

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)
)
Double Tree Lake Estates, LLC,) CASE NO. 14-31467 HCD
DBL Residential, LP, and DBL Golf, LLC) CHAPTER 11 Jointly Administered
)
DEBTORS.)

DECISION and ORDER

At South Bend, Indiana, September 18, 2014.

Before the court is the “Motion to Quash Discovery Requests and Subpoenas Served by Matney” filed on September 9, 2014 by Double Tree Estates, LLC, et al, by counsel Frederick L. Carpenter. *See R. 73.* Creditor Kenneth Matney (“Matney”) served subpoenas and requests for production on the debtors, Friedman & Huey Associates, LLP, Thomas K. Witherow, and Meridian Title on September 4, 2014. (*see id.* Exs. A, C, D, E). Friedman & Huey, Withrow and Meridian Title, the targets (“Targets”) of the subpoenas, are all non-parties to this litigation. These subpoenas fixed the date for production of the requested documents and information as September 19, 2014.

This motion asks the court to resolve a continuing discovery dispute between the debtor, a real estate developer, and one of its creditors. It raises three issues: (1) the discovery requests made by means of the subpoenas and requests for production are untimely; (2) Matney did not issue the discovery requests according to the order of this court or Federal Rule Civil Procedure 45; (3) the discovery requests are irrelevant to the issues involved in this litigation.

Matney has previously served a similar discovery request on Friedman & Huey. The debtors filed a motion to quash this subpoena. *See R. 63.* The court quashed this subpoena because the wrong court issued it. The court also found that Matney failed to provide prior service of the subpoena on the debtor before serving the person to whom the subpoena is directed. *See R. 65.*

Settling discovery disputes is within the sound discretion of the court. *Countryman v. Community Link Federal Credit Union*, 2012 WL 1143572, *2 (N.D. Ind. April 2, 2012) (“As with other discovery issues, deciding whether to grant a motion to quash lies within the sound discretion of the district court.”) The debtors note Matney served the discovery subpoenas on Friedman & Huey before service on debtors’ counsel by some 26 minutes. See R. 73, at ¶¶ 17, 21 and Ex. G. This is a technical violation of Civil Rule 45. As the court previously stated in its order of September 4, 2014, Federal Rule of Civil Procedure 45(a)(4) calls for service of notice and a copy of the subpoena on parties before service on the target of the subpoena. The purpose of this requirement is to enable parties to object or to serve a subpoena for additional materials. See Advisory Committee Note to the 2013 amendments to Rule 45. Considering the debtor’s previous challenge of a similar subpoena, the court finds a 26 minute gap has not prejudiced the debtor in this instance. The debtor has in fact had an opportunity to object to the subpoenas.

The debtors argue that the requested discovery items are completely irrelevant to the issues present in this case, and are designed for purposes of harassment or embarrassment. See R. 73, at ¶ 27. As the movant opposing discovery, the debtor must establish the information sought is not relevant to this case. *Countryman*, 2012 WL 1143572, at*2 (“The party opposing discovery has the burden of showing the discovery is overly broad, unduly burdensome, or not relevant.”) (citations omitted). The debtor points to the fact that Matney seeks financial data, communications, emails, escrow documents, and real estate closing packets going back as far as 2004. While the subpoenas seek a substantial amount of information, the debtors have not clearly shown why or how this information is irrelevant. The court notes the targets of the subpoenas are non-parties. “Ordinarily a party has no standing to seek to quash a subpoena issued to someone who is not a party to the action, unless the objecting party claims some personal right or privilege with regard to the documents sought.” 9A Wright & Miller, *Federal Practice & Procedure*, § 2459 (3rd ed. 2014); see also *Parker v. Four Seasons Hotels, Ltd.*, 291 F.R.D. 181, 186 (N.D. Ill. 2013). The debtor has

neither alleged nor shown the requested discovery seeks privileged or confidential information, or that compliance with the subpoenas will be unduly burdensome.

The debtors also contend that the subpoena compliance date is beyond the discovery completion date previously set by the court. See R. 35. This contention has no merit as the subpoenas were issued and served before the discovery completion date.

The court denies the debtor's Motion to Quash Discovery Requests and Subpoenas Served by Matney.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT