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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

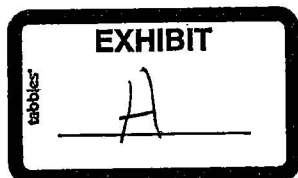
E. A. RENFROE & COMPANY, INC., )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CORI RIGSBY MORAN and )  
KERRI RIGSBY, )  
 )  
Defendants. )

Case No. 2:06-cv-01752-WMA  
Birmingham, Alabama  
August 29, 2007

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE WILLIAM M. ACKER, JR.  
SENIOR UNITED STATES DISTRICT JUDGE

Court Reporter:

Virginia W. Flowers, RPR  
325 U. S. Courthouse  
1729 5th Avenue North  
Birmingham, AL 35203  
Tel. 205.862.8115



1 I can see why the Rigsbys did not file a counterclaim in  
2 my court asserting what they assert in this amendment to  
3 their qui tam case because the qui tam case was under seal  
4 and they couldn't violate that seal by asserting by July 2,  
5 2007, before the seal was lifted down there, a counterclaim,  
6 which would reveal the subject matter in the qui tam case. I  
7 can figure that out.

8 But what I can't figure out is what to do about it.  
9 Because although Mr. Scruggs is not a lawyer in this case,  
10 and I've just called all the lawyers in this case and his  
11 name is not among them, he is the lawyer in the qui tam case  
12 and he represents the Rigsbys in that case, which I now know  
13 about. And he asserts in that case on their behalf that they  
14 are the victims of retaliation.

15 There is no way in the world that that's not a compulsory  
16 counterclaim in this case unless this unique set of  
17 circumstances changes that.

18 If this case goes to trial on this schedule with no  
19 amendment and no counterclaim, which would cover that, and  
20 this case reaches a conclusion by dispositive order and is  
21 entered, it will preclude anything -- Now, that's just my  
22 free legal advice, because I can't control what another judge  
23 does in another case. But I can give you some free legal  
24 advice on both sides, that the first one of those cases that  
25 gets to trial and resolves the question of who did what to

1 whom as between the Rigsbys and Renfroe -- Now, let me add  
2 this dimension.

3 This case has a dispositive motion schedule for January  
4 next year. I've forgotten when discovery is completed, but  
5 the dispositive motion is in January. I don't know how much  
6 familiarity you all have, any of you, with qui tam  
7 litigation. But looking at this amended complaint in the qui  
8 tam case, it is, I'd say, carefully crafted, well-drawn. I'm  
9 not going to talk about the merits of it, but I'm going to  
10 say that it will take a long time, unless it settles in some  
11 way, to be resolved. It will not be resolved by January of  
12 2008, the qui tam case won't be. Too many people involved,  
13 too many parties involved, too many issues involved. And I  
14 can't even tell now. Just recently the seal has been lifted,  
15 so I don't even know whether State Farm and Nationwide and  
16 all these other named defendants including Renfroe in that  
17 case have answered or filed motions.

18 I don't know where it is. Nobody has told me. All  
19 you've told me -- I say you. Any of you all didn't tell me.  
20 Somebody else told me. But I know, and I think I can take  
21 judicial knowledge of it that I just happened to find it out  
22 some way of a paper filed in the Eleventh Circuit in this  
23 case, respecting this case, some aspect of it, anyway,  
24 collateral though it may be.

25 And you don't have to know all about qui tam law to know

1 that that case is going to take a long time. So I predict  
2 that unless you, not I, because I can't -- I'm not calling  
3 the judge down in Mississippi and begging for him to transfer  
4 something to me. But if he, whoever it is, that's got that  
5 case down there, the qui tam case, manages it or mismanages  
6 it, whatever, by the time that case is over, this case will  
7 have already been over. And this case will control the  
8 outcome of the retaliation claim down there one way or the  
9 other.

10 How you get all that melded together into one ball so  
11 that somebody is going to ride herd on both of them, I'm not  
12 sure. I think it's going to require some cooperative effort  
13 by you and some participation by Mr. Scruggs, who is doing  
14 that case down there.

15 And the mechanics of trying to get them together, I know  
16 I said I wasn't going to call the judge down there and beg to  
17 have it sent here, and I'm sure not going to call down there  
18 and beg him to take mine. I'm not going to do that either.

19 Unless you all can do something about it and figure out  
20 what to do about it, I'm going to do nothing. I'm just  
21 telling you what the problem is. But the solution is going  
22 to have to be worked out by you and somebody else.

23 Now, I'll cooperate. If you come up with a scheme where  
24 I can contribute something to solve the problem, sure, I want  
25 to help get the thing done, because I'd like to clean my

1 docket up one of these days in this case. But how we go  
2 about it, I'm just contributing my free legal advice, you've  
3 got to get that case somehow, whoever is handling it or who  
4 is riding herd on it, to figure out with you how to get both  
5 of them up here, is what I think, because I don't see how  
6 they could take and add this case to a qui tam case. That  
7 doesn't make sense. It makes a lot more sense to bring that  
8 up here if it can be done or if you all can figure it out.

9 I don't know whether you all anticipated this question or  
10 this problem for discussion. And I don't know if anybody on  
11 either side of this wants to say something on this subject  
12 now after I've explained how I'll view it and what the  
13 problem is as I see it. I'll be glad to hear from either  
14 side if you want to comment on it. If you just want to  
15 receive the surprise and go try to do something about it  
16 together or with somebody else, then I've made my speech and  
17 I'll close it off right there.

18 Anybody got any argument with there being a problem? I  
19 think you understand that there is a problem. How big it is  
20 and what the solution is remains to be seen.

21 The only other thing that occurs to me that might be  
22 worth mentioning, and it's, like I said, didn't occur to me  
23 until after the opinion of the Eleventh Circuit went down  
24 whenever it was last week, I said that the dispositive motion  
25 deadline was January. The opinion of the Eleventh Circuit of

1 or that I don't depending on --

2 (Laughter.)

3 MR. TAYLOR: We will reflect heavily on those  
4 issues. I don't think I'll be with you in New Haven -- it's  
5 not my year -- but those are always wonderful events.

6 THE COURT: You're a New Havenite?

7 MR. TAYLOR: I am, Your Honor.

8 THE COURT: Well, we're glad to have you. This is  
9 my 55th. I don't know whether we need to keep all this on  
10 the record....

11 (Discussion off record.)

12 MR. TAYLOR: Your Honor, I do think it's possible  
13 that we'll want to see you before you leave.

14 THE COURT: I think that would be good. We'll  
15 figure out. We'll look at my calendar and find a time in  
16 late September when we can get together for another visit for  
17 a morning.

18 MR. TAYLOR: I think that would be -- We would  
19 appreciate that.

20 THE COURT: Y'all talk to your clients, talk to  
21 whoever you need to talk to. I think that somebody needs to  
22 talk to Scruggs because he's got an interest in what I'm  
23 talking about. Of course, he's got an interest in other  
24 things, but he's got an interest in what I call and  
25 characterize as a compulsory counterclaim. But when we get

1 together, somebody needs to be ready to tell me not in  
2 just -- and I think it's part of the reaction to what I  
3 brought up -- what kind of pleading is going on in the qui  
4 tam case with respect to Renfroe. Renfroe now knows that  
5 it's been sued.

6 MR. TAYLOR: Hasn't been served though.

7 THE COURT: Well, I didn't know that. Well, that's  
8 another --

9 MR. TAYLOR: That's the protocol in the qui tam  
10 process.

11 THE COURT: Well, I think the protocol though, isn't  
12 it, when the seal is off, service is required?

13 MR. TAYLOR: No --

14 THE COURT: So that there's a service obligation now  
15 under just Rule 4(m). It may be 120 days just like any other  
16 4(m). But once that seal comes off, I think service must  
17 be -- Now, I think that Renfroe knows about it. I'm guessing  
18 they do. The allegation in the qui tam cases alleges that  
19 they knew or should have known. So I don't know whether they  
20 are going to be able to prove that or other things, but they  
21 now know it. They know it now because I've just told them.

22 MR. TAYLOR: Well, I think, Your Honor, and I'll  
23 have to refresh on this, but I think nothing moves until the  
24 United States of America decides what position they are going  
25 to take on the case. And then that --

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I certify that the foregoing is a correct transcript from  
the record of proceedings in the above-entitled matter.

*Virginia W. Flowers*

8-31-07

Virginia W. Flowers, RPR

Date