

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Dorothy Pierce,)
)
PLAINTIFF,)
)
-vs-)
)
Edwards Group Holdings, Inc.,)
et al.)
)
DEFENDANT.)
)
_____)

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-37-00182

TRANSCRIPT OF RECORD



MARCH 22, 2023
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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THE COURT: Okay, this Dorothy Pierce versus Edwards Group, et al.

MS. KNEHANS: Yes, Your Honor.

THE COURT: All right, according to my notes, this is The Journal newspaper's motion for sanctions, and Richard Hunt McDuff's motion for sanctions, is that correct?

MR. MISHKIN: That's correct, Your Honor.

MS. KNEHANS: Yes, Your Honor.

THE COURT: I'll -- since I -- I'll just do them in the order I have them. The Journal would go first.

MR. MISHKIN: Thank you very much, Your Honor. Thank you, Your Honor. Max Mishkin here for The Journal defendants. As Your Honor said, we are here on a motion for discovery sanctions. I'd like to set the table -- there's two motions for discovery sanctions. I'd like to set the table a little bit about the procedural history of the case. So, you know, we're on -- the operative complaint here is an amended complaint that was filed, I think March of 2022. Motion to dismiss was denied in part on that in June 2022.

And we sent out our first set of written discovery requests, which are sort of ultimately the ones in question here, in August of 2022. And since then, it has been sort of the -- what leads us here today is the struggle to get the information that we requested in August of 2022. I would say,

1 the top of that list being any records to substantiate the
2 claim of tremendous damages that the Plaintiff is alleging in
3 this case. So, we received a first set of discovery
4 responses, you know, after they were due in October of 2022.
5 We notified Plaintiff that those responses were deficient, you
6 know, the following month, November 2022.

7 When that deficiency letter did not cure the issue, we
8 moved to compel December 2022. Had a hearing the following
9 month, January 2023. The order issued the following month,
10 February 2023, again, when that did not cure the issue, we
11 moved for sanctions earlier this month.

12 THE COURT: What did the January order provide?

13 MR. MISHKIN: Sure. Actually, the order issued in
14 February. And so, the order was -- I'll just quote it for
15 you. In relevant part, the Plaintiff shall provide all
16 records in her possession that relate to her claim for damages
17 and a complete witness list to defense counsel within 15 days.
18 And there were, you know, additional provisions, Your Honor,
19 but, those are -- that is what we're here on our motion.

20 THE COURT: And what was provided pursuant to that order?

21 MR. MISHKIN: Sure. So, we received -- well, when we did
22 not initially receive anything within 15 days, we exchanged
23 communications with the Plaintiff and offered additional time,
24 an additional week after -- I should say, we filed our motion
25 for sanctions, Plaintiff reached out and said, we are -- you

1 know, that she is in the process of preparing the records.

2 We said, okay, we'll withdraw the motion for sanctions if
3 we get a complete production within a week. And that didn't
4 happen. What we did receive, and was marked as confidential,
5 so I guess I want to be sensitive to that under the parameters
6 of the protective order in this case, are documents ---

7 THE COURT: Say that again about the ---

8 MR. MISHKIN: So, there's a protective order in this
9 case, so the documents that we received from the Plaintiff --
10 what she purports to be evidence of her damages, are marked as
11 confidential. So, since this is an open proceeding, I guess I
12 want to be sensitive to the fact that they are marked as
13 confidential, and you know, thus subject to the protective
14 order in this case. But, you know, I do have copies for Your
15 Honor, of what she has produced.

16 THE COURT: Okay.

17 MR. MISHKIN: I can hand them up, if you would like.
18 Let's hand these out. So, you know, what we asked for in
19 discovery, which is what we always ask for, like what is my
20 usual practice to ask for in discovery in a defamation action
21 where the Plaintiff is seeking economic damages, is -- and
22 this is in the exhibits to our motion. We asked for --
23 describe -- in interrogatory, describe in detail the damages
24 you contend you sustained as a result of each of the
25 challenged news reports. In any response, identify all

1 persons with knowledge of facts relating to your damages,
2 substance ---

3 THE COURT: What number interrogatory is that?

4 MR. MISHKIN: That's interrogatory number two, Your
5 Honor. I think -- and then, going into the request for
6 production of documents, this is really where the rubber hits
7 the road, Your Honor. Request for production number 10,
8 produce all documents concerning your financial condition,
9 including but not limited to financial statements, financial
10 summaries, financial reports or statements of financial
11 condition.

12 Request for production 11, produce all tax returns filed
13 by you or on your behalf with any local, state, or federal
14 taxing authority and all related schedules and attachments.
15 And request for production 15, produce all documents -- I'm
16 sorry, 14, produce any and all documents that support your
17 claim for damages, sort of the catch-all to the extent that
18 that was not covered by the statement of financial --
19 statements of financial condition or tax returns.

20 And what we received Your Honor, is not that. What we
21 received, as you can see now is a heavily redacted document
22 that appears to be ---

23 THE COURT: You are going to have to be more specific.

24 MR. MISHKIN: Sure. A document -- this document, Your
25 Honor. It's marked confidential. Trade key or Key to Global

1 Trade for Queen Industries Limited, a company that before
2 receiving this document, we had never heard of, that contains
3 what appears to be a series -- or what purports to be a series
4 of inquiries from buyers, from Queen Industries, not
5 contracts, not actual completed sales, and that is heavily
6 redacted such that it's not even clear whether we could sort
7 of cross check the accuracy of whether these are, in fact,
8 real potential customers. No records of whether they actually
9 bought anything, whether they ever entered into a contract to
10 buy anything. So, that's one document we received.

11 THE COURT: Show me. I have two things from Queen
12 Industries, Limited.

13 MR. MISHKIN: Sure.

14 THE COURT: Hold it up so -- oh, so it's the one with VIP
15 on it?

16 MR. MISHKIN: Yes, it has a VIP seal on it.

17 THE COURT: All right.

18 MR. MISHKIN: Thank you, Your Honor. Another document we
19 received, likewise marked confidential, your inquiries from
20 Thomasnet users, again for Queen Industries, this is the one
21 that doesn't have the VIP seal. Again, this is a bunch of
22 inquiries. It does not purport to be contracts for sale or
23 any kind of statement of financial condition of this company
24 that, again, we hadn't heard of before.

25 You know, we have been in this case for some time now.

1 We've never heard of Queen Industries before. We have no
2 documentation of how Queen Industries relates to the
3 Plaintiff. And then, I think, what is the most remarkable
4 document to me, Your Honor, is this spreadsheet marked
5 confidential, part -- that is titled partial preliminary
6 estimate of damages, which appears to be a document that the
7 Plaintiff created for the purposes of this litigation.

8 You know, this is a case where the Plaintiff, I
9 understood, was seeking a quarter of a billion dollars in
10 damages, allegedly sustained as a result of my client's news
11 publications. This spreadsheet, as I understand it, requests
12 a loss of sales of \$1.4 billion, including, if I'm reading it
13 correctly, a \$45 million contract with the United States Army,
14 that apparently was lost as a result of this. I mean, and
15 again, this is -- there's no documentation behind any of this.
16 It is merely a spreadsheet with, I suppose, you know,
17 customers, product, and then, quantity, price, amount,
18 contract value over 10 years. Why 10 years?

19 You know, these are not -- frankly, these are not the
20 documents we asked for. They are not the documents that are
21 probative of anything of what Plaintiff allegedly sustained as
22 damages. And the documents that we did ask for are the
23 documents that are, you know, directly relevant to her
24 financial condition before the publications and after the
25 publications, exactly the kind of documents that, you know, a

1 defamation defense lawyer like myself would ask for. You
2 know, ten times out of ten in a case like this, are
3 Plaintiff's tax returns, Plaintiff's statement of financial
4 conditions or other, you know, bank statements, anything that
5 actually reflects the financial condition of the companies
6 that allegedly suffered injury as a result of these
7 publications. And so ---

8 THE COURT: Well, first there is not a company, this is
9 an individual business.

10 MR. MISHKIN: That is correct, Your Honor. Plaintiff is
11 suing in her individual capacity. There is no corporate
12 plaintiff in this case.

13 THE COURT: All right. Thank you, sir. Just one second.
14 Ms. Pierce, I'll be glad to have your response, please.

15 MS. PIERCE: Yes. Well, I would like to start by
16 addressing the fact that the day we came here, on January 27th,
17 for the hearing on motion to -- which motion was that again?
18 Give me a minute -- motion to compel. The defendants were
19 very, very specific about what they wanted -- evidence to show
20 damages. Today, they went back and now they are trying to
21 highlight certain things that they wanted. They only came to
22 court to compel evidence to show damages. They didn't specify
23 they wanted my tax returns. They never specified.

24 When they claim they wanted my tax returns, I objected to
25 that. And therefore, if they wanted to compel the court on

1 that day, January 27th, they should have specified exactly what
2 they wanted me to produce. So, I presented to the Court that
3 my company was new. I was trying to make sure my company
4 launched. And in the middle of trying to make sure my company
5 launched, they defamed me to the extent that my brand was
6 completely tarnished. And therefore, let the record show that
7 by the time the defendants tarnished my reputation, my brand
8 ---

9 THE COURT: What is that you are handing up, please, Ms.
10 Pierce?

11 MS. PIERCE: Sorry?

12 THE COURT: What are you handing up?

13 MS. PIERCE: This is a contract.

14 THE COURT: I want to go back to his discovery. I don't
15 want to hear about that. I'll give you a chance in a minute.

16 MS. PIERCE: Okay.

17 THE COURT: Counsel says that Judge Sprouse, in order
18 number one, said that you will provide all records in your
19 possession that relate to the claim for damages and a complete
20 witness list within 15 days.

21 MS. PIERCE: Preliminary records of damages.

22 THE COURT: Show me what you provided within 15 days.

23 MS. PIERCE: I provided everything that they gave to you
24 right now.

25 THE COURT: And these -- and what you provided was ---

1 MS. PIERCE: Queen Industries is my brand.

2 THE COURT: Excuse me. Do not interrupt me, please.

3 MS. PIERCE: Okay.

4 THE COURT: Okay, I -- we can't keep up. This lady can't
5 write it down. If you would. You provided a document that
6 says confidential, your key to global trade --- based on your
7 --- progress report VIP Queen Industries, Limited. Correct?

8 MS. PIERCE: Queen Industries, LLC, yes.

9 THE COURT: Ma'am?

10 MS. PIERCE: Queen Industries, LLC, my brand.

11 THE COURT: This says Queen Industries, Limited.

12 MS. PIERCE: It's still the same.

13 THE COURT: It says Limited. All right, the next one
14 says confidential, your inquiries from the Thomasnet users
15 Queen Industries, Westminster. Right?

16 MS. PIERCE: Yes.

17 THE COURT: And then there's a spreadsheet that you
18 provided? Okay.

19 MS. PIERCE: Yes.

20 THE COURT: Are these your responses to defense's request
21 for your damages?

22 MS. PIERCE: That's right.

23 THE COURT: And there's no other damages out there?

24 MS. PIERCE: That's still -- that is preliminary, Your
25 Honor. The judge ordered preliminary. Everything in my

1 possession. Remember, I have Alibaba account.

2 THE COURT: Stop, stop. You're right. At this point,
3 have you provided everything in your possession that relates
4 to damages?

5 MS. PIERCE: I have another one that I'm supposed to give
6 them, a contract. They have it, a copy of the contract from
7 the Ministry of Health, and I want to hand it over to the
8 Court. They will be able to verify that with the Ministry.
9 Can I hand this over to the Court?

10 THE COURT: You want to hand it to me?

11 MS. PIERCE: Yeah.

12 THE COURT: And what's the purpose in this?

13 MS. PIERCE: It is part of the evidence that I have
14 presented to them.

15 THE COURT: Well, no. I just want you -- the question
16 is, did you fully respond to discovery?

17 MS. PIERCE: Yes, Your Honor, 100 percent.

18 THE COURT: And the things that I just went over with
19 you, according to what you're telling me, is everything you
20 have in your possession.

21 MS. PIERCE: Preliminary -- everything I have in my
22 possession.

23 THE COURT: Okay. All right.

24 MR. SMITH: Your Honor.

25 MS. PIERCE: And the witness list.

1 THE COURT: Hang on, you sit down. Have a seat. All
2 right, go ahead.

3 MS. PIERCE: The witness list was another item. I also
4 complied. I added additional supplemental list of my
5 witnesses. And so, there were only two items that the judge
6 ordered. And I provided everything I had in my possession and
7 witness list.

8 THE COURT: So, let me ask you, so I'm clear. Going back
9 to my original question, everything that's in existence at
10 this date ---

11 MS. PIERCE: In my possession.

12 THE COURT: --- in your possession has been provided.

13 MS. PIERCE: Yes. And I have the right ---

14 THE COURT: So, if I were to order today that from this
15 point forward, that unless it's a new document that comes into
16 existence after today's date, you are limited to what you have
17 presented at this point in putting your case forward for
18 damages.

19 MS. PIERCE: So, let me seek the Court's ---

20 THE COURT: No, no. Answer my question, please.

21 MS. PIERCE: I think that is true, Your Honor. That is
22 every in my possession, unless the judge's order was not
23 clear.

24 THE COURT: That order is clear.

25 MS. PIERCE: Yes, so if it was clear, that was everything

1 I had in my possession, and this is what I want clarification
2 on. I still have other customers on Alibaba. I still have
3 other things in emails, like the contract with Itron. I still
4 have to contact Itron and get the other emails, because I lost
5 the emails. Those are not in my possession.

6 THE COURT: Well, I can't advise you, Ms. Pierce. But
7 the question that you answered for me ---

8 MS. PIERCE: Yeah, everything I have in my possession.

9 THE COURT: Everything that you have in existence in your
10 possession at this juncture ---

11 MS. PIERCE: Yes.

12 THE COURT: --- has been provided?

13 MS. PIERCE: Mm-hmm. (Indicating affirmatively.)

14 THE COURT: So, at this point, I'm going to issue an
15 order that says from this point forward, that anything that is
16 not in existence -- excuse me, anything that is in existence
17 that was in her actual constructive possession prior to today
18 can't be used at trial. She can only use these documents at
19 trial to prove her damages unless they are documents that come
20 into existence after today's date. Does that make any sense?

21 MS. PIERCE: Before we work on that, can we clarify
22 something, Your Honor?

23 THE COURT: Hang on, hang on. Yes, ma'am.

24 MS. PIERCE: Okay.

25 THE COURT: Does that make sense?

1 MR. MISHKIN: Well, I guess -- a clarifying question,
2 Your Honor. So, this document, what is styled a purchase
3 agreement -- this is the first time that we've seen this. It
4 wasn't produced in discovery. You know, handed over today for
5 the first time, so.

6 THE COURT: I haven't seen it. I want ---

7 MR. MISHKIN: Right. So, I would want to clarify that
8 ---

9 THE COURT: What I went over -- what I went over ---

10 MR. MISHKIN: Mm-hmm.

11 THE COURT: --- was this spreadsheet and the two
12 confidential things that had Queen Industries Limited or Queen
13 Industries named on the front of them, which is what I -- you
14 held up and she acknowledged is what she gave in discovery.
15 And that's what she's going to be limited to, okay. Unless
16 it's a document that's created after today's date, and today's
17 date is March 22nd, 2023. Okay.

18 MR. MISHKIN: I understand, Your Honor. But again, a
19 clarifying question, which is to say that there are still
20 documents -- I mean, recognizing Plaintiff's -- I guess I want
21 to go back to Plaintiff's argument, which is to say that she
22 doesn't believe, I suppose, that we clearly specified in our
23 motion to compel that we were asking for tax records.

24 And I would call Your Honor's attention to the motion to
25 compel, which is attached as an exhibit to our motion for

1 sanctions, where in brief we say, Plaintiff objected -- it's
2 on page 4 of our brief -- Plaintiff objected or failed to
3 respond to multiple requests for information concerning ---

4 THE COURT: Stop. Give me -- hand it up here and let me
5 look at it.

6 MR. MISHKIN: Sure, sure, sure, Your Honor.

7 THE COURT: This is the motion for sanctions. This is
8 your Journal. Okay.

9 MR. MISHKIN: Yeah, and I'm looking at Exhibit F, which
10 is our brief in support of the motion to compel, which is, you
11 know, the ---

12 THE COURT: I've got your motion for sanctions, and has a
13 copy of the orders attached, Exhibit A. I have nothing else
14 attached to that. Unless there's a -- or was it your
15 memorandum?

16 MR. MISHKIN: The memorandum. Yes, Your Honor.

17 THE COURT: Okay.

18 MR. MISHKIN: Exhibit F to the memorandum of law.

19 THE COURT: What am I looking at on the memorandum?

20 MR. MISHKIN: Exhibit F, Your Honor ---

21 THE COURT: F?

22 MR. MISHKIN: --- which is the -- sorry to -- but it's a
23 -- you know, like a Russian nesting doll. It's that ---

24 THE COURT: Stop. Do you have a copy of the discovery
25 that you actually submitted attached to your motion?

1 MR. MISHKIN: I'm sorry, the discovery requests
2 themselves?

3 THE COURT: Yeah. I mean, you're asking me to give
4 sanctions based on her failure to respond. I have an order
5 that's fairly generic, saying you're going to give all the
6 damages documents in your possession. And I assume that's
7 based on some discovery that you had previously given to her
8 where you requested certain financial information. And that's
9 what I want to see.

10 MR. MISHKIN: Oh, sure, Your Honor. And that's attached
11 to -- again, attached to the memorandum at exhibit ---

12 THE COURT: It's not on Exhibit F. I just looked at it.

13 MR. MISHKIN: No, that's correct. The actual discovery
14 requests themselves are Exhibit A and B.

15 THE COURT: Okay. Just one second. And these were the
16 motions that were before Judge Sprouse?

17 MR. MISHKIN: That's correct. These are ---

18 THE COURT: Okay.

19 MR. MISHKIN: --- the underlying ---

20 THE COURT: I mean, I'm --- you mean the discovery that
21 had been issued on your motion to compel before Judge Sprouse.

22 MR. MISHKIN: That's correct, Your Honor.

23 THE COURT: Okay.

24 MR. MISHKIN: Just to clarify, Exhibit A is the
25 interrogatories, Exhibit B is the request for production. And

1 to anticipate what I imagine might be Your Honor's next
2 question ---

3 THE COURT: Stop, stop, stop.

4 MR. MISHKIN: Sure.

5 THE COURT: So, you're looking at production 10 and 11?

6 MR. MISHKIN: That's correct, Your Honor.

7 THE COURT: Okay. So, Ms. Pierce did not produce any
8 income taxes, financial statements or anything of that nature?

9 MR. MISHKIN: That's correct, Your Honor.

10 THE COURT: She said she objected to that. Is there a
11 written objection to that?

12 MR. MISHKIN: Yes, Your Honor. That's Exhibit C and D
13 are her responses to those written discovery requests.

14 THE COURT: Is that before or after Judge Sprouse's
15 order?

16 MR. MISHKIN: Before.

17 THE COURT: That was before.

18 MR. MISHKIN: Right. So, we were moving to compel over
19 those objections, right.

20 THE COURT: Okay, and Judge Sprouse said okay, you
21 objected, but you are going to give them out anyway, right?

22 MR. MISHKIN: That's correct.

23 MS. PIERCE: No.

24 MR. MISHKIN: I would argue, you know, over her
25 objection.

1 MS. PIERCE: No. No.

2 THE COURT: Please don't interrupt, okay. I'm going to
3 let you speak. Okay. All right, I think I understand. Now,
4 Ms. Pierce, I will be glad to hear from you.

5 MS. PIERCE: They are lying. On that day, there were
6 very ---

7 THE COURT: Ms. Pierce, we're not going to have that.
8 You'll use the proper etiquette ---

9 MS. PIERCE: Okay.

10 THE COURT: --- in the courtroom.

11 MS. PIERCE: But on that day, Your Honor, they were not
12 specific about what they wanted. They did not mention my tax
13 returns in any way. They just said what was suffered my
14 damages. They didn't specify to the judge that they wanted
15 tax returns. And I had also asked them about their
16 financials, because they defamed me and they made so much
17 money in that period, because they advertised this in advance.
18 And they responded to me and said that was protected, they
19 were not going to give it to me, because it was not anything
20 that would be admissible into evidence.

21 Why do they want my tax returns? What would my tax
22 returns prove to them? Because my company was building up.
23 They defamed me. How is it relevant? I had a contract. I
24 had all of this. So I objected to that. The judge did not
25 compel it, because they did not bring it up. They only

1 brought up what would prove my damages, and it was blanket.
2 They didn't identify 11 or identify 10, no. So, that was not
3 part of the motion to compel.

4 THE COURT: Is there a transcript of that hearing?

5 MR. MISHKIN: Not that I'm aware of, Your Honor. But
6 those requests were clearly specified in our memorandum of law
7 in support of our motion to compel.

8 THE COURT: Say that again, please.

9 MR. MISHKIN: The very requests the Plaintiff is
10 referring to about her tax returns were, you know, identified
11 by name and number in our memorandum of law in support of our
12 motion to compel, the one that Judge Sprouse ruled on.

13 THE COURT: Okay, and that was -- that included this
14 memorandum that's before me today?

15 MR. MISHKIN: That's correct. That is ---

16 THE COURT: Where is that exhibit? What?

17 MR. MISHKIN: That was exhibit, I believe F, Your Honor.
18 Exhibit F, Your Honor.

19 THE COURT: F?

20 MR. MISHKIN: Yes.

21 THE COURT: That's where you named the exhibits, right?

22 MR. MISHKIN: I'm sorry, Your Honor?

23 THE COURT: That's where you made the production requests
24 and the interrogatories exhibits to your motion to compel?

25 MR. MISHKIN: I'm sorry, I'm not following. I apologize.

1 THE COURT: When you file a motion to compel, you attach
2 your requests of discovery that they didn't respond and their
3 responses, correct?

4 MR. MISHKIN: Yes, that's correct.

5 THE COURT: So, I'm just simply asking you, did you file
6 the exhibit A, being your interrogatories and B being your
7 discovery -- production request. That's all I'm asking.

8 MR. MISHKIN: That's correct. Yes, we did, Your Honor.

9 THE COURT: All right. It's not a hard question.

10 MR. MISHKIN: Sorry, it was my own confusion.

11 THE COURT: All right. So, Ms. Pierce ---

12 MS. PIERCE: Yes, sir.

13 THE COURT: --- that seems to refute what you're saying,
14 that they did file, with their motion, the exhibits where they
15 asked you for these documents and that is 10 and 11 of the
16 requests for production. Judge Sprouse said you would give
17 them up, and you didn't do that.

18 MS. PIERCE: So, if that was that blanket -- okay.

19 THE COURT: You need to stand up, please.

20 MS. PIERCE: The tax returns have nothing to do with
21 this, and I objected to it. And the judge did not specify
22 that I needed to give the tax returns. If you want that to
23 happen, then, Your Honor, you have to make that case right
24 now.

25 THE COURT: That's not what I need to do. Sir, what

1 relief are you seeking?

2 MR. MISHKIN: Sure. Well, thank you, Your Honor. That
3 takes us to really what brings us here today, which is, we are
4 seeking as much as terminating sanctions in this case, Your
5 Honor. That is, we are asking -- in our memorandum of law we
6 relied on, there are basically two questions when there is a
7 failure of discovery of this magnitude, right, is when is the
8 time to say enough is enough, and what does it take for a
9 sanction to be effective?

10 And in these circumstances where what Plaintiff has, you
11 know, refused to produce the documents that we've asked for,
12 and you know, is representing that we never asked for them,
13 and you know, I would argue, trying to relitigate the motion
14 to compel, it seems clear to us that there are no sanctions
15 less effective than striking the complaint ---

16 THE COURT: I'm not going to do that.

17 MR. MISHKIN: Sure.

18 THE COURT: It's too harsh, too Draconian, and the Court
19 would not let that stand if I were to do it. So, I don't ---

20 MR. MISHKIN: I appreciate that.

21 THE COURT: --- think they would not.

22 MR. MISHKIN: Well, then, what I would say, Your Honor,
23 is in most of the cases that we cited in our memorandum, it
24 seems that there was a last clear chance given to a party in
25 this situation, where, you know, requested documents need to

1 be produced by a date certain or the complaint will be
2 dismissed. And so, what I would suggest, then, if Your Honor
3 is not comfortable dismissing today is to say, within seven
4 days, produce to the defendants complete copies of your tax
5 returns with all schedules for yourself and any business that
6 you claim you suffered losses for going back for a period -- I
7 forget what their -- if Your Honor will give me a second, we
8 defined it -- you know, we didn't ask for forever, right. We
9 have a defined time period. And to have those records be
10 produced within seven days or ten days, and on pain of if
11 those are not produced by that date certain, that, you know,
12 Your Honor has given a last clear chance and then you would
13 dismiss the case for -- as a sanction for failure to
14 participate in discovery.

15 THE COURT: Well, it seems to me that a proper sanction
16 at this juncture would be to limit her evidence to what she
17 has produced at this juncture. And that seemed to me to be a
18 proper sanction under the circumstances -- I'm going let you
19 speak -- based on then or now, you know existing, or then
20 existing documents. If they are, after today's date, they
21 come into existence, then maybe she can use them. But
22 anything in existence that was not produced, she's limited to
23 what she gave you in her trial of her case. Why would that
24 not be an appropriate sanction?

25 MR. MISHKIN: Well, what concerns me, Your Honor, is, you

1 know, we have not yet taken Plaintiff's deposition, in part
2 because we were waiting to have a full paper document
3 production to ask questions about. And so, again, what draws
4 my concern is that that doesn't necessarily preclude Plaintiff
5 from offering testimony admittedly without documentation to
6 back it up. But, she would be free to testify that she
7 suffered whatever damages she claims she suffered, and we
8 wouldn't be able to impeach that testimony, because again, we
9 don't have in front of us, you know, a sworn prior statement.

10 THE COURT: Well, what if I fashion a sanction that says
11 that the damages she claims are limited to the damages
12 contained in the production thus far, unless it's after
13 acquired, or after -- it's developed after today's date. In
14 other words, she's limited to the damages she presents right
15 here, and anything that is in existence before today's date,
16 she can't put up, and she's limited to this. And if it's
17 created after today's date, such as a tax return, then that
18 would be up to the trial judge to decide whether it's
19 admissible or not.

20 MR. MISHKIN: Well, again, I think that is part of --
21 that would be part of a ---

22 THE COURT: I'm not going to strike the complaint. You
23 can forget that.

24 MR. MISHKIN: I respect that, Your Honor. But I do
25 believe that the value of getting the documents, of an order

1 compelling them -- an order additionally compelling, on some
2 additional pain of penalty to produce the documents we asked
3 for, which would allow us to impeach her claims -- I mean,
4 those are -- that's her affirmative case for damages. But we
5 have been -- we have not received the documents that would,
6 you know, empower us, you know at trial, to impeach her claim
7 for damages, because we don't -- and, you know, that -- so
8 that is what I'm asking. I think the sanction limiting her
9 ability to present new evidence is ---

10 THE COURT: Not sufficient.

11 MR. MISHKIN: --- not sufficient, because that leaves us
12 without our ability to defend ourselves.

13 THE COURT: All right. Ms. Pierce?

14 MS. PIERCE: Yes, sir. Your Honor, before they filed
15 these sanctions ---

16 THE COURT: Before they what?

17 MS. PIERCE: Before they filed the motion for sanctions,
18 I had written to them asking them for additional time, so I
19 could gather all the evidence, because I was still working on
20 it. And, by the way, let's also make this clear. The Court
21 gave them 30 days to produce everything they had in their
22 possession, and the Court gave me 15 days to give them
23 everything I had in my possession. And, they don't want to
24 confer with me. They just went ahead and violated Rule 11A,
25 by just filing motion for sanctions without even trying to see

1 if I was working on this.

2 So, the moment I sent them this email, then they sent me
3 back and told me, oh, we have already filed motion for
4 sanctions. This is a violation. And I was actually just
5 asking this Court to strike their motion for sanctions,
6 because it's in violation. If they had conferred with me, we
7 would have talked, and sorted out many things that they wanted
8 to have sorted out, other than just filing the sanctions.
9 Now, if this Court would allow, can I give this to the Court?

10 THE COURT: Sure. I'll be glad to look at anything you
11 have.

12 MS. PIERCE: That is the email that I sent to them. Two
13 days. Two days after the deadline, and they had 30 days.
14 They didn't give me any documents, even up to now, as I speak.
15 It is so shameful that they are here saying that I did not
16 comply, and yet I complied with everything ---

17 THE COURT: Well, let me stop you. Why did not you
18 consult with her as required by Rule 11?

19 MR. MISHKIN: Thank you, Your Honor. Because this is a
20 motion for sanctions under Rule 37, not a motion for sanctions
21 under Rule 11. We are not attempting to strike a pleading or
22 a paper. This is a discovery sanction, and what ---

23 THE COURT: Well, don't you have a duty to consult before
24 you file it, or no?

25 MR. MISHKIN: Oh, I don't believe that under Rule 37B,

1 the motion for sanctions can be filed for failure to comply
2 with an order on a motion to compel. I think that is the
3 condition precedent.

4 THE COURT: Okay.

5 MS. PIERCE: Rule 11A ---

6 THE COURT: All right.

7 MS. PIERCE: --- does that.

8 THE COURT: What is this you handed me?

9 MS. PIERCE: Those are all -- they're claiming I have not
10 complied with discovery requests. I have given them more
11 documents than anyone in -- any of their clients.

12 THE COURT: Take -- give that -- I'm not going to look at
13 that. All right.

14 MS. PIERCE: And then, the defendant is also doing
15 something really terrible, Your Honor. Imagine they are
16 sending me documents that are protected with protected
17 passwords.

18 THE COURT: Today's motion is based on the motion for
19 sanctions. That's all we're hearing today. We're not going
20 into anything else.

21 MS. PIERCE: And I am defending that motion, though.

22 THE COURT: Yes, ma'am, and I'll be glad to hear from
23 you, why you have not complied with it.

24 MS. PIERCE: And they also say -- they claim that I did
25 not send them additional list of witnesses. Is that still

1 their status? Because I provided list of witnesses. That
2 means I complied with that. This is my additional
3 supplemental list of witnesses that was part of that order.
4 So according to me, I have really complied with everything in
5 that order, though they have not complied with any in the same
6 order. And I did that just two days after the judge made that
7 order. They are just harassing me, I know.

8 THE COURT: Ma'am?

9 MS. PIERCE: They just intend to harass me, because I've
10 given them all the evidence.

11 THE COURT: On the witness list that you were given, is
12 that complying with the rules of evidence -- that she put all
13 the information of pending cases that she's supposed to under
14 the interrogatory?

15 MR. MISHKIN: Thank you. The attorney defendants' motion
16 speaks more to the witness list than ours does.

17 THE COURT: All right.

18 MR. MISHKIN: We are focusing primarily on damages, so I
19 think Your Honor will ---

20 THE COURT: Okay, I'll ---

21 MR. MISHKIN: Thank you.

22 THE COURT: We'll get to the witnesses in just a second.
23 But here's -- on the damages, I'm going to give her 30 days
24 from today's date to totally and completely respond to
25 interrogatories 10 and 11 or production requests 10 and 11.

1 Is that the numbers or is there other numbers, please tell me
2 now.

3 MR. MISHKIN: Let me double check, Your Honor.

4 THE COURT: Yes, sir.

5 MR. MISHKIN: Thank you.

6 MS. KNEHANS: Your Honor, for the Court's expediency, as
7 far as damages go, we have the exact same argument.

8 THE COURT: Okay.

9 MS. KNEHANS: Yeah.

10 THE COURT: Thank you.

11 MR. MISHKIN: Sure, so we're talking about
12 interrogatories -- interrogatory number 2 and interrogatory
13 number 3, which are relating to the damages, and then request
14 for production 10 and 11.

15 THE COURT: Okay.

16 MR. MISHKIN: We would consider 10 and 11 to satisfy 15,
17 is what I would say.

18 THE COURT: All right, Ms. Pierce.

19 MS. PIERCE: Yes.

20 THE COURT: Is there any reason at all why you can't
21 completely and totally respond to interrogatories 2 and 3 ---

22 MS. PIERCE: I don't have that in front of me.

23 THE COURT: I'm in the middle of talking to you.

24 MS. PIERCE: Okay.

25 THE COURT: Don't interrupt me, okay.

1 MS. PIERCE: All right.

2 THE COURT: Interrogatories 2 and 3 and production
3 requests 10 and 11, within 30 days from today's date,
4 excluding today's date?

5 MS. PIERCE: So, I don't have that copy of
6 interrogatories ---

7 THE COURT: Is there any reason why you cannot do that?

8 MS. PIERCE: There should be no reason as long as I know
9 exactly what they are asking for.

10 THE COURT: Ma'am, you will have the interrogatories.
11 They will be written out in the order, and they'll be attached
12 to the order.

13 MS. PIERCE: Okay.

14 THE COURT: Okay. So, any reason why you can't fully and
15 completely respond within 30 days?

16 MS. PIERCE: I can respond within the 30 days, that's no
17 problem. But can I also respond with objections, since I
18 don't have that in my ---

19 THE COURT: No, you have no right to object. Your
20 objections were overruled by Judge Sprouse. You will provide
21 this information.

22 MS. PIERCE: All right.

23 THE COURT: Okay.

24 MS. PIERCE: Okay.

25 THE COURT: And so, what we're going to do, is you're

1 going to draft me an order on behalf of the -- all the
2 defendants with regard to the damages ---. And it will
3 clearly outline the interrogatory being requested, and it must
4 be responded to and the production being requested. And it
5 will be due 30 days from today, excluding today, regardless of
6 when that order is done. You need to get it done. So, you
7 understand, Ms. Pierce?

8 MS. PIERCE: Uh-huh, I do.

9 THE COURT: You will need to have this in by -- what
10 would be 30 days from today's date, excluding today? Madam
11 Clerk, can you help me with that? That way we're all in the
12 same boat.

13 THE CLERK: It looks like it would be April the 21st.
14 We're not counting today.

15 THE COURT: Okay. It would be April 21st?

16 THE CLERK: Yes, sir.

17 THE COURT: All right. So, Ms. Pierce, so we're clear,
18 you would have to make that production -- all the
19 interrogatories -- not production -- you would have answer
20 fully interrogatories 2 and 3, and production requests number
21 10 and 11, by April 21st.

22 MS. PIERCE: Okay, Your Honor.

23 THE COURT: And be totally and completely done. Okay?

24 MS. PIERCE: All right.

25 THE COURT: Have you incurred attorney's fees and costs

1 in this case, and are you seeking them in this motion?

2 MR. MISHKIN: We have. We were -- depending on the
3 outcome of this hearing, we were sort of reserving our right
4 to file for fees.

5 THE COURT: If you provide me an affidavit of attorney's
6 fees and costs that you've incurred in filing this motion, not
7 anything else, only in regard to this motion, provide her a
8 copy and submit it to me.

9 MR. MISHKIN: I can do that, Your Honor.

10 THE COURT: And she will have a right to cross examine
11 you if she wants to about your fees, okay.

12 MR. MISHKIN: Absolutely, Your Honor.

13 THE COURT: All right. Now, I want also the order -- I'm
14 going to hear you on the witnesses ---

15 MS. KNEHANS: I just ---

16 THE COURT: Just one second.

17 MS. KNEHANS: Yeah. Yeah.

18 THE COURT: Let me finish.

19 MS. KNEHANS: No worries.

20 THE COURT: I also want as an additional sanction, in
21 addition to fees, that if she fails to completely and totally
22 respond to interrogatories 2 and 3 or production 10 and 11
23 within the time period, then she will be limited to the
24 damages that she has set forth in the documents that have been
25 provided as of March the 22nd, 2023, which is the confidential

1 spreadsheet and confidential your inquiries from Thomasnet
2 users document, Queen Industries, and the confidential your
3 key to global trade on the VIP document. These -- and I want
4 somehow those to be -- these are all confidential by order?

5 MR. MISHKIN: Yes, Your Honor.

6 THE COURT: They'll need to be referred to with such
7 specificity that somebody else, other than myself, will be
8 able to see which documents they are. I tell you what I'm
9 going to do. I'm going to make these court exhibits to this
10 motion -- exhibit -- Mona -- exhibit -- Court Exhibit number 1
11 would be the confidential spreadsheet. The Court Exhibit
12 number 2 would be the documents captioned confidential, your
13 inquiries from Thomasnet users, Queen Industries, Westminster.
14 Court Exhibit number 3 will be confidential, your key to
15 global trade, --- buyer progress report, VIP, Queen
16 Industries, Limited. And make that under seal, please. Okay.
17 Now, I'll be glad to hear from you on the witness list.

18 MS. KNEHANS: Just ---

19 THE COURT: Or whatever you wanted to clarify on the
20 damages.

21 MS. KNEHANS: Of course. Just for clarification
22 purposes, for our request for production, they are numbers 2,
23 6, 11, 19, and 20. We didn't serve the exact same
24 interrogatories or requests, Your Honor, but those were our
25 damage requests for production.

1 THE COURT: That's production?

2 MS. KNEHAN: Production, right.

3 THE COURT: Okay.

4 MS. KNEHAN: And then, interrogatories 10, 11, and 26.

5 THE COURT: Okay. And again, Ms. Pierce ---

6 MS. PIERCE: Yes, Your Honor.

7 THE COURT: --- from this -- which group do you

8 represent?

9 MS. KNEHANS: The attorney defendants, Your Honor, Mr.

10 McDuff and MJM Law.

11 THE COURT: Okay. Once these are spelled out to you, and

12 you have these from the attorney defendants, is there any

13 reason why you can't respond to these fully within the 30 days

14 I gave you?

15 MS. PIERCE: I need to look at those, though, Your Honor.

16 THE COURT: Ma'am?

17 MS. PIERCE: I need to look at them, because I also have

18 genuine objections to these interrogatories.

19 THE COURT: Were those objections prior to Judge

20 Sprouse's order?

21 MS. KNEHAN: Yes, Your Honor.

22 THE COURT: They were overruled by Judge Sprouse. So,

23 that would be interrogatories 10, 11, and 28?

24 MS. KNEHANS: 26, Your Honor.

25 THE COURT: 26.

1 MS. PIERCE: Are they connected to witnesses?

2 THE COURT: Ma'am, talk to me, please.

3 MS. PIERCE: Are they connected to witnesses, because the
4 judge only ruled on damages and witness list.

5 MS. KNEHANS: These are the damages interrogatories and
6 request for production, Your Honor.

7 THE COURT: Okay. Again, now that you have them, any
8 reason why you can't respond within 30 days?

9 MS. PIERCE: Can they repeat the numbers again? I have
10 interrogatories ---

11 THE COURT: I'll give them to you, Ms. Pierce. It would
12 be interrogatories 10, 11, and 26 from the -- did you say
13 attorney defendants?

14 MS. KNEHAN: Attorney defendants.

15 THE COURT: And production numbers 2, 6, 11, 19, and 20.

16 MS. KNEHAN: I believe they're styled at Richard Hunt
17 McDuff's and MJM Law's -- they're not tied together as
18 community defendants, but I think we all recognize them as the
19 attorney defendants.

20 MS. PIERCE: Production number -- production number what,
21 Your Honor? Production.

22 THE COURT: I'm sorry?

23 MS. PIERCE: Production number?

24 THE COURT: Production number 2, 6, 11, 19, 20. And this
25 would be on MJM Law, LLC, is that correct?

1 MS. KNEHANS: Yes, Your Honor. And Richard Hunt McDuff.

2 THE COURT: And Richard Hunt McDuff.

3 MS. PIERCE: I have already produced part of it. I will
4 produce everything else that remains. So, I'm okay with
5 those.

6 THE COURT: So, there will be an order, Ms. Pierce, that
7 will be issued saying that within 30 days you will fully and
8 completely respond to the interrogatories I just gave you, and
9 the production. Are you seeking fees and costs in this
10 matter?

11 MS. KNEHANS: Yes, Your Honor.

12 THE COURT: Would you turn in your affidavit for fees and
13 costs?

14 MS. KNEHANS: Of course, Your Honor.

15 THE COURT: Again, if Ms. Pierce, in your belief, fails
16 to fully respond to the production and interrogatories, you
17 can seek to have her limited to the documents I made as Court
18 Exhibit 1, 2, and 3 to this hearing that's under seal. Yes,
19 ma'am?

20 MS. PIERCE: Your Honor, they are seeking fees, but
21 partially, most of the documents I've already complied with
22 it, like 80 percent. Because part what they are asking for,
23 everything that I am alleging in my damages, I have them. I
24 have produced them. So why would they be seeking fees in
25 something that I have actually 80 percent complied with.

1 THE COURT: Well, what I got, and what you responded to
2 me is what you gave them is not responsive to what's being
3 asked and what was ordered, and that's what I made my decision
4 based on.

5 MS. PIERCE: Okay.

6 THE COURT: Okay.

7 MS. PIERCE: All right.

8 THE COURT: So, I don't know what else I can do but base
9 it on what I have before me, okay. So, at this juncture,
10 there's going to be 30 days on that. Okay, go ahead. You're
11 going to keep looking. I know you've got the witnesses
12 aspect. Other than what we've gone over, anything else on
13 damages before we move on?

14 MR. MISHKIN: Just one tiny point, which is to say, if
15 we're going to limit -- if we reach the point where we're
16 going to limit to the damages of the documents that Your Honor
17 has entered and sealed in court exhibits, at some point we're
18 going to need unredacted copies of those. Otherwise, we can't
19 -- again, we can't like test the veracity of these, you know,
20 purported customer ---

21 THE COURT: We will cross that bridge when we get there,
22 okay. I hear you.

23 MR. MISHKIN: Thank you, Your Honor.

24 THE COURT: All right. And I assume that would go along
25 with any motion that would impose sanctions.

1 MR. MISHKIN: Absolutely, Your Honor.

2 THE COURT: All right. Now ---

3 MS. PIERCE: Can I have back that? It's not marked
4 properly. That's confidential, so I will mark it and then
5 send it to you.

6 THE COURT: All right. As to witnesses.

7 MS. KNEHANS: Yes, Your Honor, in the same order from
8 Judge Sprouse, Plaintiff was directed to produce a full
9 witness list. Throughout this complaint ---

10 THE COURT: Hang on, let me get his order out.

11 MS. KNEHANS: Yes, and I have a copy if you need it, Your
12 Honor.

13 THE COURT: I have it. I just have a lot of stuff in the
14 file at this point.

15 MS. KNEHANS: And we did file it as an exhibit, as well.

16 THE COURT: Okay.

17 MS. KNEHANS: Throughout the pendency of this litigation,
18 Your Honor, Plaintiff has claimed that certain individuals
19 read The Journal articles, which she alleges Mr. McDuff and
20 his law firm contributed to, and then they informed her that
21 they no longer wanted to the work with her or that her
22 reputation was damaged in their eyes. They no longer wanted
23 to associate with her. Throughout this litigation, we sought
24 the identification of those individuals to question them about
25 to veracity of Plaintiff's claims.

1 In both her original interrogatory responses, her
2 amended, and the interrogatory responses she sent to us post-
3 Judge Sprouse's orders, the only identification of those
4 individuals we have is a very broad category that states all
5 Journal subscribers and readers, names and contact information
6 of the following witnesses are pending response to Plaintiff's
7 discovery requests from all defendants.

8 THE COURT: Where am I looking? Where are reading from?

9 MS. KNEHANS: So, this is -- I can pass it up to you,
10 Your Honor, it's just ---

11 THE COURT: Just tell me where you're reading from,
12 please.

13 MS. KNEHANS: It's Ms. Pierce's supplementals that she
14 sent to us after Judge Sprouse's order, and it's also
15 identical to the responses we received previously, which we
16 filed our motion to compel on.

17 THE COURT: It's identical?

18 MS. KNEHANS: More or less, Your Honor. It just says --
19 her original response was all Journal subscribers and readers.
20 Her response after Judge Sprouse's order was all Journal
21 subscribers and readers, names and contact information of
22 following witnesses are pending response to Plaintiff's
23 discovery request from all defendants.

24 MS. PIERCE: Which interrogatory number is that?

25 MS. KNEHANS: It is interrogatory number 3. And it's not

1 numbered in the supplementals we received after Judge
2 Sprouse's order.

3 THE COURT: So, looking at page one.

4 MS. KNEHANS: Yes, Your Honor.

5 THE COURT: And I'm looking at a document that's
6 captioned Supplemental Response to Defendant's Discovery
7 Requests.

8 MS. KNEHANS: Yes, Your Honor.

9 THE COURT: And it has the date ---

10 MS. KNEHANS: The ---

11 THE COURT: Hang on.

12 MS. KNEHANS: Yeah, sorry.

13 THE COURT: Certificate of service is on February the
14 16th, 2023.

15 MS. KNEHANS: Yes, Your Honor. And that would have been
16 the day after Judge Sprouse's order was entered.

17 THE COURT: Okay. And so, if you would, first, you are
18 complaining as to -- under the caption on page 2, other
19 witnesses, number 14 and 15, that all Journal subscribers and
20 readers and current and former employees of The Journal
21 defendants.

22 MS. KNEHANS: Yes, Your Honor, but ---

23 THE COURT: Okay.

24 MS. KNEHANS: --- what we're really -- it's number 14 is
25 what we're really struggling with, because Plaintiff has

1 claimed she's had individuals who've read these articles who
2 have come to her, and no longer want to work with her or have
3 told her that they don't want to associate with her. But we
4 don't have any idea who those people are, and that's what we
5 argued to Judge Sprouse, and that's when she was directed to
6 provide a complete witness list. And this clearly doesn't
7 comply with that order.

8 MS. PIERCE: You said number 14? 14 or 13?

9 MS. KNEHANS: 14.

10 THE COURT: All right, Ms. Pierce.

11 MS. PIERCE: Your Honor, she's just confusing, because
12 number 3, according to what I have here. This is my amended
13 response to their interrogatories. In number 3, I provided a
14 list of witnesses that I had at the time, and then I
15 supplemented additional list with what I have that you have in
16 front of you. So, if she's saying they are not specific in
17 what they want, and right now she's trying to claim that she
18 wants additional information to be specific, but she was not
19 even specific on that date.

20 THE COURT: Just one second, I want to respond to what
21 you just said. Interrogatory number 3 that you're referring
22 to, can I see it please?

23 MS. KNEHANS: Yes, Your Honor. I can pass that up to
24 you.

25 MS. PIERCE: Amended.

1 THE COURT: Do you -- show it to Ms. Pierce first,
2 please.

3 MS. KNEHANS: This is your amended responses.

4 MS. PIERCE: Yes. And this is number 3. And I see it.

5 MS. KNEHANS: Yeah. It's identical to what you have in
6 your ---

7 MS. PIERCE: I just want to make sure. Yes. And then
8 number 14. It's not even similar to what she's talking about.

9 MS. KNEHANS: And Your Honor, I'm sorry, I handed you my
10 copy, so.

11 THE COURT: I'll give it back.

12 MS. KNEHANS: No, I don't need it back, just if we have
13 any questions, I handed you my copy, so.

14 THE COURT: Where is -- okay. Interrogatory -- identify
15 all persons known by you or counsel to have the knowledge,
16 information, or belief that the facts and circumstances
17 alleged in the amended complaint, your alleged injuries
18 relevant to the subject matter of this lawsuit, relevant to
19 your claim or defense of either party, which might lead to
20 discovery of such information setting forth either a
21 sufficient summary to inform you -- to inform the other party
22 of important facts known to or observed by such person and/or
23 provide a copy of any written report or statement taken from
24 such person.

25 MS. KNEHANS: Yes, Your Honor. And if you flip to the

1 next one, her first response is all Journal subscribers and
2 readers. We then followed up with a motion to compel. We
3 followed up originally with a letter stating who are these
4 individuals that you allege read the articles and now don't
5 want to associate with you as you claim in your amended
6 complaint.

7 We followed up with that motion to compel when that
8 wasn't complied with. Judge Sprouse ordered her to comply
9 with the full witness list, and all we got is what Your Honor
10 has in front of him already, number 14, all Journal
11 subscribers and readers.

12 THE COURT: All right, Ms. Pierce ---

13 MS. PIERCE: Yes.

14 THE COURT: --- I'll be glad to hear from you.

15 MS. PIERCE: So, Your Honor, as you can see, we're
16 talking about the question is about the witness list. Persons
17 I know. And I complied with that. And I added -- I asked The
18 Journal defendants to give me the list of all of their
19 subscribers so that I can randomly contact them and then I
20 also have a list of other people that I have talked to. I
21 still have to depose them. We haven't reached the level of
22 deposition, and I have the right to amend my witness list.

23 THE COURT: Why haven't you included them in your answers
24 to interrogatories?

25 MS. PIERCE: I have included it. I say ---

1 THE COURT: Where are they?

2 MS. PIERCE: It is here, Your Honor. You have it there.

3 THE COURT: This -- I'm looking at what is captioned, Ms.
4 Pierce ---

5 MS. PIERCE: Plaintiff's response ---

6 THE COURT: Hang on, hang on. This is supplementary
7 response to defendant's discovery request. Is that where it's
8 going to be located?

9 MS. PIERCE: In my amended response to the interrogatory.
10 What I have there does not immediately, you know, squash this
11 one.

12 THE COURT: Show that to opposing counsel and make sure
13 that y'all are on the same ---

14 MS. KNEHANS: It's what we just handed you, Your Honor.

15 MS. PIERCE: I have the right to amend ---

16 THE COURT: Is that what she just gave you?

17 MS. PIERCE: --- my witness list.

18 MS. KNEHANS: I'll give it back to Your Honor.

19 THE COURT: Okay. Okay, so.

20 MS. PIERCE: Can I have that one?

21 THE COURT: You responded with the amended response is
22 what you're telling me.

23 MS. PIERCE: Yes.

24 THE COURT: Okay.

25 MS. PIERCE: And I told them that I had the right to

1 supplement and add more witnesses on the list. The trial is
2 set for after July.

3 THE COURT: Where do you answer? Tell me so I don't have
4 to walk through this whole thing.

5 MS. PIERCE: It is number 3.

6 MS. KNEHANS: Page 4, Your Honor.

7 MS. PIERCE: Page 4, I think. Not page 4, let me see.

8 THE COURT: Okay. So, looking at A, C, and D, of her
9 response, I assume that's where your problem lies?

10 MS. KNEHANS: Without being able to see it, Your Honor,
11 yes.

12 THE COURT: It says all Journal subscribers and readers,
13 as A. C being current or former employees of The Journal
14 defendants, and D, current employees, former employees and
15 partners of Merrill, Jahn, and McDuff, PA, and MJM Law, LLC.

16 MS. KNEHANS: Yes, Your Honor. We're mostly focused on
17 the all Journal subscribers and readers, because, you know, we
18 don't know who she alleges has read these articles and then no
19 longer wants to do business or be in reputation with her,
20 which is what she alleges her damages against us are partially
21 in her complaint.

22 THE COURT: Why haven't you provided that, Ms. Pierce?

23 MS. PIERCE: Your Honor, I have time to supplement. I'm
24 still thinking that I'm going to do depositions of these ---

25 THE COURT: Ma'am?

1 MS. PIERCE: I'm going to depose all of these witnesses,
2 and then put their name on.

3 THE COURT: No, no, no, no. You have been ordered to
4 turn these people over. You can't go through this process of
5 deposing them and then turn them over when you decide you want
6 to. Judge Sprouse said you had 15 days to do it.

7 MS. PIERCE: Okay.

8 THE COURT: So, you've got to.

9 MS. PIERCE: All right. Then I will just supplement that
10 list again.

11 THE COURT: Okay. I tell you what.

12 MS. PIERCE: I will just supplement it.

13 THE COURT: I'm going to give you the same question I
14 gave you a minute ago, okay. And that is this, so we're clear
15 on the record. This interrogatory number 3 to the Richard M.
16 McDuff -- Richard Hunt McDuff, MJM Law discovery as to
17 witnesses interrogatory number 3.

18 MS. KNEHANS: Yes, Your Honor.

19 THE COURT: And that's it, right?

20 MS. KNEHANS: I think it's just number 3, but you have my
21 copy, so.

22 THE COURT: Okay. I'm going to give it back to you.
23 Take it a look at it and make sure we're right.

24 MS. KNEHANS: Yes, Your Honor, looking through it, it's
25 interrogatory number 3.

1 THE COURT: Okay. Going back to my question to you, Ms.
2 Pierce. McDuff, MJM Law interrogatory number 3 to you, is
3 there any reason within 30 days from today's date, excluding
4 today's date, or by -- which would be April 21st, could you
5 fully and completely respond to that interrogatory?

6 MS. PIERCE: Yes, Your Honor.

7 THE COURT: And that would include the names of The
8 Journal subscribers and readers. And -- is that the main one
9 you were concerned on? But also, current and former employees
10 of The Journal defendant, and also employees or current or
11 former employees of the law firm?

12 MS. KNEHANS: Yes, Your Honor, and would that include the
13 other portions of that request as well, the -- she never
14 responded to any of the setting forth either a summary
15 sufficient to inform the party of important facts known, or
16 written statement.

17 THE COURT: And do you understand what she's saying, Ms.
18 Pierce?

19 MS. PIERCE: Yes. What I'm saying is that ---

20 THE COURT: Hang on, let me go over it with you.
21 Sometimes people don't understand. You're representing
22 yourself.

23 MS. PIERCE: Yes.

24 THE COURT: You write the person's name down, but then
25 you've got to write the general substance of what they're

1 testimony is going to be.

2 MS. PIERCE: I've included that before.

3 THE COURT: Or you give an affidavit that they have given
4 to you, which would be the substance of their testimony, okay.

5 MS. PIERCE: Yes.

6 THE COURT: And then you indicate whether there is a
7 recorded or written statement that they have provided, so
8 they'll know whether to seek it later on. But you need to put
9 that -- in that interrogatory, you need to read the entire
10 interrogatory and fully and completely respond to it within a
11 30-day time frame by April 21st, okay.

12 MS. PIERCE: Yes, Your Honor.

13 THE COURT: All right. What would you like to say?

14 MS. PIERCE: I have a question. I also want information
15 from them about the list of their employees.

16 THE COURT: This is not -- today's not a production -- a
17 motion to compel on your part.

18 MS. PIERCE: Okay. All right.

19 THE COURT: You have to file one, and that's just -- I'll
20 give you time to file.

21 MS. PIERCE: Mine is coming up.

22 THE COURT: Okay. That will be fine.

23 MS. PIERCE: Okay.

24 THE COURT: But you have file that, and once it's filed,
25 and the time runs, we'll have a motion hearing. It might be

1 me, it might be somebody else, okay.

2 MS. PIERCE: Thank you, Your Honor.

3 THE COURT: All right. So, have I answered all of the
4 issues today that we need to address?

5 MR. MISHKIN: So, just to the -- since, it seems like
6 we're doing things by cross reference, so I guess we're going
7 to do on damages, combined order to, you know respond to
8 interrogatories and request for production for both Journal
9 defendants and attorney defendants. And then on the witness
10 list, I guess I just -- to fully complete the circle, there
11 are, you know, sort of parallel interrogatories from The
12 Journal defendants.

13 THE COURT: Okay. What are your interrogatories that
14 have to do with witnesses?

15 MR. MISHKIN: Sure. Principally, it's 4, 5 -- 4 and 5,
16 which is personal relationships that you allegedly saw lost or
17 deteriorate as a result of the challenged reports, and every
18 person who communicated to you, whether indirectly or directly
19 that he or she thought less of you or has a diminished opinion
20 of you as a result of the challenged reports.

21 THE COURT: So, interrogatories 4 and 5 ---

22 MR. MISHKIN: That's correct.

23 THE COURT: --- from ---

24 MR. MISHKIN: The Journal defendants, Your Honor.

25 THE COURT: --- The Journal defendants, okay. Again, Ms.

1 Pierce, I'm going to ask you so we're clear on the record.
2 Any reason why you can't fully and completely respond to
3 interrogatories ---

4 MS. PIERCE: No, I will answer that.

5 THE COURT: --- 4 and 5 within 30 days, or April 21st?

6 MS. PIERCE: No reason, Your Honor.

7 THE COURT: Okay, thank you, ma'am. All right, I'm going
8 to ask that you guys get together and just do one order
9 jointly. Give it to Ms. Pierce before you give it to me.
10 Now, let me ask you this. Sometimes we have situations where
11 we don't have emails. Communication with the Court is
12 typically by email. Do you have Ms. Pierce's email?

13 MR. MISHKIN: We do, Your Honor.

14 THE COURT: Okay. So, you know that when you send it,
15 you've got to send it to her. I don't want you to send it to
16 her at the same time you send it to me. I want you to send it
17 to her, let her read it. And if you have objections, tell
18 them I object to this, this, and that, and see if y'all can't
19 work it out. If you can, then you need to amend it. If you
20 cannot, then you'll provide me an underlined copy where the
21 objections lie, and I'll make a response or I'll have a
22 conference call, okay.

23 MR. MISHKIN: That works for us. Thank you, Your Honor.

24 MS. KNEHANS: Thank you, Your Honor.

25 THE COURT: All right, thank you. Get me those attorney

1 fee statements within 10 days, and those will be given to Ms.
2 Pierce within 10 days, okay.

3 MR. MISHKIN: Again, do you want that to go to Ms. Pierce
4 first, or does that?

5 THE COURT: Yes.

6 MR. MISHKIN: Okay. Thank you, Your Honor.

7 THE COURT: And Ms. Pierce ---

8 MS. PIERCE: Yes, sir.

9 THE COURT: If you -- once you get the statement from
10 both these attorneys that are claiming the fees that they've
11 incurred for this hearing, if you wish to cross examine them
12 about those fees, only about those fees, you need to indicate
13 to me within five days of receiving their affidavit, okay.

14 MS. PIERCE: Yes, Your Honor.

15 THE COURT: If you would put that in that order, okay.

16 MR. MISHKIN: Yes, Your Honor.

17 MR. SMITH: And on that issue, Your Honor, Chris Smith,
18 very briefly, for the attorney defendants. I'm here as well.
19 I don't have as much investment in the drafting of this motion
20 as Dakota does, but I will have a small affidavit as well.
21 And separately, Your Honor ---

22 THE COURT: Who do you represent?

23 MR. SMITH: I represent the attorney defendants as well
24 through a separate insurance policy, Your Honor, so -- and I
25 was wondering if your order on sanctions, does it -- will it

1 provide a deadline for her to pay those sanctions, and if
2 there ---

3 THE COURT: Pay the fees?

4 MR. SMITH: Yes, Your Honor, and if they're not paid,
5 what the ramification of that would be.

6 THE COURT: Well, it's like any other money judgment out
7 there.

8 MR. SMITH: Okay.

9 THE COURT: Okay. I'm not going to try to say -- give it
10 in a certain amount of time.

11 MR. SMITH: Okay.

12 THE COURT: But, we can cross that bridge down the line.

13 MR. SMITH: Thank you, Your Honor.

14 MS. PIERCE: Well, you owe me, too, so.

15 THE COURT: Ma'am?

16 MS. PIERCE: I said they owe me a lot already, so
17 whatever they are seeking ---

18 THE COURT: Well, whatever that is, we'll cross that
19 bridge, I'm sure.

20 MS. PIERCE: Mm-hmm. (Indicating affirmatively.) Yes,
21 Your Honor.

22 THE COURT: All right. Does that answer all of the
23 defendant's issues?

24 MR. MISHKIN: Yes, Your Honor.

25 MS. KNEHANS: Yes, Your Honor.

1 THE COURT: Ms. Pierce, you understand exactly where we
2 are today?

3 MS. PIERCE: Yes. I am.

4 THE COURT: Okay. Very good.

5 MS. PIERCE: Thank you.

6 THE COURT: Thank you, guys. Y'all have a nice day.

7 End of Transcript.

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED MONA L. MANLEY, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF ALL REQUESTED PROCEEDINGS RECORDED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT OF OCONEE COUNTY, SOUTH CAROLINA, ON THE 22nd DAY OF MARCH, 2023.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

January 17, 2024

Mona L. Manley

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