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

ELAINE L. CHAO, Secretary of Labor, United States Department of Labor, Plaintiff,	)	
vs.	)	No. 01-2350-MlV
3RE.COM, INC. and GENERAL ELECTRIC CAPITAL CORPORATION, Defendants.	)	

ORDER GRANTING SECRETARY'S MOTION TO COMPEL
COMPLETE DISCOVERY RESPONSES
AND GRANTING SECRETARY'S MOTION FOR AN UPDATED ACCOUNTING

Before the court are two motions filed July 7, 2003 by the Secretary of Labor. The first motion asks the court to compel the defendant General Electric Capital Corporation to provide an updated accounting of funds. The second asks the court to compel GE Capital to respond to the Secretary's interrogatories and requests for document production propounded on or about April 17, 2003. The motions were referred to the United States Magistrate Judge for determination. For the following reasons, both motions are granted.

The underlying case involves a complaint filed May 3, 2001 by the Secretary of Labor against defendant 3RE.com for violations of

the Fair Labor Standards Act (FLSA) concerning employee wages.[1] 3RE.com's assets were identified as "hot goods," and in granting a motion for preliminary injunction, the court permitted 3RE.com to ship goods from its warehouse as long as it deposited with the Clerk of Court money equal to the value of those goods. GE Capital, a commercial lender with security interests in 3RE.com assets, was named a co-defendant. The financial arrangement between GE Capital and 3RE.com permitted GE Capital to directly access and "sweep" 3RE.com accounts receivable in association with its commercial lending to 3RE.com.

On July 6, 2001, the court found FLSA violations, issued a permanent injunction, and ordered the defendants to deposit $222,841.12 with the Clerk of Court so that the taint on 3RE.com's goods could be purged and the goods released untainted into interstate commerce.[2] At that time, the funds already deposited with the Clerk of Court totaled $205,406.82. The court ordered GE Capital to deposit $17,434.30 with the Clerk of Court to make up the difference. GE Capital sought a stay, which was denied. GE Capital appealed to the Sixth Circuit, and on January 23, 2003, the

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[1] The factual background also is detailed in an Order Denying Defendant's Motion for Approval of Supersedeas, or to Stay Proceedings [and] Order Denying Plaintiff's Motion to Modify Injunction, *Chao v. 3RE.com, Inc.*, Civil Case No. 01-2350 (W.D. Tenn. Oct. 22, 2001).

[2] Order [Granting Permanent Injunction], *Chao v. 3RE.com, Inc.*, Civil Case No. 01-2350 (W.D. Tenn. July 6, 2001).

Sixth Circuit reversed the permanent injunction and remanded the case to the district court for further proceedings.

After remand, the Secretary contacted GE Capital, expressed interest in settlement, and then propounded six interrogatories and five requests for the production of documents in an attempt to determine whether GE Capital still had any security interest in the funds held by the Clerk of Court. GE Capital had continued to sweep monies from 3RE.com accounts during the litigation and also had conducted an auction of 3RE.com assets in November of 2001. The last time GE Capital proffered an accounting of its receipts was April 20, 2001. The discovery requests at issue seek itemized lists of 3RE.com assets disposed of by GE Capital; the identities of persons GE Capital hired to dispose of 3RE.com assets; the dollar amount to which GE Capital claims entitlement; the location and identity of all funds received from 3RE.com; the names of 3RE.com employees who GE Capital asserts are exempt from FLSA overtime provisions; and the documents supporting the responses to these inquiries.

GE Capital partially responded to the requests while objecting on grounds of overbreadth and irrelevance. In response to the request for production of documents, GE Capital referred the Secretary to GE Capital's prior court filings and offered to make "documents responsive to [the requests]" available for review at

the offices of its counsel. The Secretary subsequently filed this motion to compel full responses.

The Secretary argues that the information sought is highly relevant because GE Capital no longer is a proper party if its security interest in 3RE.com is satisfied. GE Capital responds that its internal staff changes and a change of employment by its counsel make production unduly burdensome. GE Capital also claims the information is irrelevant because it never has put its standing at issue. Finally, GE Capital points out it previously had informed the Secretary by letter that 3RE.com's outstanding obligation as of June 20, 2003 was $286,538.79.

Information is discoverable if "relevant to the claim or defense of any party" or if it "appears reasonably calculated to lead to the discovery of admissible evidence." FED. R. CIV. P. 26(b)(1). *See also Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978); *Lewis v. ACB Bus. Services, Inc.*, 135 F.3d 389, 402 (6th Cir. 1998). A court need not compel discovery if it determines that the request is "unreasonably cumulative . . . [or] obtainable from some other source that is more convenient, less burdensome, or less expensive . . . [or] the party seeking discovery has had ample opportunity by discovery in the action to obtain the information . . . [or] the burden or expense of the proposed discovery outweighs its likely benefit." FED. R. CIV. P. 26(b)(2)(i)-(iii).

In this case, the court finds GE Capital's objections unjustified. As to the claims of undue burden and expense, generally the party responding to a discovery request bears the cost of compliance. *Rowe Entertainment, Inc. v. The William Morris Agency, Inc.*, 205 F.R.D. 421, 428-29 (S.D.N.Y 2002)(citing *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 358 (1978)). If the burden of responding is truly undue, "a court may protect the responding party . . . by shifting some or all of the costs of production to the requesting party." *Id.*; FED. R. CIV. P. 26(b)(2),(c). Here, however, GE Capital has failed to demonstrate that the cost of an accounting is unduly expensive. Indeed, this information should be readily available to GE.

GE Capital's position that it has never put at issue the propriety of its standing in the action also lacks merit. This is GE Capital's sole basis for resisting an updated accounting and also the basis of its relevance objections to the discovery requests. The information sought could not be more relevant because it goes to prove whether a "case or controversy" exists between the Secretary and GE Capital. Absent a case or controversy, the district court lacks jurisdiction as to GE Capital. *See* U.S. CONST. Art. III. It is immaterial that GE Capital has never put its standing at issue. The question of jurisdiction is one "the court is bound to ask and answer for

itself, even when not otherwise suggested . . . ." *Great Southern Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900). Also, standing need not be placed at issue for the court to compel GE to provide an accounting as a discovery device. *Coleman v. American Red Cross*, 23 F.3d 1091, 1096 (6th Cir. 1994) (noting that "the scope of discovery is within the sound discretion of the trial court" and quoting *United States v. Guy*, 978 F.2d 934, 938 (6th Cir. 1992)). GE Capital's letter indicating the overall dollar amount of its security interest is insufficient. The Secretary seeks substantiation of that figure, and GE Capital has stated no reason the Secretary and the Clerk of Court are not entitled to it.

For the foregoing reasons, both the Secretary's motions are granted. GE Capital is directed to provide an updated accounting and to fully and completely respond to the Secretary's interrogatories and requests for production of documents within fifteen (15) days from the date of this order.

IT IS SO ORDERED this 28th day of July, 2003.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE