

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF ALABAMA,
 SOUTHERN DIVISION

E.A. RENFROE & COMPANY, INC.,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	
V.)	2:06-cv-1752-WMA
)	
CORI RIGSBY MORAN and KERRI)	
RIGSBY,)	Judge William M. Acker, Jr.
)	
Defendants.)	

**RENFROE’S SUPPLEMENT TO ITS MOTION FOR PROTECTIVE
 ORDER AND RESPONSE TO DEFENDANTS’ MOTION TO
 COMPEL TESTIMONY OF WITNESSES**

Plaintiff, E.A. Renfroe & Company, Inc. (“Renfroe”), hereby supplements its recently-filed Motion for Protective Order and Response to Defendants’ Motion to Compel Testimony of Witnesses (Dkt. No. 311) in response to an email received on May 27, 2008 from counsel for Defendants Cori Rigsby (Moran) and Kerri Rigsby (“Defendants” or “the Rigsbys”). The email, a true and correct copy of which is attached as Exhibit A, contests Renfroe’s understanding of the negotiated agreements about the underlying discovery dispute.

Renfroe’s understanding of counsel’s agreement was that Defendants withdrew their request to strike Renfroe’s breach of contract claim and two questions relating to Cori Rigsby’s ex-husband Paul Moran, and that Renfroe

agreed to pay to Defendants' reasonable fees and expenses for the re-deposition of Renfroe employees Don Goodin and Steve Cantrell to answer the questions and reasonable additional follow-up questions specifically related to the questions originally posed to Goodin and Cantrell on the pages cited in Dkt. No. 311. (The parties have generally categorized these questions as "public policy" questions.)

Further, Renfroe understood that the parties agreed that the propriety of Defendants' questions concerning retaliatory discharge and Renfroe's agreement or requirement to keep confidential its communications with the Department of Justice, the Mississippi Department of Insurance and the Mississippi Attorney General was to be submitted to this Court for determination. Renfroe further understood that Defendants did not intend to pursue those questions related to communications with these governmental agencies because of the confidential nature of those communications.

Based on the May 27, 2008 email, it appears that counsel for Defendants does not withdraw their request to strike a portion of Renfroe's pleadings despite the fact that Renfroe agreed to pay their reasonable fees and expenses to re-depose Goodin and Cantrell on the "public policy" questions (and despite the fact that Defendants' counsel questioned both Gene Renfroe and Jana Renfroe without restriction and at length on these same "public policy" questions). The harsh sanction sought by Defendants is inconsistent with well-established Eleventh

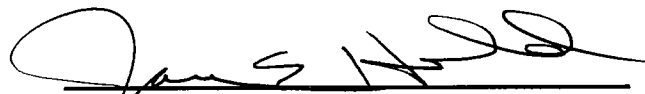
Circuit precedent requiring that a court order regarding the discovery dispute be disobeyed before the imposition of such a sanction. *See, e.g., United States v. Certain Real Property Located at Route 1, Bryant, Ala.*, 126 F.3d 1314 (11th Cir. 1007) (citing cases consistently reserving the sanction of dismissal for cases “where the party’s conduct amounts to flagrant disregard and willful disobedience of discovery orders” and “ought to be a last resort – ordered only if noncompliance with discovery orders is due to willful or bad faith disregard for those orders”) (citations omitted) (emphasis in the original).

Renfroe is disappointed by Defendants’ position, but stands by its agreement to pay their reasonable fees and expenses to re-depose Goodin and Cantrell on the “public policy” questions and to abide by this Court’s decisions regarding questions concerning retaliatory discharge and cooperation with state and federal agencies.

PRAYER

ACCORDINGLY, Renfroe respectfully requests that this Court: (1) permit Renfroe to offer Goodin and Cantrell for continued depositions as specified and as limited in Section I of Dkt. No. 311; (2) deny Defendants’ Motion (Dkt. No. 283); (3) sustain Renfroe’s objections, and (4) grant Renfroe’s motion for protective order with respect to the discovery matters discussed in Section II of Dkt. No. 311.

Respectfully submitted on this 29th day of May, 2008.



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CERTIFICATE OF SERVICE

I hereby certify that copies of the above and foregoing have been served upon the following counsel of record to this proceeding via e-mail transmission and United States Mail, properly addressed and postage prepaid, on this the 29th of May, 2008, as follows:

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A handwritten signature in black ink, appearing to read "Jack E. Held", written over a horizontal line.

Jack E. Held
Of Counsel for Plaintiff

EXHIBIT "A"

Barbara E. Stanley

From: Bob Battle [rbattle@bfgwc.com]
Sent: Tuesday, May 27, 2008 3:48 PM
To: Barbara E. Stanley; McClees, Rushton
Cc: Harlan Winn; Amy Lavender Rodgers; Jon Patterson
Subject: Renfroe's Motion for a Protective Order and Response to Motion to Compel Testimony

Barbara and Rushton,

I just reviewed this pleading filed by Renfroe at the end of last week. I was surprised to see that you state on page 2 of this pleading that "Defendants have withdrawn . . . their request that any portion of Renfroe's complaint be stricken." I assume that is referring to our sanction request, in our motion to compel testimony, that the breach of contract claim be dismissed. We did not agree to withdraw this portion of our sanction request unless you agreed to pay our fees and any related expenses for the witnesses to be re-deposed on all the questions on which we moved to compel (other than the ones re: Paul Moran you cite in the same sentence). You did not agree to do so, and instead filed your response on the majority of the questions at issue. Thus, we made no agreement to withdraw this sanction request. Please submit a correction to Judge Acker that lets him know of this misstatement in your response. Thanks.

-Bob

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5/27/2008

