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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re) Case No. 17-11028-B-11
PACE DIVERSIFIED CORPORATION,)
Debtor.)

PACE DIVERSIFIED CORPORATION, a) Adv. Proceeding No. 18-01006-B
California corporation; DARK)
ROCK, LLC, a California limited) DC No. BBR-6
liability company,)
Plaintiffs,)

v.)
MACPHERSON OIL COMPANY, a)
California corporation; SANDRA)
BRAUCHT, an individual,)
Defendants.)

MACPHERSON OIL COMPANY, a)
California corporation,)
Counter-Plaintiff,)

v.)
PACE DIVERSIFIED CORPORATION, A)
California corporation; DARK)
ROCK, LLC, a California limited)
liability company,)
Counter-Defendants.)

MEMORANDUM DECISION

1 and other documents. The court determined a hearing was
2 unnecessary and is deciding the matter based on the written
3 submissions.

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5 CONTENTIONS

6 PDC contends there is cause to permit both depositions
7 because after the Cramer deed, MOC changed its legal position
8 from having acquired the Braucht interests by lease to acquiring
9 the interests by deed and other transfers. So, PDC contends the
10 depositions are necessary. They also contend that Hicks
11 represented to the Braucht heirs, including Cramer, the Braucht
12 interests were not subject to a lease though Hicks knows this
13 litigation has been pending and was aware of PDC's claims. PDC
14 points to the fact that Hicks' deposition was taken over one
15 year ago; long before the 2019 transfers discovered only three
16 months ago. Cramer has not previously been deposed in this
17 adversary proceeding and PDC contends should answer questions
18 about the transactions.

19 MOC claims any information about Hicks or Cramer is not
20 probative on the extent of any interests because Cramer's
21 predecessors held title in joint tenancy. When one of the joint
22 tenants died, the surviving tenant received title free of Pace's
23 claimed interest since the surviving tenant did not sign the
24 "Pace-Olcese" lease. MOC also points out that the
25 "ratification" Pace received was not recorded before MOC
26 recorded the Cramer quit claim deed. PDC had contacts with
27 Cramer at the same time MOC did, MOC claims, so no new
28 information can be gleaned from the depositions. MOC contends

1 that Hicks' representations that the Braucht interests were free
2 of the claimed Pace lease is consistent with MOC's theory why
3 its' claim to title has precedence over PDC.

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5 ANALYSIS

6 The court's discretion in dealing with discovery matters is
7 beyond dispute. See Fed R. Civ. P. 26 (b) (2) Fed. R. Bankr. P.
8 7026). Leave of court is necessary to depose a person twice.
9 Fed. R. Civ. P. 26 (a) (2). The court finds cause to permit the
10 second deposition of Ms. Hicks and to permit the "post-discovery
11 cutoff" deposition of Ms. Cramer.

12 MOC's concern that the information to be obtained is not
13 probative because of its legal theory that Cramer's
14 predecessor's death terminated the "Pace-Olcese lease" is not
15 persuasive on this motion. That argument is equivalent to the
16 contention that the admissibility of the evidence revealed in
17 discovery is the standard for allowing discovery. That, of
18 course, is not the case. See Fed. R. Civ. P. 26 (b) (1).

19 PDC's contacts with Cramer during the last year does not
20 obviate the need for discovery. First, a deposition is not
21 limited to witnesses who a party may not have contacted about
22 the transaction underlying the litigation. Second, again the
23 standard for allowing discovery does not include the lack of or
24 amount of previous contact.

25 MOC has not persuaded the court that either the second
26 deposition of Hicks or the Cramer deposition will result in any
27 harm or burden on MOC. MOC has not demonstrated that either
28 deposition is cumulative or that there is a less expensive way

1 for PDC to get the information. See Fed. R. Civ. P. 26 (b) (2)
2 (C). See, Christy v. Pennsylvania Turnpike Commission, 160
3 F.R.D. 51, 53 (E.D. Penn. 1995). The late exchange of the
4 documents further justifies the discovery. See, Botell v. U.S.,
5 2:-11-cv-1545 GEB GGH, 2013 U.S. Dist. LEXIS 12075 (Jan. 29,
6 2013, E.D. Cal.) citing Christy.

7 Finally, the question of "good cause" to permit discovery
8 after the cut off is within the trial court's discretion and
9 reviewing courts are highly deferential to the trial court's
10 decision. See, Rivera-Almodovar v. Instituto Socioeconomico
11 Comunitario, 730 F. 3d 23, 26 (1st Cir. 2013). The parties'
12 stipulation for document production, the produced documents, the
13 fact that Cramer was not deposed before and the limits placed on
14 this discovery by the court supports granting the request.


15 The second deposition of Hicks will be limited to the 2019
16 transaction the parties exchanged documents about. No further
17 deposition of Ms. Hicks will be permitted on any topic addressed
18 in the first deposition. The second Hicks deposition will be
19 limited to two hours of direct examination by PDC's counsel.
20 There is no time limit on MOC's cross examination, if any.

21 The deposition of Ms. Cramer will be permitted but only
22 about the 2019 transactions that are the subject of the informal
23 document exchange. The court will also authorize the deposition
24 by remote means under Fed. R. Civ. P. 30 (b) (4). The precise
25 method of taking and recording the deposition shall be left to
26 the parties. If the parties cannot agree on a method to
27 conduct, record or transcribe the Cramer deposition, either
28 party may bring the matter before the court.

1 PDC's counsel shall prepare an order consistent with this
2 ruling. Order to be approved as to form by MOC's counsel.

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6 Dated: Oct 24, 2019

By the Court

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8 René Lastrero II, Judge
9 United States Bankruptcy Court

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