

GMAC Bank v. HTFC Corp.

(Teaching Excerpt – Deposition Misconduct)

GMAC Bank v. HTFC Corp., Civil Action No. 06-5291,
248 F.R.D. 182 (E.D. Pa. Feb. 29, 2008)

This opinion addresses extreme deposition misconduct and illustrates the obligations of witnesses under Federal Rule of Civil Procedure 30 as well as the affirmative duty of counsel to control their own witnesses. The Court grants a motion to compel and imposes substantial monetary sanctions on both the witness and defense counsel.

I. BACKGROUND

GMAC Bank administers residential mortgage loans. HTFC Corp. originates and sells residential mortgage loans to lenders, including GMAC. GMAC alleges that HTFC breaches its contract by selling loans that are improperly underwritten and not investment quality, and by refusing to repurchase those loans as required by contract. HTFC asserts a counterclaim for tortious interference with contract.

GMAC seeks to depose Aaron Wider, the owner and chief executive officer of HTFC, on September 26 and November 8, 2007. The deposition process fails almost immediately and deteriorates further over the course of nearly twelve hours of testimony. GMAC moves to compel and for sanctions. The Court also issues a rule to show cause directed at defense counsel, Joseph Ziccardi.

II. LEGAL STANDARDS GOVERNING DEPOSITIONS

Rule 30 governs depositions by oral examination. Depositions are not informal conversations; examination and cross-examination proceed as they would at trial. Fed. R. Civ. P. 30(c)(1). Objections must be stated concisely on the record, but the testimony proceeds subject to objection. Fed. R. Civ. P. 30(c)(2).

A witness may refuse to answer a question only where counsel properly instructs the witness not to answer in order to preserve a privilege, enforce a court-ordered limitation, or present a motion under Rule 30(d)(3). Absent such instruction, a witness must answer the question, even if the witness or counsel believes the question is improper.

Rule 37(a)(3)(B)(i) permits a motion to compel where a deponent fails to answer a question or provides evasive or incomplete answers, which are treated as failures to answer. Rule 37(a)(5)(A) requires the court to award reasonable expenses and attorney's fees when a motion to compel is granted, unless the conduct is substantially justified.

Separately, Rule 30(d)(2) authorizes sanctions against any person who impedes, delays, or frustrates the fair examination of the deponent. Sanctions may include attorney's fees and costs and do not require a showing of bad faith.

III. FACTUAL FINDINGS: WIDER'S DEPOSITION CONDUCT

After reviewing transcripts and video recordings, the Court finds that Wider's conduct falls into three overlapping categories: (1) hostile, uncivil, and vulgar conduct; (2) deliberate obstruction and delay; and (3) refusal to answer and intentionally evasive responses.

A. Hostile, Uncivil, and Vulgar Conduct

From the outset, Wider seeks to intimidate opposing counsel through profanity, insults, and threats. For example:

When asked to review his loan file, Wider responds:
"I'm not your f--- b---... Earn your f--- money, a-----."

Later, Wider tells opposing counsel:
"You're a piece of s--- and a piece of garbage and I'm the only person in your life that is f--- up your world and I enjoy it."

On another occasion:
"Don't speak for anybody in here except yourself, f--- face."

The Court notes that Wider uses the word "f---," or variants thereof, more than seventy times during a commercial deposition. In contrast, the word "contract"—the core subject of the lawsuit—is used only fourteen times. The Court concludes that the vulgarity serves no purpose other than intimidation and harassment.

B. Impeding, Delaying, and Frustrating the Examination

Wider repeatedly interrupts questioning, launches into nonresponsive monologues, and openly declares his intention to prolong the deposition to increase costs. For example, Wider states:

"I'll have you flying in and out every month and this will go on for years... I'll make your life miserable. Trust me."

When counsel attempts to proceed, Wider responds:
"Stick to the here and now; you'll get out of here quicker because I'll take months."

Wider frequently walks out of the deposition room, forcing repeated recesses. At one point, after telling counsel to "shut the f--- up," Wider leaves the room, stating:
"I have a business to run."

The Court finds that these actions are calculated to derail the deposition and undermine the discovery process.

C. Failure to Answer and Intentionally Evasive Answers

Even when Wider does not resort to profanity, he repeatedly refuses to answer questions or gives deliberately evasive responses. For example:

Q: “What do the initials HTFC stand for?”

A: “Hit That F---’ Clown.”

Q: “Where are you currently employed?”

A: “I work for free.”

When asked about property transactions:

“That’s confidential... None of your business... Not even a judge could get me to answer that.”

When pressed on basic factual matters:

“According to you, I’ve got psychiatric issues, so I can’t recall.”

The Court emphasizes that these tactics—sarcasm, feigned memory loss, and counter-questions—constitute classic evasive conduct under Rule 37.

IV. REJECTION OF DEFENSE JUSTIFICATIONS

HTFC argues that Wider’s conduct is justified by relevance objections, confidentiality concerns, provocation by opposing counsel, and mental health issues. The Court rejects each argument.

Relevance objections do not permit a witness to refuse to answer. Confidentiality concerns must be addressed through objections or protective orders, not unilateral refusal. The Court finds no provocation by GMAC’s counsel, who remains professional throughout. As to mental health, Wider acknowledges that he is medicated and capable of proceeding, and the Court finds no basis to excuse his behavior.

V. SANCTIONS IMPOSED

The Court grants GMAC’s motion to compel and orders that Wider’s deposition be retaken under judicial supervision.

Under Rule 37(a)(5)(A), the Court orders Wider to pay \$13,026.00 in fees and expenses incurred in bringing the motion to compel. Under Rule 30(d)(2), the Court imposes additional sanctions, finding that approximately 75% of the deposition time is wasted. Wider is ordered to pay \$16,296.61 in deposition-related costs and attorney’s fees.

VI. SANCTIONS AGAINST DEFENSE COUNSEL

The Court finds that defense counsel Joseph Ziccardi fails to meaningfully intervene and, at times, appears to encourage the misconduct. The Court holds that counsel’s inaction

constitutes endorsement and ratification of Wider's conduct, making counsel jointly and severally liable for sanctions under Rules 30(d)(2) and 37(a)(5)(A).

VII. CONCLUSION

The Court describes Wider's conduct as outrageous and counsel's complicity as inexcusable. The opinion stands as a warning that depositions are governed proceedings, not free-form confrontations, and that both witnesses and attorneys are held accountable for discovery abuse.