing counsel, going as far to say, "Could you imagine if [another lawyer] was defending this dep? There would be a footprint on your head right now."); *Landers v. Kevin Gros Offshore, L.L.C.*, No. CIV.A. 08-1293-MVL-S, 2009 WL 2046587 (E.D., La. July 13, 2009) (awarding sanctions against counsel when he (1) repeatedly interrupted the witness, (2) would not let the witness complete his answer and provide an explanation, (3) yelled at the witness and counsel, and (4) asked improper questions); *Carroll v. Jaques Admiralty Law Firm, P.C.*, 110 F.3d 290, 293 (5th Cir. 1997) (affirming an award of sanctions against counsel when he threatened and cursed the deposing attorney);

is not at the level and of the kind to impose sanctions. “The power to sanction should be used sparingly and . . . [i]t should not be used like a sword and used frequently . . . as to do so would diminish the significance when sanctions should be imposed . . .” *Ex rel. Gibbons v. Smart*, No. W2007-01768-COA-R3-CV, 2008 WL 4491729 *13 (Tenn. Ct. App. Oct. 8, 2008) (citing *Alexander v. Jackson Radiology Assoc.*, 156 S.W.3d 11, 15 (Tenn. Ct. App. 2004)).

The Court does find, however, that the exchanges of all Counsel in the Owen Sanders deposition delayed and prolonged the deposition. Under these circumstances, the Court finds that Plaintiffs’ Counsel did not err in halting the deposition. To eliminate these inefficiencies if Plaintiffs’ Counsel determines to resume the deposition, the Court enters the following measures.

1. One source of delay in the Owen Sanders deposition was that he was asked questions which asked for a legal conclusion. Accordingly, it is ORDERED that the evidence to be obtained from Owen Sanders is limited² to exclude questions which require a legal conclusion. Additionally, if a statutory or legal term is used in a question seeking the witness’ layperson understanding or actions with respect to that term, the question shall make

Unique Concepts, Inc. v. Brown, 115 F.R.D. 292, 293 (S.D.N.Y. 1987) (imposing sanctions on counsel for making the following harassing remarks during the deposition, “You are being an obnoxious little twit. Keep your mouth shut”; “You are a very rude and impertinent young man”; “If you want to go down to Judge Pollack and ask for sanctions because of that, go ahead. I would almost agree to make a contribution of cash to you if you would promise to use it to take a course in how to ask questions in a deposition.”).

²A deponent must answer all questions asked to them, “except under very limited circumstances,” *Dargi v. Terminix Intern. Co., L.P.*, 23 S.W.3d 342, 344 (Tenn. Ct. App. 2000), which circumstances include when necessary to enforce a limitation on evidence directed by the court. TENN. R. CIV. P. 30.03.

clear that the answer sought is the witness' layperson understanding of the term, not a legal conclusion.

2. It is ORDERED that Counsel shall not instruct Deponent Owen Sanders not to answer a question except (a) for the circumstances provided in paragraph 1 above of enforcing the court limitation of evidence asking for a legal conclusion and/or (b) to preserve a privilege, and the specific privilege shall be identified on the record by Counsel.

3. It is ORDERED that Attorney Catalano shall proceed in accordance with Tennessee Civil Procedure Rule 30.03 and the Advisory Comments and state objections concisely and using legal terms, and in his objections shall not use sarcasm, humor and/or suggesting an answer to the deponent.

4. Deponent Owen Sanders is ORDERED that he may not object to a question, only Counsel may lodge objections. This Order is without prejudice to Owen Sanders to ask for clarification, state he does not know or understand a question, and/or to identify premises or facts he does not agree with or adopt in a question but to answer the question.

5. If the Owen Sanders deposition is resumed, it shall be completed by November 21, 2017, and the questioning by Plaintiffs' Counsel is limited to an additional three hours, exclusive of breaks. The Plaintiffs' motion to compel Owen Sanders to answer questions asked but not answered in the deposition that is the subject of the Plaintiffs' motion is denied.

6. It is ORDERED that it was proper for the Court to adjudicate the summary judgment motion of the Defendant Company even though the Owen Sanders deposition was suspended because the Plaintiffs did not invoke Tennessee Civil Procedure Rule 56.07 to show essential facts of the summary judgment motion that the Owen Sanders deposition would respond to or provide.

/s/ Ellen Hobbs Lyle

ELLEN HOBBS LYLE
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, email, or efile as applicable to:

William B. Hawkins III
Eric G. Evans
Ronald H. Pursell
Edward Hadley
James Catalano