

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

FRED H. GILLHAM, SR. as)
TRUSTEE for the TIMCO)
EMPLOYEE PROFIT SHARING)
PLAN & TRUST, FBO FRED H.)
GILLHAM, SR.,)

Plaintiff,)

v.)

TENNESSEE VALLEY)
AUTHORITY,)

Defendant.)

Case No. 1:09-cv-01006-JDB-egb

**ORDER GRANTING IN PART AND DENYING IN PART TENNESSEE VALLEY
AUTHORITY’S MOTION FOR PROTECTIVE ORDER**

Before the Court is the Motion for Protective Order (D.E. 25) filed by Defendant Tennessee Valley Authority (“TVA”). Plaintiff has filed a response in opposition (D.E. 27). This motion was referred to the Magistrate for determination (D.E. 26). After considering the pleadings, this Court finds that the Motion should be granted in part and denied in part.

BACKGROUND

Since 1997, Plaintiff has owned a 40-year easement granted by TVA to certain real property located in the Yellow Creek Port Industrial Park, Tishomingo County, Mississippi, the subject of this lawsuit. TVA and Plaintiff agreed to an auction sale of this property and the improvements which had been added by Plaintiff. The original sale date was to be July 17, 2007.

However, it was cancelled by TVA to allow a third-party—the Yellow Creek Port Authority—to prepare a bid. Plaintiff protested the cancellation and claimed breach of their agreement.

Following discussions between the parties, a new auction date of December 21, 2007, was established. Prospective bidders were expected to meet certain financial requirements, and to that effect, had to submit a “bid package” to TVA no later than 12:00 noon, December 19, 2007. Plaintiff was the only bidder to meet this requirement and was notified that it was the only qualified bidder. TVA sent a deed to the attorney of the Plaintiff to review.

However, a problem arose when TVA discovered that Dynasteel, another potential bidder, had submitted a bid package. Apparently, it had been misrouted in-house by TVA. Dynasteel was permitted to bid, and with a competitive auction, Plaintiff had to bid \$1.5 million in order to win the auction, \$592,700.00 more than its original bid proposal.

ANALYSIS

The present dispute concerns three issues centering on discovery requests Plaintiff submitted to TVA. The first dispute concerns three notices (Nos. 3, 5 and 7) to take the depositions of TVA corporate representatives. TVA objects that the topics are irrelevant, overly broad and/or otherwise outside the scope of discovery.

Fed. Civ. P. 26 (b) describes the scope of permissible discovery:

Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is **relevant to any party’s claim** or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence (emphasis added).

While TVA's argument correctly notes the efforts in 2000 to narrow the "relevant to the subject matter" standard, the Court finds that Plaintiff's claims are sufficiently encompassing to permit the discovery of the requested witnesses. Here, the objections of TVA pertain to witnesses who, in effect, have knowledge of "current and historical practices" of (a) how TVA land is disposed and/or sold; (b) TVA's relationship, dealings and communications with Yellow Creek Port Authority regarding this land, and (c) similar information regarding Tishomingo County, Mississippi.

The claims as alleged in Plaintiff's Complaint (D.E. 1) include breach of contract and unjust enrichment, and are based squarely on the events surrounding the agreement to auction the land on July 17, 2007, the unilateral cancellation of the sale and the events running up to the December 21, 2007 auction and the inclusion of Dynasteel as a competitive bidder. Plaintiff alleges in the complaint that TVA "unilaterally and without justification cancelled" the first sale and "refused to giveany reason for the unilateral, unjustified cancellation." TVA indicates that the first sale was stopped in order to give the Yellow Creek Port Authority the opportunity to submit a bid, which apparently did not materialize. Further, it is alleged that TVA "attempted to schedule a later date for the Public Auction without the consent" of the Plaintiff, and that because of TVA's "improper and 'strong arm' tactics" over several months, Plaintiff was "improperly forced to acquiesce" to new appraisals of the property and ultimately a new sale date. While much of this language is conclusory, clear evidence of the cancelled sale, the rescheduled sale, the late and questioned appearance of an additional bidder, together with the backdrop of emails to and from significant third-parties, including Tishomingo County, Mississippi and the Yellow Creek Port Authority, which express negative opinions and concerns

over Plaintiff acquiring this property, all provide the necessary Rule 26 (b) relevance to Plaintiff's claims. This part of TVA's Motion is DENIED.

The second request of TVA's Motion for Protective Order is to revise numbers 2, 3, 5, 6 and 7 of Plaintiff's notices to depose to "describe with reasonable particularity" the relevant subjects of the depositions. The Court finds these notices are sufficiently reasonable in their particularity and finds no objection to Defendant responding to the notices as prepared by Plaintiff. Therefore, this part of the motion is also DENIED.

The last issue raised by TVA regards clarification of Rule 30(b)(6) designees not being required to bring documents to their depositions. Plaintiff's counsel indicates that Plaintiff will not contest this issue. This part of the motion is GRANTED.

IT IS SO ORDERED.

s/ Edward G. Bryant
EDWARD G. BRYANT
United States Magistrate Judge

March 18, 2010
Date

ANY OBJECTIONS OR EXCEPTIONS TO THIS ORDER MUST BE FILED WITHIN FOURTEEN (14) DAYS AFTER BEING SERVED WITH A COPY OF THE ORDER. 28 U.S.C. § 636(b)(1)(C). FAILURE TO FILE THEM WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.