

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

ECP COMMERCIAL II, LLC,

Plaintiff,

vs.

Case No. 2016-3932-CB

F.A.M.J. INVESTMENT COMPANY,
and TOWN CENTERS DEVELOPMENT
COMPANY, INC.,Defendants.

OPINION AND ORDER

Defendants have filed objections to, and a motion to quash, a subpoena. Plaintiff has filed a response and requests that the motion be denied. The only undecided issue presented in the parties' pleadings is whether the subpoena issued to First American Title Co. ("First American") should be quashed. Specifically, Defendants argue that the subpoena is too broad and seeks irrelevant material. In response, Plaintiff argues that an issue in this case is whether Defendants had a fraudulent intent when it made certain transfers. However, Defendants argue that Plaintiff has failed to show any reason why the subpoena to First American is anything more than a fishing expedition. In response, Plaintiff maintains that Defendants' representatives have made false statements in depositions and that Defendants have given inaccurate answers to other discovery requests. As a result, Plaintiff argues that it is likely that the subpoena in question is likely to lead to the discovery of fraudulent activity.

Discovery of information must be relevant and not privileged, MCR 2.302(B)(1). The rule allows discovery of matter that is relevant to the subject matter involved in the pending action or that appears reasonably calculated to lead to the discovery of admissible evidence. *Bauroth v Hammoud*, 465 Mich 375, 381; 632 NW2d 496 (2001). Michigan has a long established tradition of liberal, open, and far-reaching discovery policy. See *Sucoe v Oakwood Hosp Corp*, 185 Mich App 484; 462 NW2d 780 (1990), *aff'd in part, vacated in part on other grounds*, 439 Mich 919; 479 NW2d 637 (1992). The rules of discovery should be construed in an effort to facilitate trial preparation and to further the ends of justice, and the discovery process should promote the discovery of the facts and circumstances of a controversy, rather than aid in their concealment. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998). However, Michigan's commitment to open and far-reaching discovery does not encompass fishing expeditions. Allowing discovery on the basis of conjecture would amount to allowing an impermissible fishing expedition. *Augustine v Allstate Ins. Co.*, 292 Mich App 408, 419–420; 807 NW2d 77 (2011).

In this matter, Plaintiff argues that the First American subpoena is likely to lead to the discovery of admissible evidence because fraudulent intent is at issue, past incidents of fraudulent activity are relevant to that inquiry, and that fraudulent activity is likely with respect to Defendants' transactions with First American because of inaccurate/false answers given in response to other discovery requests. However, Plaintiff has failed to establish that any of

Defendants' responses to other requests in this case have been false. Moreover, any belief that one or more transactions involving First American were fraudulent appears to be nothing more than conjecture. Consequently, the Court is satisfied that Plaintiff has failed to establish that the First American subpoena is anything more than a fishing expedition. As a result, Defendants' motion for quash the First American subpoena must be granted.

Conclusion

Based upon the reasons set forth above, Defendants' request to quash the subpoena issued to First American Title Co. is GRANTED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: MAY 17 2018

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge