

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

-vs-

Case No. 2:05-cv-306-FtM-29DNF

**STOCK BUILDING SUPPLY, INC.,
formerly known as Carolina Holdings, Inc.,
doing business as Stuart Lumber Co.,**

Defendant.

ORDER

This cause came on for consideration on the following motion(s) filed herein:

**MOTION: MOTION TO TAKE DEPOSITION UNDER FRCP
30(b)(6) OUTSIDE OF THE DISCOVERY PERIOD (Doc.
No. 40)**

FILED: September 19, 2006

**THEREON it is ORDERED that the motion is GRANTED in part and
DENIED in part.**

Plaintiff, the United States Equal Employment Opportunity Commission ("EEOC") is requesting leave to take a deposition of Defendant, Stock Building Supply, Inc.'s ("Stock") corporate represent pursuant to Fed.R.Civ.P. 30(b)(6) after the discovery deadline. Stock objects arguing that the EEOC has failed to show good cause to allow a modification of the Scheduling Order, has failed to show excusable neglect for not setting this deposition during the discovery period, as well as other

arguments such as the EEOC has already received many documents responsive to the areas set forth in the Notice of Deposition. The Court tends to agree with Stock that the EEOC has failed to show good cause as to why the deposition of the corporate representative was not taken during the discovery period. The Case Management and Scheduling Order (Doc. 19) clearly states that motions for the extension of the discovery deadline are disfavored and will not be extended absent a showing of good cause. However, the prejudice to the EEOC by not being able to take the deposition of the corporate representative outweighs any prejudice to Stock. The Court will limit the deposition to categories 4 and 7 in the Notice of Deposition as agreed to by the EEOC previously.

IT IS FURTHER ORDERED:

1) The Court will permit the deposition of a corporate representative of Stock to be taken within thirty (30) days from the date of this Order. The parties shall cooperate in the scheduling of this deposition.

2) The deposition will be limited to categories 4 and 7 as set forth in the Notice of Deposition.

**MOTION: MOTION TO COMPEL PRODUCTION OF
DOCUMENTS (Doc. No. 39)**

FILED: August 18, 2006

THEREON it is ORDERED that the motion is DENIED.

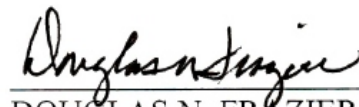
The EEOC is requesting that the Court compel Stock to produce documents in response to a Request for Production of Documents served on July 18, 2006, after 5:00 p.m. Stock responds that it did produce the documents, even though document production was technically after the discovery

deadline. Stock asserts that the EEOC filed its Motion to Compel prior to the response time for the requested document production had run. It appears that Stock is correct, and the EEOC filed its motion prematurely, most likely to preserve its right to file a motion to compel during the discovery period. Stock did respond timely to the production requests. The filing of the Motion to Compel and requiring Stock and the Court to address issues that are essentially moot is a waste of time for both the Court and for counsel for Stock. It is very clear that counsel for the EEOC did not comply with the spirit of Local Rule 3.01(g) when providing a certification that counsel conferred with counsel for Stock prior to filing the Motion to Compel.

IT IS HEREBY FURTHER ORDERED:

Based upon the premature filing of the Motion to Compel, within thirty (30) days from the date of this Order, counsel for the EEOC shall pay all the reasonable attorney's fees incurred by counsel for Stock in filing its Response (Doc. 42).

DONE and ORDERED in Chambers in Ft. Myers, Florida this 12th day of September, 2006.



DOUGLAS N. FRAZIER
UNITED STATES MAGISTRATE JUDGE

Copies:
All Parties of Record