

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

DEDDRICK CAMPBELL,)
)
 Plaintiff,)
)
 vs.) No. 03-2789-BV
)
 CCL CUSTOM MANUFACTURING, INC.)
 a Texas corporation,)
 STEVE SHUTLER, TED MELLINGER,)
 ROGER BOSS, and CATHY)
 REGENWETHER)
 Defendants.)

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

Before the court is a motion filed December 1, 2004 by the plaintiff, Deddrick Campbell, to compel the defendant, CCL Custom Manufacturing, Inc. ("CCL"), to produce documents and responses to interrogatories and for sanctions. The motion was referred to the United States Magistrate Judge for determination. For the reasons set forth below, the motion to compel is granted in part and the motion for sanctions is denied.

Campbell initially requested responses to interrogatories and production of documents in July of 2004. CCL represented to Campbell on several occasions that production of the requested information would be forthcoming; however, as of December 1, 2004, CCL had not complied with Campbell's request. Campbell filed a

motion on December 1, 2004 pursuant to Rule 37(a)(2) asking the court to order CCL to produce the requested information. In its response to Campbell's motion, CCL claims that it has forwarded draft answers for the interrogatories to Campbell and that it is in the process of gathering the documents subject to the request. Accepting this assertion as true, the court finds that Campbell's motion to compel answers to its interrogatories is moot.

With respect to the request for documents propounded by Campbell on July 25, 2004, CCL has failed to respond and the time for responding has expired. It appears, therefore, that defendants' motion is well-taken and should be granted. Accordingly, CCL shall provide documents requested by Campbell within ten (10) days of the entry of this order.

Campbell also requests reasonable expenses including attorney fees under Rule 37 of the Federal Rules of Civil Procedure. Rule 37(4)(a) provides that if a motion to compel is granted:

"the court shall . . . require the party or deponent whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's non-disclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust."

Fed. R. Civ. P. 37(a)(4)(A); see also Fed. R. Civ. P. 37(c).

Here, the unfortunate circumstances surrounding CCL's Rule

30(b)(6) witness provides substantial justification for the delay in production of the requested disclosures, particularly in light of the fact that there has been no previous discovery orders in this case. CCL claims that John Ahrendt's availability was critical to the preparation of its discovery responses and that its failure to respond was neither willful or purposeful. From the time that Campbell initially requested discovery until the time the motion to compel was filed, John Ahrendt experienced a death in the family, contended with a serious illness of another family member, and was heavily involved with a Union election concerning CCL. Accordingly, defendant's motion for reasonable expenses, including attorney fees, is denied.

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

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE