

IN THE CIRCUIT COURT OF THE
18TH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA

SCOTT ELLIS, in his official capacity
as Brevard County Clerk of the Circuit
Court,

CASE NO.: 05-2013-CA-033457

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited
liability company,

Defendant.

MOTION FOR PROTECTIVE ORDER

COMES NOW, Defendant, BLUEGEM, LLC (hereafter "BLUEGEM" or "Defendant"),
by and through undersigned counsel and pursuant to Rule 1.280(c), Fla.R.Civ.P., and files this
Motion for Protective Order, and as grounds thereof states:

1. Plaintiff, SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Court (hereafter "ELLIS" or "Plaintiff"), initiated the subject action by filing a Complaint against Defendant for declaratory relief, breach of contract, and rescission. These causes of action all involve contract(s) between Plaintiff and Defendant for document copying and/or scanning services.
2. The Complaint also contains general allegations of alleged improprieties by BLUEGEM, by BLUEGEM executives and/or employees, and by the former Brevard County Clerk of Circuit Court. These same allegations have been made by the State Attorney's Office in criminal cases brought against certain persons, including Rose Harr and Matt Dupree, who are associated with BLUEGEM.

3. BLUEGEM has denied all allegations alleged in this action, and Ms. Harr and Mr. Dupree have denied all allegations made against them in their pending criminal cases.
4. There is also a federal civil action (CASE NO.:6:14-cv-60-Orl-36) currently pending in the United States District Court, Middle District of Florida. That action was brought by Hewlett-Packard Financial Services Company (hereafter "H-P") against the Brevard County Clerk of the Circuit Court, Ms. Harr, and other named defendants, related to financing H-P provided to the Brevard County Clerk of Circuit Court associated with copying and/or scanning equipment and services.
5. Plaintiff scheduled and noticed the deposition of non-party, Nick Geaney, for March 3 and 4, 2014 at 9:30 A.M. The Amended Notice of Taking Video Deposition is attached hereto as Exhibit "A".
6. The subject deposition of Mr. Geaney was coordinated only between Plaintiff and Defendant herein, and the certificate of service on the deposition notice only mentions Defendant's undersigned counsel. However, Defendant has recently learned that an attorney with the State Attorney's Office and H-P's attorney plan to attend the upcoming deposition of Mr. Geaney.
7. Thus, Defendant seeks the protection of this Court, pursuant to Rule 1.280(c) Fla.R.Civ.P, which states in pertinent part:

Upon motion by a party...and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:
...(2) that the discovery may be had only on specified terms and conditions...(5) that discovery be conducted with no one present except persons designated by the court...

8. Geaney's deposition was only coordinated in and only noticed in this subject action. H-P's attorney and the State Attorney do not have any involvement in this action, nor any standing to participate in this deposition in any way.
9. Such other attorneys should not have the right to attend such deposition. If the State Attorney is allowed to attend Mr. Geaney's deposition, then the criminal defense attorneys representing Harr, Dupree, and others, should be allowed to attend as well; however, the criminal defense attorneys for Harr and Dupree are not available on March 3-4, 2014. Likewise, if H-P's attorney is permitted to attend, attorneys for all the other parties in that federal action should be allowed to attend; however, the deposition was never coordinated with those other attorneys.
10. Pursuant to Rule 1.280(c)(5), this Court has the authority, and should exercise the authority, to order that no one else be present at the deposition of Mr. Geaney other than the representatives and attorneys for the two parties to this action.
11. Applicable caselaw also supports the relief sought herein. In Dardashti v. Singer, 407 So.2d 1098 (Fla. 4th DCA 1982), the Court's holding essentially extended the rule of sequestration to prevent a non-party from attending the deposition of another witness. By natural extension, this ruling requires, or at least allows for, the exclusion of non-parties' attorneys from attending depositions of other witnesses as well.
13. Counsel has conferred with counsel for Plaintiff in this matter; however, Plaintiff's counsel has stated that he is unable to agree to the relief sought by this motion.
14. Plaintiff will not be prejudiced in any way by the Court's granting of this Motion,

as the subject deposition would still move forward as scheduled. Further, based on the foregoing, it is clear that good cause exists for this Court to enter the protective order requested.

WHEREFORE, Defendant, BLUEGEM, LLC, respectfully requests that this Court grant its Motion for Protective Order; order that only the representatives and attorneys for the parties' named in this action may attend the scheduled deposition of Nick Geaney; order that no attorney or other representative of or for the State Attorney's Office or of or for Hewlett-Packard Financial Services Company may attend the scheduled deposition of Nick Geaney; and, order such further and supplemental relief as this Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of February, 2014, a true and correct copy of the foregoing was furnished to Alec Russell, Esquire, and to Curt Jacobus, Esquire, GRAY ROBINSON, P.A., 1795 W. NASA Boulevard, Melbourne, FL 32901 via email at curt.jacobus@gray-robinson.com, alec.russell@gray-robinson.com, and tonimarie.dalessandro@gray-robinson.com.

LAW OFFICES OF DAVID S. COHEN, LC

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IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2013-CA-33457

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court,

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited liability
company,

Defendant.

BLUEGEM, LLC, a Florida limited liability
company,

Counter-Plaintiff,

vs.

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court.

Counter-Defendant.

AMENDED NOTICE OF TAKING VIDEO DEPOSITION

PLEASE TAKE NOTICE that the attorney for the Plaintiff will take the following video-
taped deposition:

Nick Geaney
735 E. Chapin Street
Cadillac, MI 49601

March 3 & 4, 2014
@9:30 am

GrayRobinson, P.A.
1795 W. NASA Blvd.
Melbourne, FL 32901

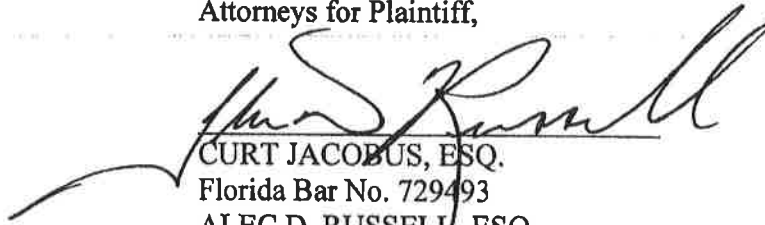
upon oral examination before King Reporting or any other officer authorized to take depositions
in the State of Florida. This oral examination will continue from day to day until completed.
This deposition is being taken for the purpose of discovery, for use at trial or for such other
purposes as are permitted under the applicable and governing rules of Court.

EXHIBIT "A"

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 4th day of February 2014, a true and correct copy of the foregoing has been electronically filed with the Clerk of Court by using the Florida Courts E-Portal which will send a notice of electronic filing to: David S. Cohen, Esq., 5728 Major Blvd., Suite 550, Orlando, FL 32819 at: david@dscohenlaw.com; admin@dscohenlaw.com; cadams@dscohenlaw.com.

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cc: King Reporting