

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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

**RENFROE'S MOTION FOR**  
**COMPENSATORY SANCTIONS**  
**FOR CIVIL CONTEMPT**

By this Motion for Compensatory Sanctions for Civil Contempt, Plaintiff E.A. Renfroe & Company, Inc. ("Renfroe") renews its request that Defendants Cori Rigsby Moran and Kerri Rigsby ("Defendants" or "Rigsbys") and Richard Scruggs and The Scruggs Law Firm ("Scruggs") be found in civil contempt for their delays and evasions in complying with the Preliminary Injunction (Dkt. #60) and for compensatory sanctions measured by Renfroe's attorneys' fees incurred in enforcing the Injunction. These attorneys fees were necessitated by the civil contempt of Defendants and

Scruggs in failing to surrender the documents “forthwith” as required by the Injunction.

**The Rigsbys and Scruggs Failed to Use All Reasonable Efforts to Return the Documents “Forthwith.”**

A respondent’s legal obligation is to exercise “in good faith all reasonable efforts to comply” with an injunction. *United States v. Hayes*, 722 F.2d 723, 725 (11<sup>th</sup> Cir. 1984). An alleged contemnor “must go beyond a mere assertion of inability’ ... and establish that he has made ‘in good faith all reasonable efforts’ to meet the terms of the order... .” *Commodity Futures Trading Comm’n*, 950 F.2d at 1529. (Citations omitted). “Even if the efforts he did make were ‘substantial,’ ‘diligent’ or ‘in good faith,’ ... the fact that he did not make ‘all reasonable efforts’ establishes that [respondent] did not sufficiently rebut the ... prima facie showing of contempt.” *Id.* (Ellipses in original). A district court’s determination of whether the contemnor has met his burden of production is “entrusted to the sound discretion of the court and subject to the clearly erroneous rule.” *Id.* (Citations omitted). Merely “requesting” return of the documents is not sufficient. *Id.* at 1530; *Hayes*, 722 F.2d at 726.

When the Rigsbys did not surrender the documents to Renfroe’s counsel as instructed by the Injunction, Renfroe, by counsel, began contacting the Rigsbys’ counsel asking for the surrender of the documents

held by the Rigsbys themselves or by “their agents, servants, employees, attorneys, or other persons in active concert or participation with them.” (See Dkt. #60 at p. 13). Renfroe wrote letters to the Rigsbys’ counsel requesting the surrender of the documents on December 14, 2006,<sup>1</sup> December 18, 2006,<sup>2</sup> and December 28, 2006,<sup>3</sup> and had multiple telephone conversations. The Rigsbys repeatedly refused to produce the documents saying first that they declined to produce the documents pending their appeals of the Injunction,<sup>4</sup> and subsequently that they did not possess the documents but had requested them from The Scruggs Law Firm which, as it turned out, had sequestered the documents with the Mississippi Attorney General.<sup>5</sup> It was not until February 2, 2007 that the first stolen document was surrendered to Renfroe’s counsel.

After a month and a half of unsuccessful efforts to retrieve the documents and enforce the Injunction, Renfroe filed a motion requesting that this Court have the Defendants and their agents and attorneys show cause why they should not be held in contempt of court for their obvious failure to comply with the Injunction. (Dkt. No. 68). Renfroe was effectively forced to bring contempt proceedings because of Scruggs’ and the Rigsbys’ failure

---

<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

<sup>3</sup> Exhibit 3.

<sup>4</sup> Exhibit 4.

<sup>5</sup> Exhibit 5 (letters dated December 21, 2006 and January 3, 2007).

to comply with the Injunction. This Court granted Renfroe's request and ordered the Rigsbys and Richard F. Scruggs and The Scruggs Law Firm (collectively, "Scruggs") to show cause why they should not be held in contempt. (Dkt. No. 88). The hearing on Renfroe's motion was held March 19-20, 2007. At that hearing, the Rigsbys testified that their only efforts consisted of making a couple of calls to Scruggs and that their attorneys also called Scruggs about returning the documents. (Dkt. 145 at p. 24). Scruggs testified that he "made an effort" to get the documents back from those to whom he had given them and that he had sent the documents to the Mississippi Attorney General rather than surrender them to Renfroe's counsel. (Dkt. 145 at pp. 7-8, 17).

From the time the Injunction was entered through the contempt hearing, Renfroe continued its efforts to enforce the Injunction. The Rigsbys and Scruggs surrendered documents sporadically prior to and after the March hearing.<sup>6</sup> The Mississippi Attorney General eventually surrendered the documents that Scruggs had sequestered with his office. Before and after the hearing Renfroe had to review pleadings by the Rigsbys and

---

<sup>6</sup> After the hearing Scruggs and the Rigsbys surrendered additional documents on April 25, 2007, May 2, 2007, August 7, 2007, and October 16, 2007. On March 23, 2007, Scruggs sent a letter to Mississippi Attorney General Jim Hood requesting that Hood send him "copies of all State Farm documents that your office voluntarily provided E.A. Renfroe last month." Although the Attorney General refused his request (Dkt No. 145 p. 11), Scruggs' actions are an example of the continuing need for Renfroe to monitor and enforce compliance with the Injunction.

Scruggs and extensively briefed issues and responses relating to the Rigsbys' and Scruggs' continued intense efforts to avoid compliance with the Injunction. (See e.g., Dkt. Nos. 91, 92, 93, 96, 97, 98, 99, 100, 102, 104, 105, 129, 131, 136, 137, 138, 139, 141, 142, and 143.).

At the March 19, 2007 hearing, the Rigsbys claimed for the first time that the number of pages they downloaded and copied from State Farm's files was 5,000 rather than 15,000 as they had announced on national television, shared with newspaper reporters, confirmed in their Answer, and repeated in pleadings in at least one other case.<sup>7</sup> This Court subsequently provided an exact count of documents actually surrendered (including documents that were surrendered the day of the hearing).

Renfroe argued vigorously at the hearing and in subsequent briefing that the total number of boxes that the Rigsbys admitted utilizing indicated sets of 15,000 pages rather than 5,000 and that Scruggs and the Rigsbys had admitted widely sharing the confidential documents without keeping any records and could not account for the documents they had given out. The Rigsbys' surprise announcement necessitated additional briefing and

---

<sup>7</sup> "Prior to discharge, relators had copied approximately 15,000 pages of documents that were turned over to counsel." *United States ex rel. Cori Rigsby et al v. State Farm Ins. Co.*, Cause No. 1:06-cv-433, WJG, Memorandum in Support of the United States' Unopposed Ex Parte Application for Six Month Extension of Time to consider Election to Intervene, Dkt. No. 4 at p. 2 ¶ 10, filed July 5, 2006 by Scruggs on behalf of the Rigsbys as Relators.

attorneys fees. Because of the last minute “clarification” as to the number of documents at issue and because the documents continued to dribble in, Renfroe argued that Scruggs and the Rigsbys had not shown a legally sufficient effort to comply with the Injunction. *See, e.g., United States v. Hayes*, 722 F.2d 723, 725 (11<sup>th</sup> Cir. 1984).

This Court, however, found that Renfroe had not presented clear and convincing evidence that the Rigsbys and Scruggs had State Farm documents that they had not yet surrendered as of the hearing date and declined to impose coercive sanctions. (Dkt. No. 145 at p. 15). This Court, however, reserved its determination as to whether the dilatory actions outlined in the paragraphs above merited compensatory sanctions until after the Eleventh Circuit ruled on the enforceability of the Injunction.

Civil contempt may serve either a coercive or a compensatory function. *Sizzler Family Steak Houses v. Western Sizzlin Steak House, Inc.*, 793 F.2d 1529, 1534 (11<sup>th</sup> Cir. 1986). Civil contempt “can be either coercive, which is intended to make the recalcitrant party comply, or compensatory, which ‘reimburses the injured party for the losses and expenses incurred because of his adversary’s noncompliance.’” *Id.* (citations omitted).

When it declined to impose coercive sanctions, this Court said: “whether it should impose civil contempt sanctions that are compensatory in nature” was premature because the Eleventh Circuit had not yet ruled on the validity of the Injunction. (Dkt. 145 at pp. 12-13). The Eleventh Circuit has now ruled and has upheld the Injunction.<sup>8</sup> There is, therefore, no impediment to the Court’s ruling that the actions of the Rigsbys and Scruggs in avoiding compliance with the Injunction warrant the imposition of compensatory sanctions.

The record from the March 19-20 hearing (Dkt. 130) provides clear and convincing evidence that, at best, the Rigsbys and their attorney and agent Scruggs made either minimal efforts to comply with the Injunction or, more likely, deliberately thwarted compliance.<sup>9</sup> “A party under court order to produce documents has a duty to make in good faith all reasonable efforts to comply.” *United States v. Hayes*, 722 F.2d at 725. Absent Renfroe’s rigorous efforts to enforce the injunction and demand surrender of the documents, there is no telling when, if ever, the Rigsbys, Scruggs, the Mississippi Attorney General, or the other known lawyers and law firms to

---

<sup>8</sup> *E.A. Renfroe & Company, Inc. v. Moran et al*, No. 06-16561, United States Court of Appeals for the Eleventh Circuit (August 24, 2007) ( Dkt. No. 165).

<sup>9</sup> See also Dkt. 145 at pp. 7-9; 11, 17. Without providing any details behind his effort, Scruggs testified that he has “made an effort’ to get individuals with whom he has shared the documents to return them.” *Id.* at p. 17. All references in Dkt. 145 to the hearing transcript are incorporated herein by reference.

whom Scruggs distributed the documents would have finally surrendered the documents we now have.<sup>10</sup> Absent Renfroe's rigorous efforts to enforce the injunction, we do not know if the Rigsbys would have continued to look in garages and other locations where they have subsequently found relevant documents.<sup>11</sup> Scruggs and the Rigsbys continue to test the limits of the Injunction's prohibited "use" of the stolen documents by sponsoring media and web ads in which Kerri Rigsbys touts to prospective Scruggs' clients her expertise in battling insurance companies such as State Farm. (Dkt. No. 131; Dkt. 145 at pp. 11-12).

This Court found that Scruggs' "lackadaisical ... attempts to retrieve copies of the documents that he shared with other individuals" could be addressed by a request for compensatory sanctions. (Dkt. 145 at p. 17). The Rigsbys' meager compliance efforts in making "one or two calls to Scruggs" may also be relevant to compensatory contempt sanctions. (Dkt. 145 at p. 24). As she admitted on August 7, 2007, some of the relevant documents were in Cori Rigsby's possession and had been stored her garage.<sup>12</sup> The extra efforts that Renfroe was forced to spend to enforce the Injunction and to continue its efforts to get the documents off the streets are a predictable

---

<sup>10</sup> Exhibit 5 and Exhibit 6 (letters from Scruggs' counsel dated February 6, 2005, February 28, 2007, April 25, 2007, May 2, 2007, and October 16, 2007).

<sup>11</sup> Exhibit 7 (letter from the Rigsbys' counsel dated August 7, 2007).

<sup>12</sup> Exhibit 6.



result of the Rigsbys' and Scruggs' tardy and incomplete efforts to comply with the Injunction. *See Sizzler Family Steak Houses*, 793 F.2d at 1536.

**Renfroe Should Be Awarded its Attorneys Fees as a  
Compensatory Sanction.**

Renfroe requested attorneys fees as a sanction for the dilatory tactics and “lackadaisical” attempts to retrieve and surrender the documents in its initial motion seeking a contempt finding against the Rigsbys and Scruggs (Dkt. No. 68 at p. 7) and again in its Brief in Support of its Motion for Defendants and Scruggs to be Held in Civil Contempt of Court (Dkt. No. 128 at p. 10). By this motion, Renfroe renews its request that the Rigsbys and Scruggs be held in civil contempt for their failure to exercise all reasonable efforts to comply with the injunction and its request for its reasonable and necessary attorneys fees incurred in enforcing the Injunction as a compensatory sanction for their dilatory and lackadaisical compliance with the Injunction.

“[A]ward of attorneys fees to the injured party in a civil contempt case is within the district court’s discretion.” *Sizzler Family Steak Houses*, 793 F.2d at 1534 (citations omitted). “[T]he mere fact that a party may have taken steps toward compliance is not a defense to a contempt charge.” *Id.* at 1535 n. 5.

The Rigsbys' and Scruggs' failure to comply with the Injunction "forthwith" required Renfroe to take extraordinary and time consuming measures to enforce compliance. Renfroe's efforts between the issuance of the Injunction and the contempt hearing date resulted in the return of 8,362 pages of documents (plus several CD's with copies of documents) as of March 28, 2007. (Dkt. 145 at p. 11). Subsequent Bates labeling of the documents reveals that Renfroe has prevailed in securing a total of approximately 14,000 pages of surrendered documents, including the documents provided as recently as October 17, 2007, that had been downloaded or copied from State Farm's files.<sup>13</sup>

As established by the attached Affidavit and redacted invoices,<sup>14</sup> Renfroe has incurred \$94,219.75 in attorneys fees in its attempt to enforce compliance with the Injunction. Renfroe seeks to recover those attorneys fees as a compensatory sanction for the Rigsbys' and Scruggs' civil contempt shown by their lackadaisical and dilatory actions in complying with the Injunction. *See Rickard v. Auto Publisher, Inc.*, 735 F.2d 450, 458

---

<sup>13</sup> The Bates labels show 14,287 pages, but some of the labeled pages are dividers, folders, envelopes, or other such documents that are not necessarily covered by the Injunction.

<sup>14</sup> Exhibit 8 which is fully incorporated herein by reference. **NOTE: Renfroe does not waive any aspect or portion of its attorney client privilege by submitting this request for reimbursement or by offering invoices as evidence of its reasonable and necessary attorneys fees. Any description of the attorney's services rendered does not open the door for further inquiry regarding that description or service and does not waive the attorney client privilege.**

(11<sup>th</sup> Cir. 1984) (compensatory sanctions are to reimburse the injured party for the adversary's noncompliance).

ACCORDINGLY, Renfroe respectfully requests that this Court find contemptuous the Rigsbys' and Scruggs' lackadaisical and dilatory response to the Injunction's requirement that the documents be surrendered "forthwith," and that it award Renfroe appropriate compensation for its efforts in enforcing the Injunction.

Respectfully submitted this 12<sup>th</sup> day of November, 2007.

By: /s/ Jack E. Held

Jack E. Held

Alabama Bar No. 6188-H65J

jackheld@sirote.com

/s/ J. Rushton McClees

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 (Fax)

And

By: /s/ Barbara Ellis Stanley

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 (Fax)  
[bstanley@helmsgreene.com](mailto:bstanley@helmsgreene.com)

ATTORNEYS FOR PLAINTIFF  
E.A. RENFROE & COMPANY, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served on all counsel of record pursuant to the Federal Rules of Civil Procedure and the CM/ECF System on November 12, 2007.

/s/ Barbara Ellis Stanley

Mr. William W. Taylor, III  
Mr. Michael R. Smith  
Zuckerman Spaeder LLP  
1800 M Street NW, Suite 1000  
Washington, D.C. 20036  
[wwtaylor@zuckerman.com](mailto:wwtaylor@zuckerman.com)  
[msmith@zuckerman.com](mailto:msmith@zuckerman.com)

Mr. Harlan Winn III  
Mr. Robert E. Battle  
Battle, Fleenor Green Winn & Clemmer LLP  
505 North 20<sup>th</sup> Street, Suite 1150  
Birmingham, Alabama 35203  
[hwinn@bfgwc.com](mailto:hwinn@bfgwc.com)  
[rbattle@bfgwc.com](mailto:rbattle@bfgwc.com)