

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

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POWER & TELEPHONE SUPPLY	)	
COMPANY, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 03-2217M1V
	)	
SUNTRUST BANKS, INC., SUNTRUST	)	
BANK, SUNTRUST BANK - ATLANTA,	)	
SUNTRUST BANK - NASHVILLE, N.A.,	)	
SUNTRUST EQUITABLE SECURITIES	)	
CORPORATION, and SUNTRUST	)	
CAPITAL MARKETS, INC.,	)	
	)	
Defendants.	)	

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ORDER GRANTING IN PART AND DENYING IN PART  
THE PLAINTIFF'S MOTION TO COMPEL

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Before the court is the February 4, 2004 motion of the plaintiff, Power & Telephone Supply Company, Inc. ("P&T"), pursuant to Federal Rule of Civil Procedure 37, to compel the defendants to respond more fully to P&T's second and third sets of interrogatories and requests for production of documents. P&T also seeks leave to file interrogatories in excess of the agreed limit of fifty (50) interrogatories should the court determine that P&T has exceeded the limit on interrogatories and permission to take an additional seven depositions. Finally, P&T seeks monetary sanctions against the defendants pursuant to Rules 37(d) and 37(a)(4)(A) for incomplete and evasive discovery responses, in

particular for failing to produce the defendants' "Financial Risk Management Marketing and Sales Policies/Procedures manual."

The defendants insist that they have responded fully to the discovery requests at issue or have lodged appropriate objections on the grounds of ambiguity, vagueness, irrelevancy, and excessiveness. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is granted in part and denied in part.

As stated in previous discovery orders, this litigation arises out of several contracts that P&T entered into with SunTrust Bank or its subsidiary between 1998 and 2000 - namely loan agreements for a \$75 million syndicated line of credit with a variable interest rate and two interest rate "SWAP agreements.". The plaintiff has alleged various causes of actions against the defendants including breach of fiduciary duty, breach of contract, violation of the Tennessee Consumer Protection Act, breach of agency relationship, common law negligence, common law misrepresentation, common law suitability, and violation of the Bank Holding Act by tying.

The scheduling order entered in this case limited each party to no more than fifty (50) interrogatories unless authorized by the court and to ten (10) depositions unless additional depositions are authorized by the court upon a showing of good cause. On July 23,

2003, P&T served its first set of interrogatories which included twenty-four numbered interrogatories. P&T's second set of interrogatories, served in November of 2003, included twenty-one numbered interrogatories, and P&T's third set, served in January of 2004, consisted of four additional interrogatories for a total of forty-nine interrogatories. The defendants have refused to answer any of the interrogatories in P&T's second and third sets of interrogatories claiming that P&T has exceeded the numerical limitations for interrogatories in its first set when the discreet subparts of each interrogatory are counted.

The purpose of the limit on interrogatories is not to prevent discovery but to prevent potentially excessive use of this particular discovery device. FED. R. CIV. P. 33 advisory committee's note 1993 Amendments. The court can impose sensible limitations if the burden imposed by the requested interrogatories is too great. See 8A Wright, Miller & Marcus, *Federal Practice and Procedure: Civil 2d* § 2164. "A subpart is discreet when it is logically or factually independent of the question posed by the basic interrogatory." *Security Ins. Co. of Hartford v. Trustmark Ins. Co.*, No. CIV.3:01cv2198(DCD), 2003 WL 22326563, at \*1 (D. Conn., March 7, 2003) (citing *Safeco of Am. v. Rawstron*, 181 F.R.D. 441, 444-45 (C.D. Cal. 1998)). Identifying a person by name, address, phone number, and place of employment is necessary to accurately

identify a person and does not count as four separate interrogatories. See *Security Ins.*, 2003 WL 22326563 at \*1. See also FED. R. CIV. P. 33 advisory committee's note 1993 Amendments (recognizing that a question about communications is to be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each communication).

Although a few of the interrogatories may contain discreet subparts, the court finds, after reviewing the interrogatories in general, that the number of interrogatories propounded by P&T is within the limit established by the court in the scheduling order. Even if P&T may have exceeded the limit, the court further finds that P&T has not excessively abused its right to propound interrogatories and grants P&T leave to exceed the numerical limit of fifty as to its second and third set of interrogatories already served. Accordingly, the defendants' objections to the interrogatories in the second and third set are overruled, and the defendants are ordered to answer these interrogatories.

Rule 30 limits a party to ten depositions as did the scheduling order in this case. To determine if additional depositions should be permitted, the court is to apply the "proportionality" considerations enunciated in Rule 26(b)(2). See 8A Wright & Miller, § 2164. According to Rule 26(b)(2), the number

of depositions should not be extended if the court determines that (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues. FED. R. CIV. P. 26(b)(2).

Here, P&T has failed to identify the proposed additional depositions it desires to take and why the additional depositions are needed. Without this information, the court is unable to determine if additional depositions are justified under the guidelines of Rule 26(b)(2). Accordingly, P&T's request to allow seven additional depositions is denied.

Finally, P&T seeks monetary sanctions because of the defendants' failure to produce a document entitled "Financial Risk Management Marketing and Sale Policies/Procedures manual" in response to Requests Nos. 16 and 19 of P&T's First Set of Interrogatories. P&T also seeks permission to redepose witnesses at defendants' cost in order to question them about the Financial

Risk Management manual.

Request No. 16 asked the defendants to produce "[a]ll documents employed or used internally or externally in regard to selling, marketing or offering the Syndicated Line of Credit, the 1999 Swap or the 2000 Swap." Request No. 19 sought:

All documents that constitute, describe, discuss, mention, refer to or in any way relate to the sale or offering or attempted sales or offerings of investments tied in any way to interest rates for the years 1998-2003 (including swap investments), said documents including, but not limited to budgets or budget projections, marketing materials, actual profits, anticipated profits, sales, increased revenue for the years 1998 through 2003.

(Mem. in Supp. of Pl.'s Mot. to Compel at 7.) The defendants maintain that its Financial Risk Management manual is not responsive to either request. As to Request No. 19, the defendants argue that it seeks documents related to "investments" and that "swaps" are not "investments."

While it may be true that "swaps" are not technically "investments," the defendants' attempt to engage in clever "wordsmithing" and careful parsing of the request is looked upon with disfavor by the court. Request No. 19 clearly seeks documents that discuss sales or offerings of swaps, which the Financial Risk Management manual appears to discuss, and the defendants should have produced the manual in response to Request No. 19. The defendants are ordered to produce the manual and all prior versions

of its Financial Risk Management manual from 1998 to the present version.

Rule 37(a) (4) mandates that if a motion to compel is granted, the court shall require the party whose conduct necessitated the motion to pay the moving party's reasonable expenses incurred in making the motion unless the court finds that the opposing party's nondisclosure was substantially justified. FED. R. CIV. P. 37(a) (4). The court does not find that the defendants' response was substantially justified and therefore awards P&T its reasonable attorney fees incurred in filing the second motion to compel.

P&T's request to redepose witnesses at the defendants' expense is denied. It appears that P&T had the manual in question during the depositions, having obtained it from an outside source, and therefore should have been able to adequately examine the witnesses.

#### CONCLUSION

P&T's motion to compel is granted as to its second and third sets of interrogatories and requests for production of documents and as to its request to exceed the limit of fifty interrogatories. The defendants are ordered to respond fully to the discovery requests within eleven (11) days of the date of entry of this order. The motion is denied as to additional depositions and P&T's request to redepose witnesses to examine them about the Financial

Risk Management manual. P&T's request for sanctions is granted. P&T's counsel is directed to submit an affidavit within eleven days of the date of this order verifying the amount of expenses and attorney fees, including the hourly rate and time spent on each task, incurred by P&T in bringing the present motion.

IT IS SO ORDERED this 15th day of March, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE