

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, ET AL.,)	
)	Judge William M. Acker, Jr.
Defendants.)	

**RENFROE’S RESPONSE TO DEFENDANTS’ MOTION TO
STRIKE PARAGRAPH 7 OF AFFIDAVIT TESTIMONY
OF JANA RENFROE**

Plaintiff, E.A. Renfroe & Company, Inc. (“Renfroe”), herein responds to “Defendants’ Motion to Strike Paragraph 7 of Affidavit of Jana Renfroe Attached as Exhibit ‘L’ to Renfroe’s Brief in Support of Motion for Summary Judgment on Its Claim Under the Alabama Trade Secrets Act” [Dkt. No. 373] (hereafter “Defendants’ Motion”) as follows:

The only part of the affidavit of Jana Renfroe about which Defendants complain states:

State Farm insisted that everyone accessing their system sign a Security Access Agreement which spells out the rules for access.

(Affidavit of Jana Renfroe, Exhibit L, ¶ 7, to Renfroe’s Brief in Support of its Motion for Partial Summary Judgment Regarding Violation of Alabama Trade

Secrets Act and Opposition to Defendants' Motion for Summary Judgment). Defendants argue that this evidence is hearsay and that it violates the "best evidence" rule. They are wrong on both points.

Ms. Renfroe's testimony is not hearsay because it is based upon her personal knowledge, as developed through her experiences and observations, all of which is confirmed by the documents, for which she is a custodian, maintained by Renfroe in the ordinary course and regular practice of its business. Her testimony is admissible since it is not hearsay at all; and even it was, it falls within the business records exception to the hearsay rule [FED. R. EVID. 803(6)] as shown in Exhibit 1 hereto. Ms. Renfroe's testimony does not violate the "best evidence" rule as it does not purport to prove the contents of the security access agreement to which she refers, but merely states in her words the general purpose of that document.

It is a bit odd for these Defendants to make a "best evidence" objection when they know as well as Jana Renfroe that State Farm required that everyone accessing their computer system sign the access agreement that spells out the rules for access. These Defendants signed a number of these access agreements during their employment with Renfroe, and Renfroe produced access agreements signed by them during discovery in this case. Defendant Kerri Rigsby has authenticated an access agreement she signed and has even admitted she violated it.

Defendant Kerri Rigsby testified that she has signed confidentiality agreements at different times in connection with her State Farm assignments during her employment with Renfroe, including the collection of documents marked as Exhibit 29 to her deposition. (Exhibit 2, at 47:9–49:8; 54:1-16; 74:13-16, excerpts of Deposition of Kerri Rigsby, June 20, 2007 taken in *Marion v State Farm et. al.*, 1:06–CV-969, United States District Court, Southern District of Mississippi, Exhibit 29). She understood the access agreement she signed in Exhibit 29 to mean “they cannot make [access to the State Farm Network] available to me unless I sign [the access agreement.]” (Exhibit 2 at 74:17–75:13). When asked whether she violated that agreement by taking documents from the State Farm system, Kerri Rigsby said, “Yes.” (Exhibit 2 at 75:14–76:1). Kerri Rigsby’s own testimony corroborates and reinforces that of Ms. Renfroe.

Ms. Renfroe’s affidavit testimony and Kerri Rigsby’s deposition testimony are admissible evidence that Defendants cannot dispute. While Renfroe sees no merit to Defendants’ objections, since Defendants demand more evidence of the undisputed facts to which Ms. Renfroe and Kerri Rigsby testified, Renfroe provides it.

The access agreement which State Farm required everyone, including Defendants, to sign to access its computer network system, spells out the following rules for access:

I am advised that you will be gaining access to the State Farm Automobile Insurance Company's computer network (the State Farm Network). In order that you may have access to the State Farm Network, you must read and follow the terms and conditions of this letter.

1. You shall keep strictly confidential any and all information of State Farm or third parties, including but not limited to vendors, consultants, suppliers, or customers of State Farm, including any business, trade secret, technical, or proprietary or other like information, whether or not such information is specifically designated as confidential. You may not use any information of State Farm or third parties for your own benefit or the benefit of any other person besides State Farm.

* * *

Without a commitment to confidentiality, we cannot make the State Farm Network available to you. Only the signer of this letter may have access to the State Farm Network.

See Exhibits A, B and C to Declaration of Jana Renfroe (Exhibit 1 hereto).¹

The access agreement, like the testimony of Kerri Rigsby, supports and demonstrates precisely what Ms. Renfroe stated: State Farm insists that everyone sign an access agreement that spells out the rules for access.

¹ Exhibit A is an access agreement signed by Kerri Rigsby and Exhibit B is the same access agreement signed by Cori Rigsby. Exhibit C is the same access agreement signed by another Renfroe employee, Harold Thomas. As all adjusters from independent adjusting services vendors like Renfroe must sign the same access agreement, Renfroe has many copies in its files signed by its adjusters. The same access agreement signed by Mr. Thomas was randomly selected from those files because the language which is identical to all the others is a little easier to read than the identical language in Exhibits A and B, which are exact duplicates of those Renfroe produced to the Rigsbys in discovery. This also serves as further evidence and illustration of the undisputed fact that the reasonable measure to protect confidential and trade secret information of requiring a contractual commitment to confidentiality applied to all independent adjusters.

For these reasons, Renfroe respectfully requests that this Honorable Court deny Defendants' Motion to Strike [Dkt. No. 373].

Respectfully submitted this 14th day of July, 2008.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 14th day of July, 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:

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