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LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

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Jason Davis,

Plaintiff,

vs.

Haidar For Trading LLC, et al.,

Defendants.

Case No. CI201903837

OPINION AND JOURNAL ENTRY

Hon. Myron C. Duhart

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This is before the court on the motion to show cause filed by plaintiff, Jason Davis. Upon review of the filings in this case, the arguments of the parties, and the applicable law, the court finds the motion to show cause well-taken.

STATEMENT OF FACTS

Plaintiff served non-party non-resident Credit Acceptance Corporation ("CAC"),¹ through its statutory agent, Corporation Service Company, with a Subpoena Duces Tecum for the production of certain documents. The subpoena did not require any personal appearance in Ohio.

¹ CAC is an indirect auto finance company located in and a resident of Michigan.

On January 7, 2020, plaintiff filed the instant motion requesting an order directing CAC to show cause why it should not be sanctioned for failure to comply with the subpoena.

The parties have fully briefed this motion and it is now decisional.

I. LAW AND ANALYSIS

Plaintiff requests an order from this court directing CAC to show cause why it should not be sanctioned for failure to comply with the subpoena. CAC has responded that as it is a nonparty, nonresident of Ohio, this court does not have the power to issue it a subpoena. CAC first argues that Ohio courts do not have subpoena power over nonparties who are not residents of the state as a court's territorial jurisdiction does not extend to such parties. In so arguing, CAC distinguishes a court's personal jurisdiction over it from a court's subpoena power. In support of its argument, CAC cites to numerous cases. The first group of cases cited by CAC are Ohio cases in which the courts found that an Ohio court's subpoena power does not reach out of state nonparties. See, e.g., *Gibsonburg Health LLC v. Miniet*, 6th Dist. Sandusky No. S-17-015, 2018-Ohio-3510, ¶ 8. However, the court finds these cases distinguishable as unlike the present case, in those cases, the subpoena was not served on a corporation by serving the corporate agent in the state of Ohio. R.C. 1703.041 specifies that process can be served upon a foreign corporation's "designated agent" within the state. "Process" is defined as "judicial process and all notices and demands required or permitted by statute to be served upon a corporation." R.C. 1703.01(E). A subpoena would fit within this definition.

CAC also cites to cases from other states that have found (1) a court's subpoena power differs from its personal jurisdiction, and (2) service of a subpoena on a non-resident's statutory agent does not provide a court with subpoena power over that nonparty. CAC maintains that while it does business in Ohio and thus, may be subject to Ohio's personal jurisdiction under certain

circumstances, it is not subject to Ohio's subpoena power. As with the Ohio cases cited by CAC, the majority of foreign cases are also distinguishable as the statutory agent was not served in that state. However, CAC does cite to *Ulloa v. CMI, Inc.*, 133 So.3d 914 (Fla.2013) where service was made upon a company's statutory agent. In *Ulloa*, the Florida Supreme Court found that, under the applicable Florida statute, designation of a registered agent "does not allow for service of subpoenas on a registered agent to compel production in [Florida] of out-of-state documents belonging to an out-of-state, nonparty corporation in connection with a criminal case" and that the party must request the documents under Florida's Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. *Id.* at 916. Similarly, in *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*, 289 Va. 426, 770 S.E.2d 440 (2015), the court found that the court did not have subpoena power over a nonresident corporate defendant despite service on a corporation's in-state statutory agent.

Plaintiff counters that CAC is subject to the court's subpoena power as it regularly does business in Ohio, has a registered agent in Ohio, and was served with the subpoena through its statutory agent in Ohio. In support of its argument that service of the subpoena on the statutory agent is sufficient, plaintiff cites to *A.O. Smith Corp. v. Perfection Corp.*, 10th Dist. Franklin No. 03AP-266, 2004-Ohio-4041. In that case, a corporation that resided in Houston, Texas but was licensed to do business in Ohio was served a subpoena through that corporation's statutory agent in Ohio. The court rejected the company's argument that the trial court did not have jurisdiction to issue the subpoena and found that service on the company's statutory agent was proper service under Civ.R. 45.² The court finds *A.O. Smith Corp.* to be persuasive. Of the cases cited by the

² The court notes that in *A.O. Smith Corp.*, although the court found service on the statutory agent to be in accordance with the Ohio Rules of Civil Procedure, the court ultimately sustained the subpoenaed company's assignment of error "only to the extent" that the subpoena was in error as witness fees were not tendered, as required by Civ.R. 45. This issue has not been raised in the current case.

parties, *A.O. Smith Corp.* is the only Ohio case interpreting Ohio law regarding whether the court has the power to issue a subpoena when the subpoena is served on the corporation through the corporation's Ohio statutory agent. Following the reasoning in *A.O. Smith*, this court finds that the subpoena was properly served on CAC.

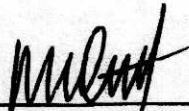
CAC has further argued that federal law prohibits it from producing a customer's non-public information in response to an invalid subpoena. As this court has not found the subpoena to be invalid, this argument is moot.

In light of the foregoing, this court will order CAC to provide plaintiff with the requested documents within ten days of the date of this order. Should CAC not comply, this court will hold a hearing regarding sanctions.

JOURNAL ENTRY

The court hereby **ORDERS** that the motion to show cause is hereby **GRANTED**. CAC will have ten days from the date of this order to comply with the subpoena. Should CAC fail to comply, plaintiff may request a hearing regarding sanctions.

4/23/20



Myron C. Duhart, Judge

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