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SC Court of Appeals

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

William F. Tomz and Francis W. Tomz,)
Individually and as Class Representatives,)
)
Plaintiffs,)

vs.)

Capital Investment Funding, LLC, and)
Arthur M. Field,)
)
Defendants.)

CIVIL ACTION NO. 2008-CP-23-3665

**SUPPLEMENTAL ORDER
REGARDING PRODUCTION OF
RECORDS and DEFENDANT FIELD'S
MOTION TO ALTER OR
TO AMEND**

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This matter originally came before the Court for the Receiver's Motion to Compel Arthur M. Field ("Field") to produce his computer. Following a hearing on the matter on December 8, 2016, the Court entered an order on December 15, 2016, wherein Field was ordered to provide four (4) computers (three (3) computers from his home and one (1) that was in the possession of Attorney Brad Martin) and any other storage devices in his possession to an expert upon whom the parties agreed so that the drives could be mirrored and preserved. Field had objected to the production of these computer records because, although not currently licensed to practice law, Field believed some privileged communications were contained on the hard drives in question.

At the December 8, 2016 hearing, the Court ordered Field to produce a privilege log for the documents he contended to be privileged. By the terms of the December 15, 2016 order, Field was ordered to provide his privilege log to the Court for the computer in Attorney Martin's possession within seven (7) days of receiving the computer back from the expert and within fourteen (14) days for the other computers.¹

¹It should be noted that at the December 8, 2016 hearing, neither Field nor his attorney objected to the timeframes set by the Court. Field's counsel requested additional time and the Court set one (1) week for the computer in Attorney Martin's possession and two (2) weeks for

In the order and at the December 8, 2016 hearing, Field was forewarned that his failure to provide a privilege log by the set deadlines constituted a waiver of his right to assert any privilege for materials contained on those drives. Subsequent to entry of its December 15, 2016 order, the Court was informed that the computers and storage drives had been delivered to James P. Perry (the agreed upon expert) and returned to Defendant Field's attorney on December 20, 2016. By terms of the December 15th order, Field was required to provide a privileged log for the computer previously held by Attorney Martin on or before December 27, 2017 and for the other computers and devices, on or before January 3, 2017.

Instead of producing any privilege log, on the day the log was due, Field filed a motion to alter or amend. In his motion, Field stated that he needed 113 days to produce his privilege log. Field said nothing at the hearing on December 8, 2016 about needing months and months of time when the Court was establishing the deadlines in the presence of the parties and their counsel. His failure to object or otherwise speak up about this at the hearing raises significant credibility questions about the time needed as set forth in his motion.

To the extent Defendant Field's motion requesting additional time to produce the privilege logs, that motion is denied. Field was present when these time frames were set, he knew the work involved and voiced no objection of needing essentially six (6) months to complete the work.

Field's Motion to Alter or to Amend raises an issue about the prohibition to Mr. Field to access the files on these computers until the expert obtained a mirror of the same. Field's counsel contends that he was inadvertently omitted from inclusion of the drafting of the order because the drafts were sent to an older email address. The Court notes that the written order entered on December 15, 2016 mirrors the very strong admonishment the Court gave Mr. Field about altering,

the others. When the court suggested two (2) weeks for the production of the privilege logs for the other computers, Field did not object; he did not state that timeframe was unreasonable; nor did he protest in any manner whatsoever.

deleting or changing the files on these computers in any way. The Court is troubled by the fact that Field waited twelve (12) days to raise the issue of access.

These deadlines have already come and gone. Further, Mr. Field has not provided a privilege log for any of the devices that were turned over to the expert. As a result, the Court is concerned with Mr. Field's potential access to and alteration of any of the computers or devices turned over in the period of time following the December 8th hearing, up to the December 15th written order, and thereafter prior to turning the computers over to the expert. The court will hold this limited issue in abeyance pending further information from the parties.

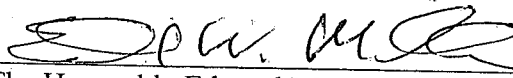
In all other aspects, Defendant Field's Motion to Alter or to Amend is DENIED. Because Field provided no privilege logs for any computer (nor did he attempt to submit any log of work completed to date), any claim of privilege is waived. The Court orders the expert to provide counsel for CIF a copy of the hard drives for the three (3) computers Field had at his home, as well as the flash drives. Mr. Perry shall provide to CIF's counsel any passwords, etc., from Defendant Field to access any files on these computers and/or drives.

The Court also orders counsel for CIF to obtain a report from Mr. Perry about any files that were accessed, altered or deleted on any of these computers following between December 8, 2016 and the date he received the same to mirror the drives. Counsel for CIF is directed to obtain this report within fourteen (14) days of entry of this order. If the expert needs additional time to complete this report, counsel for CIF shall notify the Court accordingly.

Within fourteen (14) days of receiving the computer information from the three (3) home computers and two (2) flash drives from the expert, counsel for CIF may request the Court to reconvene the Rule to Show Cause hearing. If additional time is needed, counsel shall notify the court accordingly. The Court reserves the right to reconvene the hearing *sua sponte* from its investigation of all pending matters.

Regarding the laptop which remained within the custody of Attorney Martin's office, because the Rule to Show Cause order entered October 1, 2013 is currently under appeal, the Court will review the transcript of the 2013 Rule to Show Cause proceedings, the subsequent orders and CIF's motion to confirm this Court's jurisdiction over the production of records on this one computer. The Court will notify the parties of its decision on that matter in the near future.

IT IS, SO, ORDERED on this 12 day of January, 2017.



The Honorable Edward M. Miller
Presiding Circuit Court Judge