IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JOY W. O'BRIEN, Executrix of the Estate of Randy Pirotin, Deceased	)	
Plaintiff,	)	
v.	)	**Civil Action File No. 2010-CV-188721**
JOSEPH CONZA, PAUL GWIN, GEORGIA ENTERPRISES, INC., FINNA, LP, NICKCO GENERAL, INC., and PEACH STATE FRANCHISE CONCEPTS, LP,	)	
Defendants.	)	

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SECOND ORDER ON DISCOVERY MOTIONS

On May 31, 2012, this Court issued its Order on Discovery Motions ("Order") setting forth its ruling on Plaintiff's Motion to Compel Finna LP to Answer Two of Plaintiff's First Interrogatories ("Motion to Compel"), Defendants' Motion for Protective Order, and Motion to Strike All Pleadings of Defendant, Joseph Conza. Upon counsel's informal request[1], the Court will address Plaintiff's request for attorneys' fees made in her Motion to Compel.

In its Order, the Court granted Plaintiff's motion to compel Finna LP to fully respond to two interrogatories. Plaintiff also asks the Court for an award of attorneys' fees in connection with this ruling.

O.C.G.A. 9-11-37 provides: "If the [motion to compel] is granted, the court shall after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or

[1] While the Court read and considered Plaintiff's informal email correspondence to the Court in this instance, the Court requests that Plaintiff's counsel direct such matters to the Court's attention by filing motions in the future.

the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust."

"Trial judges have broad discretion in controlling discovery, including imposition of sanctions, and appellate courts will not reverse a trial court's decision on such matters unless there has been a clear abuse of discretion." West v. Equifax Credit Information Services, 230 Ga.App. 41, 42 (1997); Gibbs v. Abiose, 235 Ga. App. 214 (1998) (finding trial court did not abuse its discretion when party failed to submit affidavit proving the actual and reasonable cost of attorneys' fees incurred in discovery dispute: "Under such circumstances, an award of attorney fees was not authorized, and there can be no abuse of the trial court's discretion in failing to grant her the requested attorney fees.").

Plaintiff failed to attach an affidavit in support of her request for attorneys' fees in support of her request. Moreover, Plaintiff failed to certify to the Court pursuant to Uniform Sup. Ct. Rule 6.4 that she made a good faith effort to resolve the instant discovery dispute. For both of these reasons, it is within the Court's discretion to deny her request. More importantly, the Court is not inclined to impose sanctions against Defendants where, as here, the Defendants were responsive to Plaintiff's discovery requests, but the parties merely disagreed over the scope of compliance. Plaintiff's request for attorneys' fees is **DENIED**.

SO ORDERED this 11th day of June, 2012.

ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies sent electronically to:

Attorneys for Plaintiff	Attorneys for Defendants
John D. Jones Carl V. Kirsch GREENE, BUCKLEY JONES & McQUEEN 5887 Glenridge Dr. Atlanta, GA 30328 404-420-5906 jdjones@gbjm.com carlkirsch@comcast.net	Matthew F. McGahren Eric J. Marlett MCGAHREN, GASKILL & YORK 6171 Crooked Creek Road Norcross, GA 30092 770-729-1779 mmcgrahren@mgylaw.com Robert Zarco Alejandro Brito ZARCO, EINHORN, SALKOWSKI & BRITO 100 S.E. 2nd St. Suite 2700 Miami, FL 33131 305-374-5418 rzarco@zarcolaw.com abrito@zarcolaw.com