

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BAHAMAS SALES ASSOCIATE, LLC)	
)	CIVIL ACTION FILE
Plaintiff,)	
)	CASE NO. 3:08cv-1062-HLA-MCR
vs.)	
)	
DARRYL WILLIS,)	
)	
Defendant.)	

DARRYL WILLIS,)
)
Counterclaim Plaintiff,)
)
vs.)
)
BAHAMAS SALES ASSOCIATE, LLC,)
)
Counterclaim Defendant,)
)
-and-)
)
GINN FINANCIAL SERVICES; et al.,)
)
Additional Counterclaim Defendants.))

**GINN’S EMERGENCY MOTION FOR PROTECTIVE ORDER
AND INCORPORATED BRIEF IN SUPPORT**

Counterclaim Defendants Bahamas Sales Associate, LLC, Ginn Financial Services, LLC, Ginn Title Services, LLC and Edward R. Ginn, III (collectively, “Ginn”), pursuant to Fed. R. Civ. P. 26(c), hereby move this Court for a protective order that: (1) prohibits the proceeding of the unilaterally noticed deposition of William McCracken currently set for December 7, 2010;

(2) prohibits the production of documents that are unlawfully in the possession of William McCracken, which production date is currently December 1, 2010; and (3) to the extent documents are produced by McCracken, that such documents be deemed “confidential” and not to be disclosed except to Plaintiffs and their counsel until such time as the parties can agree to terms of confidentiality.

I. BASIS FOR EMERGENCY RELIEF

The subject of this motion is a subpoena that was served on November 19, 2010 that requires the production of stolen documents on December 1, 2010 and a unilaterally noticed deposition for December 7, 2010. Given the Thanksgiving holiday, the production date will occur before this motion is ripe for review under the ordinary court schedule.¹

II. BASIS FOR RELIEF REQUESTED AND SUPPORTING MEMORANDUM OF LEGAL AUTHORITY

A. Background of Affected Lawsuits

The Counterclaims in this lawsuit raise similar claims as in four other lawsuits raised by the same counsel in the Middle District of Florida: *Liles v. Ginn-LA West End Ltd.*, Case No. 3:08-cv-1217-J-34JRK, *Webb v. Ginn Financial Services*, Case No. 3:09-cv-516-J-34JRK, *Bailey v. ERG Enterprises*, Case No. 3:10-cv-422-J-32JRK, and *Bahamas Sales Associate v. Byers v. Ginn Financial Services*, Case No. 3:08-cv-1012-J-32HTS.² There is significant overlap in the defendants to these lawsuits, and there is overlap in the plaintiffs in *Liles*, *Webb*, and *Bailey*. The underlying claims all involve the Plaintiffs’ purchase of real property in The Bahamas prior to the worldwide recession and real estate market crash. Although each

¹ Should the Court grant Ginn’s Motion for Rule 16 Conference, filed contemporaneously herewith, Ginn’s counsel will be unavailable due to the holiday November 24 through November 29.

² For convenience, Ginn will refer to the counter-plaintiffs in *Byers* and *Willis* as “Plaintiffs.”

Plaintiff's claims are separate, distinct, and subject to severance because they each arise from a different purchase and sale contract for a different real estate lot, economy dictates a common process for certain discovery activities.

Significantly, the *Liles* lawsuit has been dismissed on the basis of improper venue because the purchase and sale contracts at issue require that all disputes arising out of the lot purchases be brought in The Bahamas. Such dismissal is currently on appeal before the Eleventh Circuit. Motions to dismiss are pending in *Willis*, *Webb*, *Byers*, and *Bailey*, which, if granted, would also send the lawsuits to The Bahamas. In fact, the motions in *Willis*, *Webb*, *Byers*, and *Bailey* are even stronger than in *Liles* in that the allegations relate to an alleged appraisal fraud, and the subject appraisals were performed by a Bahamian appraiser in The Bahamas.

B. Unilateral Noticing of McCracken Deposition

Late in the evening on November 11, 2010, Ginn's counsel received notice that McCracken would be settling all claims against him in exchange for a meeting with plaintiffs followed by a deposition. Ginn's counsel was not asked to consent to or provide any deposition dates.

On November 12, 2010, Plaintiffs' counsel served a Cross Notice of Deposition in *Willis*, *Webb*, *Byers*, and *Bailey*, setting a deposition of Mr. McCracken for December 9, 2010, which is attached hereto as Exhibit "A." Plaintiffs' counsel did not consult with Ginn's counsel regarding this date, and did not offer to cooperate with Ginn's counsel regarding such date. In fact, Plaintiffs' counsel did not check with any interested parties. Given the cross-notice, persons entitled to appear at the deposition include Ginn's counsel, Bobby Ginn's personal counsel who

has appeared in this lawsuit, Lubert-Adler's counsel³, and client representatives. After checking availability, including Ginn counsel's own schedule, Ginn objected on November 16, 2010 to the unilaterally selected December 9 date.

On November 18, 2010, Plaintiffs' counsel asked about December 7 as a possible date for the deposition. Plaintiffs' counsel did not check with other interested parties. After checking schedules, Ginn's counsel responded that December 7 was not available.

Despite the express statement that December 7, 2010, was unavailable, on November 18, 2010, Plaintiffs served a Notice of Deposition and subpoena in *Willis*, setting the deposition for December 7. Ginn's counsel immediately restated the objection to such date. Yet, shortly thereafter, Plaintiffs served a corrected subpoena that still set a December 7 deposition date, which is attached hereto as Exhibit "B", and a Cross-Notice of Deposition for the *Webb, Byers*, and *Bailey* matters, which is attached hereto as Exhibit "C." Plaintiffs' counsel has refused to move the deposition to a date convenient for all parties, which for the reasons below should be reset for January.

C. Ginn Documents Unlawfully Taken By McCracken

On November 9, 2010, Ginn's counsel received six (6) bankers boxes of documents from then co-defendant and former Ginn employee William McCracken. This followed the delivery of another box of original Ginn documents approximately a week earlier. At the time, Ginn intended to file motions to stay in all of the aforementioned lawsuits, and in fact did file its first Motion to Stay in *Webb*, which had the first relevant discovery due date, on November 10, 2010. Judge Klindt set a Rule 16 Conference to address such motion on November 23, 2010.

³ Lubert-Adler is a defendant in the *Bailey* lawsuit.

Critically, the subpoena also requests that McCracken produce documents in his possession by December 1, 2010. As noted above, Ginn only recently learned that McCracken unlawfully retained original Ginn documents following his termination from Ginn, which includes confidential documents. Although McCracken has returned the original documents, his counsel has retained a copy and apparently intends to produce responsive documents in response to the subpoena absent an intervening order of the Court. McCracken's counsel has asked Ginn to conduct a privilege review, but this does not address issues of confidentiality, scope, and relevance.

In essence, McCracken is in possession of stolen documents, and the subpoena seeks production of such stolen documents. But McCracken should not have the documents in the first place. These are Ginn documents, and it is Ginn's right and duty to review and produce responsive documents. Ginn also has the right to object to the scope of the document request. For example, Ginn has consistently taken the position that Plaintiffs are entitled to documents related to their lot purchases, but not documents related to the purchases by non-parties. It would simply be a gross miscarriage of justice for Plaintiff to avoid Ginn's rights in discovery by serving a subpoena to a third party who does not lawfully possess the documents.

D. Ginn Counsel's Schedule

Lead counsel for Ginn has a heavy schedule through December, and has communicated such fact to Plaintiffs' counsel in requesting that the deposition be moved to January. Counsel has on his schedule a Thanksgiving vacation November 24 – 29, 2010, a motion for summary judgment due in another lawsuit on December 1, 2010, a court conference in the District of Maryland on December 6, 2010, arbitration preparation the remainder of the week of December

6, 2010, arbitration the week of December 13, 2010, and a holiday vacation December 22, 2010 through January 1, 2011. This schedule is without regard to the availability of Ginn representatives, Bobby Ginn's counsel, and Lubert-Adler's counsel and representatives.

E. Ginn's Right to Prepare for the Deposition

There is simply no reason to rush the McCracken deposition given the issues raised above. Furthermore, Ginn has the right to be prepared for the deposition, including serving requests for production and subpoenas for documents from Plaintiffs and their counsel related to the settlement with McCracken.⁴ As noted above, Ginn also has just recently received 6 bankers boxes totaling approximately 15,000 pages of original documents taken by McCracken, and it is entitled to time to review the documents and identify any issues prior to the deposition.

F. Tail Wagging the Dog; Plaintiffs Concern for the *Willis* Schedule is Easily Cured

The pressure to take the McCracken deposition at this time appears to arise out of the fact that the discovery cutoff in this case is January 3, 2011. The discovery cutoff in *Byers* is February 11, 2011 and the cutoff in *Webb* is February 1, 2011. The court has not yet set the discovery cutoff in *Bailey*. In essence, the single-plaintiff *Willis* lawsuit cutoff is being used by Plaintiffs' counsel as an excuse not to move the McCracken deposition. This is easily cured by allowing the McCracken deposition to occur out of the discovery period, thus serving the convenience of multiple cases.⁵

⁴ Federal Rule of Evidence 408 does not exclude evidence of offers of compromise when it is offered for purpose of determining bias and prejudice.

⁵ Allowing the deposition to occur after the cutoff is without prejudice to Ginn's Motion to Stay and motion for a complete enlargement of the discovery period as explained in those motions, also being filed by Ginn.

III. CONCLUSION

For the above reasons, the Ginn Defendants respectfully request an order: (1) prohibiting the McCracken deposition from proceeding until January 2011, (2) prohibiting McCracken from producing, and Plaintiffs' counsel from receiving, Ginn documents that are in the possession of McCracken or his counsel; and (3) to the extent documents are produced by McCracken, that such documents be deemed "confidential" and not to be disclosed except to Plaintiffs and their counsel until such time as the parties can agree to terms of confidentiality.

LOCAL RULE 3.01(g) CERTIFICATE OF COUNSEL

Undersigned counsel has consulted with Plaintiffs' Counsel regarding this Motion, and Plaintiffs' Counsel will not consent to the relief sought.

Respectfully submitted this 22nd day of November, 2010.

MORRIS, MANNING & MARTIN, LLP

s/ Lawrence H. Kunin
Lawrence H. Kunin, Esq., Fla. Bar No. 050210
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326
Telephone: (404) 233-7000
Facsimile: (404) 365-9532
lhk@mmmlaw.com

Trial Counsel for The Ginn Defendants

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2010, I electronically filed the foregoing “THE GINN DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PROTECTIVE ORDER” on the following attorneys of record via the CM/ECF system, which will automatically send email notification of such filing:

Dana Louise Ballinger, Esq.
BALLINGER LAW OFFICE
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Sanibel, FL 33957
dballinger@ballingerlawoffice.com

*Attorneys for Defendant-Counterclaim
Plaintiff Darryl Willis*

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Ryan T. McCoy, Esq.
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rmccoy@fulbright.com

*Attorneys for Counterclaim Defendant
William McCracken*

E. Lanny Russell, Esq.
SMITH HULSEY & BUSEY
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lrussell@smithhulsey.com

*Attorneys for Counterclaim Defendant
William McCracken*
Lynn Chandler, Esq.
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lynnchandler@smithmoorelaw.com

Attorneys for Edward R. Ginn, III

/s/ Lawrence H. Kunin

Lawrence H. Kunin, Esq.
Florida Bar No. 050210

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BAHAMAS SALES ASSOCIATE, LLC.,

Plaintiff,

Civil Action No. 3:08-cv-1062-J-25MCR

vs.

DARRYL WILLIS,

Defendant.

_____ /

DARRYL WILLIS,

Counterclaim Plaintiff,

v.

BAHAMAS SALES ASSOCIATE, LLC.,

Counterclaim Defendant,

- and-

GINN FINANCIAL SERVICES; et al.,

Additional Counterclaim Defendants

_____ /

-----**AND**-----

BAHAMAS SALES ASSOCIATE, LLC.,

Plaintiff,

Civil Action No. 3:08-cv-1012-J-32HTS

vs.

DONALD CAMERON BYERS,

Defendant.

_____ /

DONALD CAMERON BYERS,

Counterclaim Plaintiff,

v.

BAHAMAS SALES ASSOCIATE, LLC.,

Counterclaim Defendant,

- and-

GINN FINANCIAL SERVICES; et al.,

Additional Counterclaim Defendants

-----AND-----

EDWARD R. WEBB, et al.,

Plaintiffs,

Civil Action No. 3:09-cv-516-J-34JRK

vs.

GINN FINANCIAL SERVICES, LLP, et al.,

Defendants.

-----AND-----

MARK F. BAILEY, et al.,

Plaintiffs,

Civil Action No. 3:10-cv-422-J-32JRK

vs.

ERG ENTERPRISES, LP, et al.,

Defendants.

CROSS NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, Plaintiffs and Counterclaim Plaintiffs in the above-captioned cases will take the deposition by oral examination of Defendant/Counterclaim Defendant William F. McCracken, on December 9, 2010 at 9:00 a.m. at the offices of Orange Reporting, 1416 East Robinson Street, Orlando, Florida 32801, (800) 275-7991.

The deposition is cross-noticed in all of the above-captioned cases for any and all purposes permitted under the Federal Rules of Civil Procedure. The deposition shall be conducted under oath by an officer authorized to take such testimony, will be recorded stenographically and by audio-visual recording, and, pursuant to Fed.R.Civ.P. 30(d)(2), shall run no longer than seven hours of actual questioning of the witness. You are invited to attend and participate.

November 12, 2010

Respectfully submitted,

s/ Dana L. Ballinger

Dana L. Ballinger
Attorney for Plaintiffs and Counterclaim Plaintiffs
Florida Bar No. 35278
BALLINGER LAW OFFICE
747 Windlass Way
Sanibel, Florida 33957
(239) 395-7672
dballinger@ballingerlawoffice.com

**CERTIFICATE OF SERVICE FOR
CROSS NOTICE OF TAKING DEPOSITION**

I HEREBY CERTIFY that on this 12th day of November 2010, I served the foregoing by mail to the following:

Attorney for Defendants and Counterclaim Defendants ERG Enterprises, LP; Ginn West End GP, LLC; Ginn-LA West End Ltd, LLLP; Ginn-LA CS Borrower, LLC; Ginn-LA Conduit Lender, Inc.; Ginn-LA CS Holding Company; Ginn-LA OBB, Limited-Corp.; Ginn Financial Services; Bahamas Sales Associate, LLC; Ginn Title Services, LLP; and Edward R. Ginn III:

Larry H. Kunin, Esquire
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Phone: 404-504-7798
Fax: 404-365-9532
lkunin@mmlaw.com

Attorneys for Defendant and Counterclaim Defendant William McCracken:

<p>John A. O'Malley Ryan T. McCoy Fulbright & Jaworski, LLP 555 S. Flower Street, 41st Floor Los Angeles, CA 90017-2571 Phone: 213-892-9297 jomalley@fulbright.com rmccoy@fulbright.com</p>	<p>E. Lanny Russell, Esq. Smith Hulseley & Busey 225 Water Street, Suite 1800 P.O. Box 53315 Jacksonville, FL 32202-2215 lrussel@smithhulseley.com</p>
--	--

Attorneys for Lubert-Adler Defendants

Michael G. Tanner Helen A. Peacock Tanner Bishop One Independent Drive, Suite 1700 Jacksonville, FL 32202 Phone: 904-598-0034 mtanner@tannerbishop.com hpeacock@tannerbishop.com	Geoffrey A. Kahn Stephen J. Kastenber Ballard Spahr LLP 1735 Market Street, 51 st Floor Philadelphia, PA 19103 kahn@ballardspahr.com kastenber@ballardspahr.com
---	--

November 12, 2010

s/ Dana L. Ballinger

Dana L. Ballinger
Attorney for Plaintiffs and Counterclaim Plaintiffs
Florida Bar No. 35278
BALLINGER LAW OFFICE
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Sanibel, Florida 33957
(239) 395-7672
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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BAHAMAS SALES ASSOCIATE, LLC.,

Plaintiff,

Civil Action No. 3:08-cv-1062-J-25MCR

vs.

DARRYL WILLIS,

Defendant.

_____ /

DARRYL WILLIS,

Counterclaim Plaintiff,

v.

BAHAMAS SALES ASSOCIATE, LLC.,

Counterclaim Defendant,

- and -

GINN FINANCIAL SERVICES; et al.,

Additional Counterclaim Defendants

_____ /

NOTICE OF DEPOSITION SUBPOENA DUCES TECUM

PLEASE TAKE NOTICE that pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiffs will serve the attached Subpoenas on William McCracken for the testimony and production of documents designated in the Subpoenas.

November 19, 2010

Respectfully submitted,

s/ Dana L. Ballinger

Dana L. Ballinger
**Attorney for Defendant and Counterclaim
Plaintiff Darryl Willis**
Florida Bar No. 35278
BALLINGER LAW OFFICE
747 Windlass Way
Sanibel, Florida 33957
(239) 395-7672
dballinger@ballingerlawoffice.com

**CERTIFICATE OF SERVICE FOR STIPULATION OF VOLUNTARY DISMISSAL
WITH PREJUDICE OF DEFENDANT WILLIAM MCCRACKEN**

I HEREBY CERTIFY that on this 19th day of November 2010, I served the foregoing by email and mail to the following:

Attorney for Defendants Ginn Financial Services; Bahamas Sales Associate, LLC; Ginn Title Services, LLP; and Edward R. Ginn III:

Larry H. Kunin, Esquire
Morris, Manning & Martin, LLP
1600 Atlanta Financial Center
3343 Peachtree Road, NE
Atlanta, GA 30326
Phone: 404-504-7798
Fax: 404-365-9532
lkunin@mmmlaw.com

Attorneys for Defendant William McCracken:

John A. O'Malley Ryan T. McCoy Fulbright & Jaworski, LLP 555 S. Flower Street, 41st Floor Los Angeles, CA 90017-2571 Phone: 213-892-9297 jomalley@fulbright.com rmccoy@fulbright.com	E. Lanny Russell, Esq. Smith Hulse & Busey 225 Water Street, Suite 1800 P.O. Box 53315 Jacksonville, FL 32202-2215 lrussel@smithhulsey.com
--	---

November 19, 2010

 s/ Dana L. Ballinger

Dana L. Ballinger
**Attorney for Defendant and Counterclaim
Plaintiff Darryl Willis**
Florida Bar No. 35278
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dballinger@ballingerlawoffice.com

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Bahama Sales Associate, LLC)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 3:08-cv-1062-J-25MCR
Darryl Willis)	
<i>Defendant</i>)	(If the action is pending in another district, state where:)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: William McCracken

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

All non-privileged documents in your possession, custody or control relating to the financing of lots in the Ginn sur Mer subdivision.

Place: Ballinger Law Office 747 Windlass Way Sanibel, FL 33957	Date and Time: 12/01/2010 9:00 am
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Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/19/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk



Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* Defendant and Counterclaim Plaintiff Darryl Willis, who issues or requests this subpoena, are:

Dana Ballinger, Esq, Ballinger Law Office, 747 Windlass Way, Sanibel, FL 33957

Civil Action No. 3:08-cv-1062-J-25MCR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney’s fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party’s officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party; or

(iii) a person who is neither a party nor a party’s officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty’s failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Middle District of Florida

Bahama Sales Associate, LLC
Plaintiff
v.
Darryl Willis
Defendant
Civil Action No. 3:08-cv-1062-J-25MCR
(If the action is pending in another district, state where:)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: William McCracken

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Table with 2 columns: Place (Orange Reporting, Inc., 1416 E. Robinson Street, Orlando, FL 32801) and Date and Time (12/07/2010 9:00 am)

The deposition will be recorded by this method: Stenographically and by videotape.

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

All non-privileged documents in your possession, custody or control relating to the financing of lots in the Ginn sur Mer subdivision.

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 11/19/2010

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Defendant and Counterclaim Plaintiff Darryl Willis, who issues or requests this subpoena, are:

Dana Ballinger, Esq, Ballinger Law Office, 747 Windlass Way, Sanibel, FL 33957

Civil Action No. 3:08-cv-1062-J-25MCR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)**(c) Protecting a Person Subject to a Subpoena.**

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

BAHAMAS SALES ASSOCIATE, LLC.,

Plaintiff,

Civil Action No. 3:08-cv-1062-J-25MCR

vs.

DARRYL WILLIS,

Defendant.

_____ /

DARRYL WILLIS,

Counterclaim Plaintiff,

v.

BAHAMAS SALES ASSOCIATE, LLC.,

Counterclaim Defendant,

- and-

GINN FINANCIAL SERVICES; et al.,

Additional Counterclaim Defendants

_____ /

-----**AND**-----

BAHAMAS SALES ASSOCIATE, LLC.,

Plaintiff,

Civil Action No. 3:08-cv-1012-J-32HTS

vs.

DONALD CAMERON BYERS,

Defendant.

_____ /

DONALD CAMERON BYERS,

Counterclaim Plaintiff,

v.

BAHAMAS SALES ASSOCIATE, LLC.,

Counterclaim Defendant,

- and-

GINN FINANCIAL SERVICES; et al.,

Additional Counterclaim Defendants

-----AND-----

EDWARD R. WEBB, et al.,

Plaintiffs,

Civil Action No. 3:09-cv-516-J-34JRK

vs.

GINN FINANCIAL SERVICES, LLP, et al.,

Defendants.

-----AND-----

MARK F. BAILEY, et al.,

Plaintiffs,

Civil Action No. 3:10-cv-422-J-32JRK

vs.

ERG ENTERPRISES, LP, et al.,

Defendants.

AMENDED CROSS NOTICE OF TAKING DEPOSITION

PLEASE TAKE NOTICE that pursuant to Rules 30 and 45 of the Federal Rules of Civil Procedure, Plaintiffs and Counterclaim Plaintiffs in the above-captioned cases will take the deposition of William F. McCracken, on December 7, 2010 at 9:00 a.m. at the offices of Orange Reporting, 1416 East Robinson Street, Orlando, Florida 32801, (800) 275-7991.

The deposition is cross-noticed in all of the above-captioned cases for any and all purposes permitted under the Federal Rules of Civil Procedure. The deposition shall be conducted under oath by an officer authorized to take such testimony, will be recorded stenographically and by audio-visual recording, and, pursuant to Fed.R.Civ.P. 30(d)(2), shall run no longer than seven hours of actual questioning of the witness. You are invited to attend and participate.

November 19, 2010

Respectfully submitted,

 s/ Dana L. Ballinger

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**CERTIFICATE OF SERVICE FOR
AMENDED CROSS NOTICE OF TAKING DEPOSITION**

I HEREBY CERTIFY that on this 19th day of November 2010, I served the foregoing by email and mail to the following:

Attorney for Defendants and Counterclaim Defendants ERG Enterprises, LP; Ginn West End GP, LLC; Ginn-LA West End Ltd, LLLP; Ginn-LA CS Borrower, LLC; Ginn-LA Conduit Lender, Inc.; Ginn-LA CS Holding Company; Ginn-LA OBB, Limited-Corp.; Ginn Financial Services; Bahamas Sales Associate, LLC; Ginn Title Services, LLP; and Edward R. Ginn III:

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November 19, 2010

s/ Dana L. Ballinger

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