UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

STAR HOSIERY, INC.
Debtor

No. 96-14152
Chapter 11

STAR HOSIERY, INC.

Plaintiff

v

MORGANTON DYEING & FINISHING CORPORATION

Defendant

Adversary Proceeding
No. 96-1194

MEMORANDUM

Appearances: Kyle R. Weems, Weems & House, Chattanooga, Tennessee, Attorney for plaintiff/debtor

Scott N. Brown, Jr., Brown, Dobson, Burnette & Kesler, Chattanooga, Tennessee, Attorney for Defendant

Robert H. Gage, Cox, Gage & Sasser, Morganton, North Carolina, Attorney for Defendant

The parties have engaged in a continuing dispute over discovery by the plaintiff regarding the defendant's counterclaim. The defendant declined to answer the plaintiff's first set of interrogatories and first request for production of documents. The plaintiff filed a motion to compel and a motion for sanctions. The defendant filed a motion for protective order regarding confidential information. The court entered a protective order. The plaintiff withdrew its motion to compel after the defendant answered the first set of interrogatories and the first request for production of documents. In withdrawing the motion to compel, the plaintiff did not admit that the defendant had fully responded; the plaintiff stated that any questions in that regard could be considered with respect to plaintiff's motion for sanctions, which the plaintiff did not withdraw.

The plaintiff then filed a second set of interrogatories and a second request for production of documents, again regarding the defendant's counterclaim. The defendant has filed an objection, and the plaintiff has filed a motion to compel. This memorandum deals with the objection and the motion to compel.

The defendant objects on the ground that the first and second sets of interrogatories total more than the limit of 25 questions, including all "discrete subparts." *Fed. R. Bankr. P.* 7033; *Fed. R. Civ. P.* 33(a). The defendant argues that the 16 questions in the first set of interrogatories actually total 28 when discrete subparts are counted.

The defendant counts 28 questions in the first set of interrogatories by counting subparagraphs in questions 3, 4, 7 and 8. For example, question 3 says:

> Identify all individuals and other entities having knowledge of facts, other information, or

> documents that may be relevant or lead to discovery of relevant information regarding Paragraph 18 of Morganton's Counter-Claim wherein Morganton alleges that:
>
> a. Star delivered the goods late:
>
> b. Star expropriated for its own benefit the hosiery designs and samples submitted to Star by MDF (herein "Morganton") as greige goods customer of Star; and
>
> c. Star expropriated for its own benefit certain knowledge of the transactions between Morganton and retail customers of Morganton, using said knowledge to contact the customers of Morganton and to acquire "retail direct" business from the customers of Morganton, to the damage of Morganton; and
>
> d. Star converted production allocated to previously entered orders from Morganton, and used such production to fill orders acquired from customers of Morganton, to the damage of Morganton.

Since the allegations set out in a-d are distinct or discrete, question 3 actually includes four questions. *Kendall v. GES Exposition Services, Inc.*, —F.R.D.—, 1997 WL 564447 (D. Nev. Aug. 8, 1997); *Ginn v. Gemini, Inc.*, 137 F.R.D. 320 (D. Nev. 1991). The same can be said of questions 4, 7, and 8. Thus, they could be counted as asking 16 questions instead of 4.

The defendant, however, can not have missed the obvious duplication in the questions. Question 3b is exactly the same as question 4a. Question 3c equals question 4b. Question 3d equals question 4c. Thus, questions 3 and 4 can be separated into five distinct questions: 3a, 3b, 3c, 3d and 4d. Questions 7 and 8 follow the same pattern. They

make up questions 7a, 7b, 7c, 7d and 8d. Eliminating the duplicates means that questions 3, 4, 7 and 8 make a total of 10 questions.

The defendant might argue that the duplicates should be counted, since the plaintiff failed to avoid the duplication. The duplication was obvious, however, so that the defendant could answer each duplicate question simply by referring to its earlier answer. Thus, the first set of interrogatories included 22 questions.

The second set of interrogatories includes 8 questions. As a result, the plaintiff's interrogatories exceed the limit of 25 questions. (This is true without any decision as to whether any of the questions in the second set of interrogatories include discrete subparts.)

A party can ask the court for leave to ask more than 25 questions. The plaintiff has not asked the court to allow more than 25 questions, but nothing in the rules prevents the court from granting leave on its own motion. "Such leave is normally given upon a modest showing that the information sought in the additional interrogatories is relevant, not easily available through another discovery technique, and not unduly burdensome or oppressive. This is consistent with the Court's desire to minimize redundancy in discovery, to limit the use of discovery as a tactical weapon, and to encourage lawyers to think through their discovery activities in advance so that full advantage is taken of each set of interrogatories." *Ginn v. Gemini, Inc.*, 137 F.R.D. 320, note 2 (D. Nev. 1991).

With regard to whether the court should grant leave, the court must consider the defendant's other objection to some of the interrogatories in the second set. The

defendant asserts that they seek information already provided in response to the first set of interrogatories. Question 1 in the second set of interrogatories can be used to illustrate the defendant's argument. Question 1 provides:

> With regard to the allegation in Paragraph 18 of Morganton's counter claim that "Star delivered the goods late," identify for each Morganton purchase order to Star which Morganton contends was delivered late, by:
>
> A. Purchase order number.
>
> B. Purchase order date.
>
> C. Shipping date.
>
> D. Cancellation date.
>
> E. Actual delivery date.

Compare this question to question 7a in the first set of interrogatories. It asked the defendant to identify all documents that may be relevant to or may lead to the discovery of relevant information regarding the defendant's allegation that Star delivered the goods late. The answers to question 7a in the first set of interrogatories should have identified the relevant purchase orders.

Question 1 in the second set of interrogatories asks the defendant to refine the identification. This suggests good hindsight by the plaintiff; it wishes the first set of interrogatories had asked question 1 in the second set instead of question 7a.

Questions 3, 4 and 5 in the second set of interrogatories follow the same pattern. They ask the defendant to give more detailed identifications of documents that should have been identified in answers to the first set of interrogatories.

The 25 question limit implies that a party may get only one shot at the target, and if it misses, then it must rely on some other method of discovery. But this is only an implication, and the court does not agree with it. A follow-up interrogatory may still be the most efficient method of discovery *for both parties*. Of course, the court should not allow follow-up questions to the point that answering them will unduly burden the opposing party.

Furthermore, the court must note that some of the information requested in these questions may not have been revealed in the answers to the first set of interrogatories. Consider again question 1 in the second set of interrogatories. The documents produced in response to the first interrogatories may not have revealed the shipping date, cancellation date, or actual delivery date. The same is true with regard to information requested in questions 3, 4 and 5.

In the second set of interrogatories, question 2 is new. Question 6 asks the defendant to identify the business information that plaintiff allegedly obtained from defendant in an unlawful, unfair, or deceptive manner. Questions 4d and 8d in the first set of interrogatories asked for the identity of persons and documents relating to the same allegation. The questions are not exactly the same. Questions 7 and 8 in the second set of interrogatories relate to information furnished by the defendant in Rule 26 disclosures. The court can not determine from the record whether these questions are repetitious or whether answering would unduly burden the defendant. The defendant has not made any specific argument regarding them. *Fed. R. Bankr. P.* 7033; *Fed. R. Civ. P.* 33(b)(4).

The court will require the defendant to answer all the questions in the second set of interrogatories. Interrogatories appear to be the most efficient method of obtaining

the information. The discovery sought is not "unreasonably cumulative or duplicative." Indeed, having already identified the documents once, the defendant should not be unduly burdened by being required to answer the questions that its asserts to be duplicative. With regard to all the questions, the court does not see any substantial burden on the defendant. Certainly the burden does not outweigh its benefit to the plaintiff. The defendant's counterclaim makes general allegations of wrongdoing by the plaintiff without specific facts to back them up. The plaintiff is seeking to discover whether there are *any* specific facts to back up the defendant's general allegations in its counterclaim. The defendant is obviously the best source of the information requested; it can not be obtained more easily or for less cost from other sources. *Fed. R. Bankr. P.* 7033 & 7026; *Fed. R. Civ. P.* 7033(a) & 7026(b)(2).

The defendant's objection does not state any specific objection to the second request for production of documents. Therefore, the objection will be denied. *Fed. R. Bankr. P.* 7034; *Fed. R. Civ. P.* 34(b). The plaintiff has also requested an extension of time to respond to defendant's request for production until after defendant has responded to plaintiff's second set of interrogatories and second request for production of documents. The motion does not state why plaintiff's production of documents is or should be connected to defendant's responses. The extension will be denied.

In summary, the court grants the plaintiff leave to exceed the 25 question limit on interrogatories, denies the defendant's objection to the second set of interrogatories and the second request for production of documents, grants the plaintiff's motion to compel

responses to the second set of interrogatories and request for production of documents, and denies plaintiff's request to amend the scheduling order.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

At Chattanooga, Tennessee.

BY THE COURT

entered 10/23/1997

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re: No. 96-14152
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MORGANTON DYEING & FINISHING
CORPORATION

Defendant

ORDER

In accordance with the court's Memorandum Opinion entered this date,

It is ORDERED that plaintiff is GRANTED leave to serve more than 25 interrogatories on defendant;

It is further ORDERED that defendant's objection to plaintiff's second set of interrogatories and second request for production of documents is DENIED;

It is further ORDERED that plaintiff's motion to compel responses to its second set of interrogatories and second request for production of documents is GRANTED, and defendant shall respond on or before October 30, 1997; and

It is further ORDERED that plaintiff's motion to amend the scheduling order is DENIED.

ENTER:

BY THE COURT

_____

entered 10/23/1997

R. THOMAS STINNETT
U.S. BANKRUPTCY JUDGE