

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: December 17, 2007
Decided: March 26, 2008

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Mr. R. Scott Stewart
2 West Aldine Drive
Hockessin, DE 19707

FR Financial Services, Inc.
c/o R. Scott Stewart
2 West Aldine Drive
Hockessin, DE 19707

Re: *FIA Card Services, N.A. v. R. Scott Stewart, et al.*,
Civil Action No. 3006-VCP

Dear Counsel and Mr. Stewart:

This action for misappropriation of trade secrets and breach of contract is currently before me on Plaintiff's Motion for Contempt against Defendants, R. Scott Stewart and FR Lewis Financial Services, Inc. ("FR Lewis").¹

By their motion, Plaintiff, FIA Card Services, N.A. ("FIA"), seeks to hold Defendants in contempt of court for violating the Temporary Restraining Order ("TRO")

¹ FR Lewis did not respond to this motion through counsel as required by Delaware law. *See Transpolymer Indus. v. Chapel Main Corp.*, 582 A.2d 936 (Del. 1990); *Weber v. Kirchner*, 2003 WL 23190392, at *1 (Del. Ch. 2003). This ruling therefore applies to FR Lewis by default and to Defendant Stewart individually for the reasons stated.

entered June 8, 2007, the July 3, 2007 order holding Defendants in contempt for violating the TRO, and the August 2, 2007 Permanent Injunction against FR Lewis, all of which prevent Defendants from disseminating FIA's confidential and trade secret information. The issues presented by Plaintiff's motion are (1) whether Stewart has violated the TRO, and (2) if so, what the remedy should be.

I. BACKGROUND

Defendant Stewart was an officer employed at FIA's predecessor, MBNA, in the Consumer Lending Finance Department.² In this role he gained knowledge and information deemed confidential and trade secret by MBNA.³ In May 2005, Stewart resigned from his position at MBNA and signed a severance agreement requiring him to maintain the confidentiality of MBNA's trade secret information.⁴ In October 2006, MBNA merged with Bank of America and FIA became the successor in interest to Stewart's agreement.⁵

After leaving MBNA, Stewart formed FR Lewis and acted on its behalf as agent for various clients negotiating affinity credit card agreements with FIA and other banks.⁶ The Complaint alleges that on May 27, 2007, Stewart sent FIA's confidential information

² Verified Compl. ¶ 4.

³ *Id.*

⁴ *Id.* ¶ 6, Ex. A.

⁵ Verified Compl. ¶ 7.

⁶ *Id.* ¶ 8.

to forty-nine different educational institutions and state nursing associations as part of an email attachment.⁷ According to the Complaint, Stewart again emailed confidential and trade secret information to various educational institutions and nursing associations on June 3, 2007.⁸

On June 13, 2007, this Court issued the TRO preventing Defendants from disseminating, disclosing, or using FIA's confidential and trade secret information, including but not limited to, the information disseminated in Defendants' May 27 and June 3 emails.⁹ Those emails and their attachments included information regarding FIA's annual net income from a particular client, that client's annual profit sharing revenue, and detailed information on the FIA deal structures with over eighteen specific clients.

On June 19, 2007, FIA moved to hold Defendants in contempt ("First Contempt Motion") for violating the TRO. FIA accused Defendants of sending an email on June 14 containing an attachment of FIA confidential and trade secret information.¹⁰ After a hearing on July 7, 2007, I found Defendants in contempt, but declined to award any attorneys' fees or damages in that instance.

⁷ *Id.* ¶ 12.

⁸ *Id.* ¶ 13.

⁹ The Court granted a proposed temporary restraining order on June 8, 2007, and then entered a revised TRO on June 13 correcting an error relating to the date of one of the referenced emails.

¹⁰ Mot. for Contempt and Sanctions Against Defs. ¶¶ 5-7.

On August 2, 2007, I granted a default judgment against FR Lewis and entered a permanent injunction preventing it from disseminating FIA confidential information. The language of the injunction mirrors that of the TRO.

On November 26, 2007, FIA filed the pending motion accusing Defendants of contempt (“Second Contempt Motion”) for violating the TRO and related orders. FIA alleges Defendants sent an email on November 3 that contained confidential information from an affinity agreement between FIA and the Ohio Nurses Association (“ONA”) to various recipients, including Bucknell University.¹¹ The ONA affinity agreement contains a confidentiality provision requiring all parties, including ONA, to refrain from disclosing information contained in the agreement except to their lawyers, accountants, financial and marketing advisors, and employees as necessary to perform their duties and provided the recipients agree to maintain its confidentiality.¹² Defendants’ November 3 email stated, for example, “We all know ONA was previously earning annual compensation of only around ___ before they signed their new contract which was guaranteed for ___ a year for ___ years at a premium of almost ___%.”¹³

¹¹ Second Contempt Mot. ¶ 5.

¹² Letter to Court Supplementing Pl.’s Mot. for Contempt Ex. A ¶ 7.

¹³ Second Contempt Mot. Ex. C. Although the email contained specific numbers, they have been redacted based on FIA’s claim of confidentiality.

II. PARTIES' CONTENTIONS

FIA alleges the statements made in Defendants' November 3 email contain FIA's confidential and trade secret information in violation of the TRO. Plaintiff supports this contention with an affidavit from Khristien Hawver-Scott,¹⁴ an FIA Card Services executive, copies of the November 3 email,¹⁵ and the ONA affinity agreement.¹⁶

Stewart denies the information disclosed in the November 3 email is either a trade secret or confidential. He asserts it is readily available to the public and accessible to third parties. Further, Stewart avers FIA had no safeguards in place to maintain the secrecy or confidentiality of the information in question. In support of his position, Stewart submitted a number of emails and other documents.

III. ANALYSIS

The information disclosed by Defendants in the November 3 email is FIA confidential and trade secret information within the meaning of the TRO and July 7 contempt order; thus, its dissemination violated those orders. The TRO enjoined Defendants from disclosing confidential or trade secret information, including but not limited to, information of the kind contained in the May 27 and June 3 emails and

¹⁴ Aff. of Khristian Hawver-Scott Regarding Pl.'s Mot. for Contempt ("Hawver-Scott Aff.").

¹⁵ Second Contempt Mot. Ex. C.

¹⁶ Letter to Court Supplementing Pl.'s Mot. for Contempt Ex. A.

attachments. At least some of the information Stewart disclosed in the November 3 email is the same type information covered by the TRO.

The information contained in the emails and attachments referenced in the TRO relates to financial terms of FIA affinity card agreements. Among other things, the May 27 email states earnings information regarding an FIA agreement with a specific affinity client. The spreadsheet attached to the June 3 email provides information on affinity agreement structures for a number of affinity clients of FIA.¹⁷ Defendants sent both the May 27 and June 3 emails to various third parties.

The June 14 email that gave rise to the First Contempt Order contained similar information to the May 27 and June 3 emails. Defendants included information on a specific FIA affinity agreement in the email and attached a statement showing the income received under the affinity agreement being discussed.¹⁸

The email of November 3 contains information similar to the information disclosed in the emails mentioned in the TRO. For example, in the November 3 email, Defendants explicitly stated the earnings ONA achieved under their expiring affinity contract and made statements regarding the terms of an addendum Stewart negotiated for ONA to continue their relationship with FIA and the anticipated earnings under that addendum.¹⁹ Defendants sent this information to Bucknell University representatives,

¹⁷ Verified Compl. Ex. E.

¹⁸ *Id.*

¹⁹ Second Contempt Mot. Ex. C.

thus disclosing it to unrelated third parties. In the original ONA agreement, FIA designated such information confidential and trade secret and restricted the ability of ONA and its agents, such as Stewart, to disclose it to third parties.²⁰ The Hawver-Scott Affidavit further demonstrates that FIA took steps to preserve the confidentiality of such information. Because Defendants' November 3 email specifically references the compensation terms of the ONA affinity agreement and of the subsequent term extension addendum Defendants negotiated on ONA's behalf,²¹ I find it discloses FIA's confidential information and trade secrets within the meaning of the TRO.

Stewart submitted a number of exhibits containing email communications between FIA representatives and FR Lewis concerning the negotiations with various affinity clients in support of his contention the information disclosed in the November 3 email is not confidential or trade secret.²² Stewart also submitted financial spreadsheets regarding various affinity agreements that were prepared by FR Lewis for internal reasons or the education of its clients.²³ Contrary to Stewart's argument, however, none of these exhibits prove the financial information and other agreement terms contained therein are publicly available. At best, they show an exchange of information relating to a specific affinity agreement among FIA, Stewart, and the particular client involved. The ONA

²⁰ Letter to Court Supplementing Pl.'s Mot. for Contempt Ex. A ¶ 7.

²¹ Second Contempt Mot. Ex. C.

²² Stewart's Answer, Exs. A, B, and F.

²³ *Id.* Ex. D.

affinity agreement required confidentiality for the “terms of this Agreement and any proposal ... provided by or on behalf of one party to the other party ... subsequent to, the execution of this Agreement.”²⁴ The agreement further required ONA to obtain Stewart’s agreement to keep confidential the information disclosed to him in performance of his duties for ONA. Therefore, Stewart, in negotiating the addendum for ONA, had no authority to disclose information regarding ONA’s affinity agreements to others. On this preliminary record, I am not persuaded by Stewart’s argument that the information disclosed in the November 3 email is public information.

Whether the information in the various emails discussed in this letter opinion ultimately qualifies as confidential or a trade secret remains to be decided after the upcoming trial on the merits. For purposes of the Second Contempt Motion, however, FIA made a sufficient showing that the November 3 email contains confidential and trade secret information to demonstrate a violation of the TRO. Stewart failed to show the information falls outside the scope of the TRO, the permanent injunction, or the first contempt order. I therefore hold Defendants in contempt for disseminating the November 3, 2007 email.

In fashioning an appropriate remedy, I find Stewart, who is proceeding pro se, did not violate the TRO in bad faith. Furthermore, I note that FIA and its predecessor, MBNA, have allowed Stewart to continue to remain active in the affinity card market and

²⁴ Letter to Court Supplementing Pl.’s Mot. for Contempt Ex. A ¶ 7.

to use his knowledge of their previous practices to at least some extent. This creates a delicate situation for all parties. FIA apparently is content to have Stewart use his knowledge and expertise to advance his client's interests in negotiations with FIA, but requires him to refrain from disclosing the confidential information he knows to third parties. Stewart failed to adhere to the requirement in this situation. Because this is the second time I have held Defendants in contempt of court, I hold Stewart and FR Lewis jointly and severally liable to pay FIA one thousand dollars to reimburse FIA, at least in part, for its attorneys' fees in prosecuting the Second Contempt Motion. I decline, however, to award any further damages. Finally, I admonish both Defendants to avoid any further violations of the TRO and related orders.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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