Lisa Borodkin <lborodkin@gmail.com>

Meet and Confer for Motion to Strike

Lisa Borodkin <lborodkin@gmail.com> **Fri, Jun 11, 2010 at 2:05 PM**
To: "<david@ripoffreport.com>" <david@ripoffreport.com>

What time on Monday?

On Jun 11, 2010, at 1:47 PM, "David Gingras" <david@ripoffreport.com> wrote:

> Lisa,
>
> I'm actually not available to talk until Monday. Also, before we do talk I would like to see your written position on the issues set forth in my email.
>
> David Gingras, Esq.
>
> General Counsel
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> **From:** Lisa Borodkin [mailto:lborodkin@gmail.com]
> **Sent:** Friday, June 11, 2010 11:41 AM
> **To:** david@ripoffreport.com
> **Cc:** Maria Crimi Speth; Daniel Blackert; paul@berra.org
> **Subject:** Re: Meet and Confer for Motion to Strike
>
> Thanks. I'll give you a call at 2.
>
> Lisa
>
> On Fri, Jun 11, 2010 at 9:46 AM, David Gingras <david@ripoffreport.com> wrote:
>
> Lisa,

I have given you my position on the disclosure issue already but will do so again just to be clear – the recordings are relevant for impeachment and thus aren't within the mandatory disclosure requirements of Rule 26. Furthermore, until I received your clients' declarations (which happened on a Monday), I had no idea what the factual basis was for their extortion claims. While there's clearly no extortion happening on the recorded calls, until your clients lied about that issue, I didn't know if the recordings were necessary at all. Once I learned this, I disclosed the recordings on Friday. As such, the disclosure argument has no basis.

As for the wiretapping argument, I also think I have already explained our position on this. First, Arizona is a one-party state and our position is that these recordings are entirely lawful under Arizona law. I am aware of authority that suggests California can impose its own laws on activities which took place in another state, but if necessary I intend to argue that those authorities are wrong.

Second, by its own terms, Penal Code § 632 only applies to "confidential communications" which are defined as a conversation which a party reasonably believes is not being recorded or overheard. Among other things, I think that any person making a call to a one-party state (as Mr. Mobrez did when he called Xcentric's number in Arizona) could not reasonably expect that the call wasn't being recorded since doing so is entirely lawful in Arizona.

In addition, of the six recordings, two are voicemails left by Mr. Mobrez. He knew those messages were being recorded, so § 632 doesn't apply at all to them. Of the remaining four recordings, Ms. Llaneras was eavesdropping on three of them. Since Mr. Mobrez knew those calls were being overheard by someone else, § 632 doesn't apply at all to them.

This leaves only a single call – the first one. This call is largely non-substantive, so excluding it won't impact our MSJ or the trial in any way (I also note that Mr. Mobrez never alleged that extortion occurred in the first call). However, because Mr. Mobrez has already testified about the first call and has clearly perjured himself as to that call and every other call, we're still entitled to use the recording of the first call to impeach him. *See Frio v. Superior Court*, 203 Cal.App.3d 1480, 250 Cal.Rptr. 819 (2 DCA 1988).

For these reasons, there is no factual or legal basis to exclude any of the calls. All those matters aside, as I indicated when the recordings were first disclosed, I think that you and Dan may be exposing yourself to severe personal and professional consequences if you attempt to suborn perjury from your clients or to aid their criminal actions in any way. Rules of evidence and procedure aside, no attorney is permitted to make knowingly false statements to the court or to assist a client in offering false testimony, so I expect that you and Dan will strictly comply with those obligations.

David Gingras, Esq.

General Counsel

Xcentric Ventures, LLC

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<image001.jpg>

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From: Lisa Borodkin [mailto:lborodkin@gmail.com]
Sent: Friday, June 11, 2010 12:14 AM
To: <david@ripoffreport.com>
Cc: Lisa Borodkin; Maria Crimi Speth; Daniel Blackert
Subject: Re: Meet and Confer for Motion to Strike

The basis is both the disclosure issue and the wiretapping.

I wondered the same thing myself, whether it could be better done just as objections, and perhaps after we confer we can decide to do that.

The thinking for now is that the wiretapping issue is rather complex legally and perhaps might be better briefed on its own rather than in the limited page length we have for opposition.

On the disclosure, we think it meets the standard of being prejudicial and harmful.

Why don't we talk tomorrow afternoon around 2 on your position regarding timing if we do it as a separate motion on shortened time.

On Jun 10, 2010, at 11:33 PM, "David Gingras" <david@ripoffreport.com> wrote:

> Lisa,
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> We can talk about this further at any point, but I think it would be helpful if you would explain the factual and/or legal bases for your position prior to any such discussion. If the only argument you have is the disclosure issue, I don't think we need to discuss it since this isn't a legitimate argument.
>
> Also, why bother with a motion to strike? If you feel the recordings are inadmissible, I think you can simply say that in your MSJ opposition and leave it at that…if you're right, then the court won't consider them.
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> David Gingras, Esq.
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From: lborodkin@gmail.com [mailto:lborodkin@gmail.com] **On Behalf Of** Lisa Borodkin
Sent: Thursday, June 10, 2010 4:46 PM
To: <david@ripoffreport.com>; Maria Crimi Speth
Cc: Daniel Blackert; alexandra@asiaecon.org; kristi@asiaecon.org
Subject: Meet and Confer for Motion to Strike

Dear David and Maria,

After the deposition of Mr. Magedson on June 7, 2010, David and I spoke briefly about plaintiffs' intention to move to exclude evidence of the recordings of Mr. Magedson's telephone conversations with Raymond Mobre. This is both for the motion for summary judgment and at trial.

We didn't come to any resolution of the issue, but if you would like to meet and confer further before we file a Motion to Strike, please let me know a time later today or tomorrow before 4 p.m. when you're available to discuss it.

Assuming we are unable to resolve the issue of the use of the recordings, we plan to set the motion for a return date of July 19, 2010.

However, since the evidence is so central to the motion for summary judgment, if we do file the motion, we ask that you join us in a stipulated request to shorten time on the hearing to June 21, 2010. Otherwise, we plan to apply ex parte.

Please let me know your position on a stipulation to shorten time, else when you are available for a conference of counsel.

Thanks,

Lisa

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