

The document below is hereby signed. Dated: August 29, 2011.



S. Martin Teel, Jr.

**S. Martin Teel, Jr.
U.S. Bankruptcy Judge**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re)	
)	
GB HERNDON AND ASSOCIATES,)	Case No. 10-00945
INC.,)	(Chapter 11)
)	Not for Publication in
Debtor.)	West's Bankruptcy Reporter

MEMORANDUM DECISION AND ORDER RE EMERGENCY MOTION TO COMPEL

The debtor's Emergency Motion to Compel Production of Documents in Response to Subpoena and to Attend Deposition, directed to a bank with whom the debtor is litigating two contested matters, will be denied.

As to the bank's having a witness attend a deposition to testify, the notice of deposition failed to comply with Fed. R. Civ. P. 30(b)(6) to apprise the bank of the matters for examination so that the bank would know who to designate to testify. Accordingly, the bank was not required to designate an individual to testify at the deposition.

Nor can the motion be granted as to the production of documents. The subpoena commanded production of documents within less than the 30 days allowed by Fed. R. Civ. P. 34 for

responding to a request for production of documents. That was impermissible. First, the debtor's reliance on Fed. R. Bankr. P. 2004 in support of its motion is unfounded: no order had issued authorizing a Rule 2004 examination. Second, although the debtor is authorized to engage in discovery with respect to the pending contested matters, the debtor must comply with the restrictions applicable to such discovery. Rule 30(b)(2) authorizes a subpoena to be served on a deponent for discovery purposes, but indicates that the notice of deposition "to a party deponent may be accompanied by a request under Rule 34" A deposition subpoena to a party may not be utilized to circumvent the 30-day response time provided for in Fed. R. Civ. P. 34. *Bank of Am. v. Travelers Indem. Co.*, 2009 WL 529235 (W.D. Wash. Mar. 2, 2009); *Stokes v. Xerox Corp.*, 2006 WL 6686584, at *3 (E.D. Mich. Oct. 5, 2006); *Joiner v. Choicepoint Servs., Inc.*, 2006 WL 2669370, at *6 (W.D.N.C. Sept. 15, 2006); *Epling v. UCB Films, Inc.*, 2000 WL 1466216, at *8 (D. Kan. Aug. 7, 2000).

In light of the foregoing, it is

ORDERED that the debtor's Emergency Motion to Compel Production of Documents in Response to Subpoena and to Attend Deposition is DENIED, and the bank shall have 30 days after service of the subpoena on it to respond to the subpoena.

[Signed and dated above.]

Copies to: Recipients of e-notices of filings.