

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

E.A. RENFROE & COMPANY, INC.,)	
)	
Plaintiff,)	
)	
-vs-)	CIVIL ACTION
)	NO 2. 06-WMA-1752-S
)	
CORI RIGSBY MORAN and)	
KERRI RIGSBY)	
)	
Defendants.)	
_____)	

RENFROE’S (1) RESPONSE TO THE MOTIONS OF CORI RIGSBY AND SCRUGGS FOR RELIEF, (2) MOTION TO AMEND PROTECTIVE ORDER, and (3) MOTION TO ENFORCE INJUNCTION

Plaintiff E. A. Renfroe & Company, Inc. (“Renfroe”) herein responds to the motions of Cori Rigsby [344] and Richard Scruggs, D. Zachary Scruggs and the Scruggs Law Firm, P.A. [360] (hereafter referred to collectively as “Scruggs”), seeking relief from this Court’s December 8, 2006 Preliminary Injunction [60] (“Injunction”). In light of these motions and for the reasons discussed below, Renfroe also moves for a limited amendment to the Injunction’s protective order as modified only as necessary to authorize and direct the provision of documents to State Farm, and seeks an order enforcing the Injunction.

II. BACKGROUND

A. The Preliminary Injunction and Protection of Documents Purportedly Returned Pursuant to It

Renfroe commenced this action in September 2006 [1] and in October 2006 moved for preliminary injunction [30]. In November 2006 the Mississippi Attorney General intervened for limited purposes [36] and filed a motion for protective order, to quash discovery and/or to stay proceedings, claiming a concern related to a then-pending criminal investigation [42]. Defendants joined the motion to stay proceedings [48], and the Court denied the requests to stay proceedings [52].

Following briefing and evidentiary hearing, the Court on December 8, 2006 issued the Injunction, which was upheld on appeal in *E.A. Renfroe & Co., Inc. v. Moran*, 249 Fed. App. 88 (11th Cir. 2007). The Injunction mandatorily enjoins Defendants, their agents, servants, employees, attorneys, and other persons in active concert or participation with them to deliver forthwith to Renfroe's counsel all documents and tangible things, whether originals or copies, in any form or medium, taken from Renfroe or any of its clients, including State Farm Fire and Casualty Company ("State Farm") [60 at pp. 13-14].

To accommodate the claimed concerns advanced at the time by the Mississippi Attorney General, the Court included in the Injunction a

protective order prohibiting disclosure by Renfroe's counsel to anyone – including Renfroe – of any materials delivered to them pursuant to the Injunction “unless and until express authorization of the court is sought and obtained.” [60 at p.15].

When Defendants filed a motion in September 2007 [162] seeking access to the documents subject to the Injunction (which were by then held by the Court), the Mississippi Attorney General raised no concerns about anyone's access to the documents. Renfroe's counsel worked with Defendants' counsel to come up with a proposed order that would allow both Defendants and Renfroe access to the documents for this litigation, while preserving the confidential and trade secret nature of information contained within the documents. The Mississippi Attorney General raised no concerns about Renfroe's or anyone else' access to the documents.

In October 2007, the Court entered the proposed order presented by the parties, which modified the original protective order contained in the Injunction. The October 10, 2007 order provided for two copies of the documents to be made for each side (one set for the parties' local attorneys and one set for their out-of-state attorneys), limiting use to this litigation and allowing disclosure to the parties, their counsel, expert witnesses and witnesses under examination (with disclosure by them restricted) [172]. As

provided in the October 10, 2007 modification to the Injunction's protective order, each side now has two sets of the same documents this Court has (referred as the "Restricted Documents"), and may disclose them to their clients that are parties to this lawsuit for purposes of this litigation. According to the Battle Fleenor lawyers, they are now in possession of both sets of the Restricted Documents given to their side due to the withdrawal of the Zuckerman lawyers.

There is no suggestion in this Court by the Mississippi Attorney General, Defendants or anyone else that there is any pending criminal investigation in Mississippi or any other reason now to prevent State Farm from having the stolen documents.

B. Defendants' and Scruggs' Efforts to Create a Discord Between this Court's Injunction and the Orders of Other Courts.

Defendants and Scruggs were mandatorily enjoined to surrender all materials covered by the Injunction in their possession or under their control forthwith when they were notified of the Injunction in December 2006. Instead, Defendants and Scruggs have used and are using the protections intended for covered materials that have been *returned* per the Injunction (the Restricted Documents) to resist discovery by State Farm in other cases, such as *McIntosh v. State Farm Fire and Casualty Insurance Co., et al.*, No. 1:06cv1080-LTS-RHW, United States District Court, Southern District of

Mississippi and to try to create conflicts between the orders of this Court and the *McIntosh* court.

As part of Defendants' most recent attempt, Cori Rigsby filed an emergency motion for modification in *McIntosh* on June 18, 2008. In that motion (which she attached as Exhibit 1 to her June 18, 2008 motion in this Court [344] for relief from the Injunction), Cori sought a protective order regarding documents from her computer that "appear to fall within the scope of documents covered by the preliminary injunction" and were put onto a compact disc ("CD"). *See* Exhibit 1 to Motion for Relief from Preliminary Injunction Regarding Certain Documents [344] (hereafter after "Motion for Relief"), Exhibit 1 at p.8. The *McIntosh* court denied Cori's requested protective order, stating:

Rigsby's counsel urges the Court to enter a protective order regarding documents which may be subject to Judge Acker's order, to avoid putting counsel or Rigsby in the position of violating the injunction. Counsel expresses concern that he and his client may have violated the injunction simply by providing the State Farm documents recovered from Rigsby's computer to this Court for *in camera* review. **It appears to this Court that a greater concern might be that since Rigsby was ordered in December 2006 "to deliver forthwith... all documents... in any form or medium..." the mere presence of the State Farm documents on Cori Rigsby's computer indicate an ongoing violation of the injunction ever since that time.** [FN7] This Court will not enter a protective order to preclude State Farm from discovering the State Farm documents Rigsby stole.

[FN7] According to Cori Rigsby, her computer did not “crash” until September 2007.

Order, June 23, 2008 [dkt no. 1213], *McIntosh v. State Farm Fire and Casualty Insurance Co., et al*, No. 1:06cv1080 S.D. Miss. (footnote in original) (emphasis added).¹

In Cori’s Motion for Relief filed in this Court, she seeks to exclude from the Injunction those same stolen documents that she told the *McIntosh* court appear to be subject to the Injunction [344 at p.3-4]. Her motion offers no explanation as to she why did not surrender those documents forthwith at any time between her December 2006 notice of the Injunction and her September 2007 computer “crash,” or why she has maintained throughout this case that she has had nothing to surrender since before the Injunction issued, or why she never mentioned those documents at any time in this case – not in written discovery, not in her two depositions, and not in her testimony before this Court during the March 2007 contempt hearing.

Scruggs’ most recent attempt is similar. In his objection to the *McIntosh* magistrate order compelling discovery of documents taken from State Farm’s computers, Scruggs stated:

¹ On June 24, 2008 the *McIntosh* court entered an order indicating that it had received a second CD containing files recovered from Cori Rigsbys computer [*McIntosh* dkt. 1214], of which that court apparently was not previously aware. It is unknown to Renfroe at this time whether that second CD also contains documents covered by the Injunction.

The production of the requested documents would compel testimony from the Scruggses that could furnish evidence to prosecute them in connection with the Alabama action. The *Renfroe* matter is still pending in Alabama, and Judge Acker has already referred Richard Scruggs and the Scruggs law Firm for prosecution once based on the alleged failure to produce documents. To require that the Scruggses now search their files and produce documents related to the *Renfroe* matter could require them to produce evidence against themselves for a further prosecution.

Objection of Nonparties Richard F. Scruggs and D. Zachary Scruggs to Magistrate Judge's Order, May 28, 2008 [dkt. no. 1201], *McIntosh v. State Farm Fire and Casualty Insurance Co., et al*, No. 1:06cv1080 S.D. Miss. The district court judge overruled Scruggs' objections, affirmed the magistrate's order in all respects and ordered compliance within 15 days. *See Order Overruling Objections to United State Magistrate Judge's Order Concerning Discovery*, June 20, 2008 [dkt. no. 1212], *McIntosh v. State Farm Fire & Casualty Co., et al*, No. 1:06cv1080 S.D. Miss.

Scruggs has now come to this Court, asking to be relieved of his obligations under the Injunction to surrender the stolen documents he admits remain in his possession [360]. According to Scruggs, sometime in the Fall of 2007 or thereafter, he decided to search his electronic files for information covered by the Injunction, and he then kept electronic versions of what he found. He complains about the precarious position in which he has placed

himself by waiting until late 2007 to look for and find the information, and then by retaining it until the *McIntosh* court had finally had enough of his discovery-avoidance tactics. [360 at ¶¶ 3, 8]. Scruggs' motion offers no explanation as to why he waited more than a year to make any effort to comply with the Injunction by even looking for the information in the face of the Injunction's clear mandate to forthwith surrender all copies of the stolen documents and other materials – in any form or media.

III. DISCUSSION

Defendants and Scruggs ask this Court to relieve them of their obligations to comply with the Injunction with which they should have long ago complied. Those motions are moot and meritless. They do, however, further show the propriety providing the stolen materials to State Farm and the continuing need to enforce the Injunction.

A. The Motions of Defendants and Scruggs for Relief from the Injunction are Moot and Without Merit.

The motions of Defendants and Scruggs are without merit and are mooted by the most recent *McIntosh* orders. The *McIntosh* court rejected their efforts to pit that court against this one, appreciating that, had they complied with this Court's Injunction, there would be nothing there to compel. Defendants and Scruggs are no less in contempt now than they

would be complying with the *McIntosh* discovery orders, as they have been in contempt since December 2006.

Moreover, Cori Rigsby's motion requesting that these stolen documents be excluded from the Injunction is no more than a request for amnesty from her own contempt. In addition to a free pass, she would also be free to disclose the confidential and trade secret information that she stole to anyone for any purpose.

Defendants' and Scruggs' motions for relief should be denied, but they do serve to further highlight concerns expressed by this Court as to problems caused by the existing prohibition on State Farm's access to the Restricted Documents. Renfroe therefore offers a simple solution regarding the Restricted Documents that both obviates the lamentations of Defendants and Scruggs about the positions in which they placed themselves here and in *McIntosh* by failing to comply with the Injunction, and aids the Court. Defendants should produce copies of the documents to State Farm as ordered in *McIntosh* and, at the same time, surrender the originals and all other copies in any form or media of those documents to the Court to become part of the Restricted Documents to be used only in this litigation. In addition, one of the existing five sets of the Restricted Documents will be returned to State Farm.

B. State Farm Should Have Access to the Stolen Documents.

The majority of the Restricted Documents contain information from State Farm's files and computer systems. In its June 24, 2008 order [356] permitting State Farm counsel and a State Farm employee to disclose the contents of Restricted documents about which the employee is questioned by Defendants' counsel, the Court noted the difficulties for State Farm presented by the application to State Farm of the October 10, 2007 restrictions, which the Court had previously applied to State Farm in the interests of the Defendants, but who now have no objection to State Farm's access to the documents. Consistent with the Court's rationale, and furtherance of the Court's desire for a permanent remedy regarding the Restricted Documents, Renfroe now proposes that a complete set of the Restricted Documents be returned to State Farm.

This Court is no longer confronted with any claim from the Mississippi Attorney General, Defendants or anyone else that there is any pending criminal investigation or any other reason that information stolen from State Farm should not be returned to State Farm.

Defendants and Scruggs have forced State Farm to expend significant efforts in *McIntosh* pursuing discovery of the stolen documents and enforcing that court's orders compelling the discovery, with Defendants and

Scruggs trying to use the protections surrounding documents surrendered pursuant to the Injunction to thwart those efforts. If the information stolen from State Farm is returned both to State Farm and to this Court, opportunities to try to pit this Court's Injunction against other courts' orders evaporate. Defendants and others enjoined by the Injunction need only comply with the Injunction.

Defendants make no objection to State Farm's access to the Restricted Documents and seek no restrictions as to State Farm's use or disclosure of the Restricted Documents. Renfroe has no objection, as Renfroe's interests in confidentiality are addressed by the mutual obligations of State Farm and Renfroe to protect confidential information. Indeed, Renfroe's goal has always been to be able to return to State Farm all documents (including all copies) that the Defendants stole from State Farm's files and systems once they are no longer needed to conduct this litigation.

Renfroe recognizes that the parties and their counsel must have access to the Restricted Documents in order to litigate this case, and recognizes that State Farm is entitled to the documents that contain information stolen from it. Renfroe further recognizes the unnecessary burdens placed upon this Court by limitations on State Farm's access to the documents where the claimed reason previously urged upon the Court for those limitations no

longer exists. The important confidentiality considerations in this litigation underlying the October 10, 2007 order remain critical, and will not be affected by the return to State Farm of a set of the Restricted Documents. For these reasons, Renfroe respectfully requests that the Court amend the December 8, 2006 protective order as modified, only insofar as necessary to authorize and direct the return a set of the Restricted Documents to State Farm. Since Defendants' counsel find themselves with an extra set of the Restricted Documents as a result of the Zuckerman lawyers' withdrawal, it would make sense for Defendants to provide their extra set to State Farm.

C. Defendants and Scruggs Should be Required to Comply with the Injunction.

Renfroe continues to be disappointed and frustrated by Defendants' and Scruggs' violations of this Court's Injunction. Given this latest example in which they inform this Court that they still have documents covered by the Injunction, Renfroe respectfully asks this Court to enforce the Injunction by ordering Defendants and Scruggs to forthwith surrender the documents, in all forms and media, that they say they have, as well as all other materials, including all copies of documents, in any form or medium, that are covered by the Injunction.

Renfroe does, of course, see the redundancy of this Court ordering what it has previously ordered. The problem for Renfroe is that Defendants

and Scruggs still have not done what has already been ordered in the Injunction, but Renfroe is somewhat hesitant to file repeated contempt motions in consideration of the Court's precious resources. Renfroe is hopeful that, given the Court's most recent contempt order which made very clear the Court's view of Defendants' and Scruggs' past conduct, a stern order directing them to fully comply with the Injunction now or face serious consequences (for example, striking Defendants' answer, stiff monetary sanctions and/or possible criminal contempt charges), will stimulate compliance once and for all. Renfroe simply wants compliance.

III. CONCLUSION

Based upon the foregoing, Renfroe respectfully requests that this honorable Court: (1) deny Cori Rigsby's Motion for Relief from Preliminary Injunction Regarding Certain Documents [344]; (2) deny Scruggs' Emergency Motion for Relief [360]; (3); amend the Injunction's protective order as modified to direct the return of one set of the Restricted Documents to State Farm, but in all other respects preserve the protections for the documents retained in this case, and (4) enter an order enforcing the Injunction.

Respectfully submitted this 25th day of June, 2008.

By: /s/ Victoria L. Helms
Victoria L. Helms, Esq.
(Admitted to Practice *Pro Hac Vice*)
Georgia Bar No. 344228
vhelms@helmsgreene.com
Steven S. Greene, Esq.
(Admitted to Practice *Pro Hac Vice*)
Georgia Bar No. 308715
sgreene@helmsgreene.com
HELMS & GREENE, LLC
115 Perimeter Center Place
Suite 635
Atlanta, GA 30346
770-206-3371
770-206-3381 (facsimile)

Jack E. Held
Alabama Bar No. 6188-H65J
jackheld@sirote.com
J. Rushton McClees
Alabama Bar No. ASB-8805-C39J
rmcclees@sirote.com
SIROTE & PERMUTT, P.C.
2311 Highland Avenue South
Birmingham, Alabama 35205
205-930-5100
205-930-5101 (facsimile)

Barbara Ellis Stanley
Admitted Pro Hac Vice
Texas Bar No.: 19043800
bstanley@helmsgreene.com
HELMS & GREENE, LLC
One City Centre, Suite 1290
1021 Main Street
Houston, Texas 77002
713-651-0277
713-651-0288 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of June, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Robert E. Battle, Esq. / rbattle@bfgwc.com
Harlan F. Winn, III, Esq. / hwinn@bfgwc.com
Jon H. Patterson, Esq. / jpatterson@bfgwc.com
Battle Fleenor Green Winn & Clemmer LLP
The Financial Center
505 North 20th Street
Suite 1150
Birmingham, AL 35203

Frank M. Bainbridge, Esq. / fbainbridge@bainbridgemims.com
Bruce F. Rogers, Esq. / brogers@bainbridgemims.com
Bainbridge, Mims, Rogers & Smith, LLP
Post Office Box 530886
Birmingham, AL 35253

John W. Keker, Esq. / jwk@kvn.com
Brook Dooley, Esq. / bdooley@kvn.com
Keker & Van Nest, LLP
710 Sansome Street
San Francisco, CA 94111-1704

/s/ Victoria L. Helms