IT IS ORDERED as set forth below:

Date: May 07, 2008

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	CASE NO. 07-72241
Reuben Charles Odum and Rhonda L. Odum,	CHAPTER 7
Debtors.	JUDGE MASSEY
Merrill Lynch, Pierce, Fenner & Smith Incorporated,	
Plaintiff,	
v.	ADVERSARY NO. 07-9048
Reuben Charles Odum and Rhonda L. Odum,	
Defendants.	

ORDER DENYING MOTION FOR PROTECTIVE ORDER

Kenneth Mechion, Patricia Menchion and Edward Menchion move for a protective order to prevent Plaintiff in this adversary proceeding from taking their depositions and to quash subpoenas duces tecum on the grounds that (1) Movants are not parties to this proceeding, (2)

there has been no showing that the information sought is relevant, (3) Plaintiff has not shown that a substantial need for the testimony or documents sought that cannot be obtained elsewhere without imposing on Movants, and (4) Edward Menchion resides more than 100 miles from the place designated for his deposition.

The motion is without merit to the point of being frivolous. It is replete with conclusions unsupported by any facts or legal foundations seemingly designed to prevent Plaintiff from discovering what might be material and important facts concerning Debtors' conduct outlined in the complaint.

> The Federal Rules of Civil Procedure, however, strongly favor full discovery whenever possible. See Fed.R.Civ.P. 26(b)(1). Specifically regarding subpoenas, Fed.R.Civ.P. 45(b) allows a court to "quash or modify the subpoena if it is unreasonable and oppressive." The trial court, however, has wide discretion in setting the limits of discovery, and its decisions will not be reversed unless a clearly erroneous principle of law is applied, or no evidence rationally supports the decision. *Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545, 1547 (11th Cir.1985).

Moore v. Armour Pharmaceutical Co., 927 F.2d 1194, 1197 (11th Cir. 1991).

The Court will address Movant's contentions in the order they are stated above. First, the fact that Movants are not parties to this adversary proceeding is not a basis to prevent Plaintiff from obtaining discovery. In effect, Movants' contention is that non-parties may not be deposed, which is preposterous.

Second, Movants contend that Plaintiff has not shown that the information sought is relevant, a conclusion directly contradicted by allegations in the complaint. Plaintiff alleges in the complaint that Defendants converted funds belonging to a customer of Plaintiff and directed some of those funds to a bank account of a company called American Residential Funding, which Defendants owned. Complaint ¶¶ 9 and 18. The complaint further alleges that Defendant

Rhonda Odum purchased a mansion in Hilton Head, South Carolina in 2005, the closing of which involved funds "diverted to American Residential Funding." Complaint ¶ 22. Thus, the circumstances surrounding the purchase and disposition of the Hilton Head property are relevant to the extent of the alleged fraud and conversion.

Movants concede that they purchased the Hilton Head property from Defendants. The subpoenas are quite specific in seeking documents referring to the Hilton Head property and related transactions, relating to transfers made by the Defendants to Movants, relating to Plaintiff's customer, and relating to other business relationships between Movants and Defendants. That the information sought is relevant to the claim made in this proceeding is obvious.

Third, Plaintiff is under no obligation to exhaust all other possible sources of information before seeking discovery of such information from Movants so as to show a "need" to depose Movants. Movants failed to file a brief with their motion in violation of Bankruptcy Local Rule 7007-1(a) and have provided no legal support for their contention that Plaintiff has a burden of showing a special need for the discovery sought.

Movants have not shown any other basis on which they would be entitled to protection under Fed. R. Civ. P. 45(c), made applicable by Fed. R. Bankr. P. 7045. They have made no showing that it would be unduly burdensome on them to testify and to produce the documents sought in the subpoenas. Nor have they identified any privilege that would justify granting the relief sought. Although they contend that they have produced documents called for by the subpoena in state court litigation, Movants have not made a case that the documents sought here

are precisely those sought in the state court case or that they produced all such documents in the other litigation. If they already gathered the documents, producing them will not be a burden.

Fourth, Plaintiff in its response shows that it has not served a subpoena on Edward Menchion, which Movants certainly must have known. Unless he is served with a subpoena, there is no controversy concerning the validity of such a subpoena that this Court now has the power to decide.

Plaintiff contends that because the subpoenas issued in this case provided for depositions noticed in March 2008 and Movants did not file their motion for a protective order until April 7, 2008, the motion is untimely. In view of the Court's rejection of the grounds on which Movants contend that they are entitled to a protective order and to quash the subpoenas, the Court need not reach this argument.

For these reasons, Movants' motion for a protective order and to quash subpoenas is DENIED.

END OF ORDER