

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

PATRICK DESMOND AND MARY )  
DESMOND, INDIVIDUALLY AND )  
MARY C. DESMOND, AS )  
ADMINISTRATRIX OF THE )  
ESTATE OF PATRICK DESMOND, )

Plaintiffs, )

v. )

CIVIL ACTION FILE  
NO. 10-A-28641 -2

NARCONON OF GEORGIA, INC., )  
DELGADO DEVELOPMENT, INC., )  
SOVEREIGN PLACE, LLC, )  
SOVEREIGN PLACE APARTMENT )  
MANAGEMENT, INC., LISA )  
CAROLINA ROBBINS, M.D., THE )  
ROBBINS GROUP, INC., AND )  
NARCONON INTERNATIONAL, )

Defendants. )

**DELGADO DEVELOPMENT, INC.'S  
MOTION FOR PROTECTIVE ORDER**

Comes Now, Defendant Delgado Development, Inc., pursuant to O.C.G.A. § 9-11-37, and files this Motion for Protective Order and shows this Court as follows:

1.

In the present suit, which was filed in May of 2010, the Plaintiffs seek to recover for the death of their 28 year-old son who died as result of a drug overdose. (Plaintiffs' Complaint at para. at 33). The Plaintiffs allege that Delgado Development, Inc. failed to keep the premises safe where the decedent was living during his drug rehabilitation. (Id.

at 48 through 51).

2.

The Plaintiffs noticed the depositions of nonparties, Maria Delgado and her ex-husband, Don Delgado, for October 24, 2011. The Plaintiffs' Notices states the depositions will be "for discovery and all other purposes allowable under the Georgia Civil Practice Act." (Plaintiffs' Notices to Take Videotape Deposition of Maria Delgado and Don Delgado). **The Delgados do not in any way oppose giving deposition testimony; however, they should only have to be deposed once.**

3.

Defendant Delgado Development, Inc. was a Georgia corporation. However, it was dissolved in September of 2009. (*See* Brief in Support of Defendant's Motion for Protective Order at Exhibit "A"). Maria Delgado is listed as an officer of Delgado Development, Inc. This corporation has no employees and is no longer in business. It is very likely that the only corporate representatives would be Maria or Don Delgado.

In connection with the scheduling of the Delgados' depositions, counsel for Delgado Development asked Plaintiffs' counsel if the Plaintiffs would depose the Delgados regarding any personal knowledge they might have as well as in a representative capacity of Delgado Development, Inc., pursuant to O.C.G.A. § 9-11-30(b)(6), at the same time. The Plaintiffs refused. (*See* Brief in Support of Defendant's Motion for Protective Order at Exhibits "B," "C," and "D").

After the Plaintiffs' refused, Delgado Development, Inc. again tried to resolve this issue and reach an agreement. Counsel for Delgado Development, Inc. suggested that the Delgados' individual depositions and any deposition in a representative capacity should be taken at the same time and proposed the following:

[i]f the Plaintiffs do plan to take a 30(b)(6) representatives deposition, I propose that you let me know the topics and then we can do the Delgados' depositions individually and in their representative capacity at the same time or on the same day(s). As you know, Delgado Development is defunct. The representative(s) will in all likelihood be Mr. or Ms. Delgado or both. It seems fair and reasonable not to require them to give separate depositions on separate dates on the exact same issues.

(See Brief in Support of Defendant's Motion for Protective Order at Exhibit "E"). Counsel for Delgado Development also made several other proposals in the same e-mail, including waiting to schedule the Delgados' depositions until after the Plaintiffs determined if they would depose a corporate representative. (Id.).

4.

Rather than discussing any proposal by Delgado Development, the Plaintiffs simply refused to agree to anything. Specifically, in response to the above proposals, the Plaintiffs stated: "**I am not agreeing to anything related to a 30b6 at this point....**" (See attached Exhibit "F") (Emphasis added). At the same time, the Plaintiffs suggested that the Delgados move for a protective order. (Id.).

5.

As a matter of general practice, witnesses are deposed one time. Although

O.C.G.A. § 9-11-30 does not have language specifically setting forth this general practice, the Federal Rules of Civil Procedure do. Specifically, Fed. R. Civ. Pr. 30 provides that a witness made be deposed one time. Fed. R. Civ. Pr. 30 generally provides that a witness may generally be deposed only one time. The Federal Rules of Civil Procedure and the decisions interpreting these rules are given “great weight” as persuasive authority in Georgia. See Barnum v. Coastal Health Services, Inc., 288 Ga. App. 209, 215 (2007). Under Rule 30, taking multiple depositions of the same witness is disfavored. See Dickson v. Certainteed Corp., 164 F.R.D. 685, 690 (D. Kan. 1996); Lone Star Industries, Inc. v. River’s Bend Red-E-Mix, Inc., No. 90-2349-V, unpublished opinion at 4 (D. Kan. Oct. 6, 1992); Miller v. Federal Express, Corp. 186 F.R.D. 376, 389 (W. D. Ten. 1999); 7 Moore’s Federal Practice §30.05[1][c], at 30-30 (Lexis 2006); and Bonnie & Co. Fashions, Inc. v. Bankers Trust Co., 945 F. Supp. 693, 732-33 (S.D.N.Y.1996).

6.

In the present case, the Delgado Development, Inc. asks only that the Plaintiffs depose Maria and Don Delgado one time as to all issues. Their knowledge as to all the issues in this case will be the same at both depositions. Delgado Development, Inc.’s Motion is consistent with the above rules and with fairness to all of the parties and to the Delgados, who are not parties to this suit. There is no reasonable explanation to depose the same witnesses more than one time on the exact same issues, facts, and circumstances. The Plaintiffs offered no such explanation, they would not attempt to reach an agreement

relating to this issue, and they suggested that the Delgados seek assistance from the Court. For the reasons set forth above and for the reasons set forth in the supporting Brief, Delgado Development, Inc. asks this Court to grant this Motion.

7.

The undersigned certifies that pursuant to U.S.C.R. 6.4 (B), he attempted to resolve this discovery issue without seeking assistance from the Court. (See Brief in Support of Defendant's Motion for Protective Order at Exhibits "B," "C," "D," and "E").

WHEREFORE, Delgado Development, Inc. respectfully urges this Court to enter an Order GRANTING its Motion for Protective Order and permitting the Plaintiffs to depose Maria Delgado and Don Delgado once as to all issues.

Respectfully Submitted,

**DOWNEY & CLEVELAND, LLP**

By: 

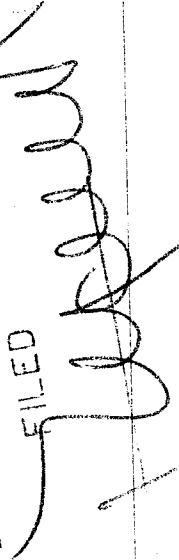
**SEAN L. HYNES**

Georgia State Bar No. 381698

Attorneys for Defendant

STATE COURT OF  
DEKALB COUNTY, GA

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FILED 

DOWNEY & CLEVELAND, LLP  
Attorneys at Law  
288 Washington Avenue  
Marietta, Georgia 30060  
(770) 422-3233

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the following counsel of record with a true and correct copy of the foregoing pleading by depositing said copy in the United States Mail, with sufficient postage affixed thereon, and properly addressed to the following:

Rebecca Franklin, Esq.  
Franklin Law, LLC  
Midtown Proscenium Center  
1170 Peachtree Street, Suite 1200  
Atlanta, Georgia 30309


Robert C. Tanner, Esq.  
Scott Kerew, Esq.  
Jeffrey N. Amason, Esq.  
Weinberg, Wheeler, Hudgins,  
Gunn & Dial, LLC  
950 East Paces Ferry Road, Suite 3000  
Atlanta, Georgia 30326

Stevan A. Miller, Esq.  
Barbara A. Marschalk, Esq.  
Kathryn S. Whitlock, Esq.  
Drew, Eckl & Farnham  
880 West Peachtree Street  
P.O. Box 7600  
Atlanta, Georgia 30357-0600

Jeffrey R. Harris, Esq.  
Harris, Penn & Lowry, LLP  
1201 Peachtree Street, N. E., Suite 900  
Atlanta, Georgia 30361

This 14<sup>th</sup> day of October, 2011.

**DOWNEY & CLEVELAND, LLP**

By:   
\_\_\_\_\_  
**SEAN L. HYNES**  
Ga. State Bar No. 381698