

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

Defendants.

Civil Action No. : 1:10-cv-00569-RJA

**REPLY TO RESPONSE TO
MOTION TO END EXPEDITED
DISCOVERY**

MEMORANDUM

INTRODUCTION

Defendants begin their Omnibus response by violating Rule 11(b)(3) repeatedly. By way of example, but by no means exhaustive, consider the following statements by Mr. Snyder in Defendants' response:

1. "[Ceglia] [h]aving been caught tampering with and destroying critical evidence...." Doc. No 237 at 1.
2. "[Ceglia] [h]aving been caught baking the fake contract in an attempt to give it an "aged" appearance and prevent ink dating...." Id.
3. "[Ceglia] seeks to conceal the *indisputable and overwhelming* evidence of his fraud...." Id. Emphasis added.
4. "Every time Ceglia gets caught red-handed committing some new act of litigation

fraud....” Id.

5. “Ceglia is desperate to portray this as a case of dueling experts, when in fact the *irrefutable evidence* leaves no room for debate....” Id. Emphasis added.

LAW AND ARGUMENT

The court should consider counsel’s argument by comparing statements versus reality. “Even at that time, Defendants had overwhelming evidence of litigation fraud.” Id. at 3. Of course, as of December 7, 2011, Defendants have produced *no evidence* of litigation fraud. Meanwhile, Defendants, Mr. Snyder and the Orrick Law Firm have acknowledged fraud and are facing sanctions looming over these proceedings. Doc. No. 232.

Defendants argument is that Expedited Discovery should continue because Mr. Ceglia has not complied. Id. at 4. Meanwhile, Defendants are involved in an ever-widening demand for information designed to never enable compliance by Mr. Ceglia. They are seeking to avoid confronting the facts and, instead, persuade this court to dismiss this case procedurally. Ironically, Defendants abandoned their pursuit of files from two experts, Blanco and Stewart and cancelled without explanation their appointment to extract data from another expert, Mr. Speckin. As to one of the lawyer targets of their file gathering bonanza, Mr. Grable at Connors and Vilardo, they accepted files from him on CD accompanied by screenshots of the meta data for those files. Their arguments for non-compliance are being whittled down to the most innocuous and borderline manufactured.

Defendants do not argue and cannot explain why this case will still be

suitable for Expedited Discovery even when their expert reports are provided.

HOW WE GOT HERE

This court reluctantly granted expedited discovery reliant on a series of promises from Snyder and Defendants. At the June 30, 2011 hearing, Snyder detailed a list of document examination tasks that he promised would reveal the Facebook Contract to be fake. “Because the testing that is done, ink extractions, toner extractions, paper extractions are accepted forensic techniques....” Doc. No. 94 at 122. He opined that Expedited Discovery would enable his experts to “prove, for example, that a toner or ink or paper fiber didn’t exist [in 2003].” Id. at 37. Snyder presented the declaration of Frank Romano calling the Facebook Contract an “amateurish forgery.” Doc. No. 48 at ¶16. The court then correctly questioned Snyder asking “Why do [the experts] need to see it through expedited discovery?” Doc. No. 94 at 33. Snyder replied, “[T]here are tests that can be done microscopically in terms of paper and toner. There are optical lights that can be used to see differences in ink, paper and opaqueness of the pages.....[I]nk extractions [can] identify whether the ink is the same on both pages and how old it is. There are differences in paper fibers....” Id. at 33-34. The useless nature of the testing is evident in Snyder’s pre-testing proclamation to the court that “[T]here’s no chance that any of our experts will change their view.” Id. This shows the inability of Defendants and their counsel to confront reality. Before the experts conducted any tests on the actual Facebook Contract, Snyder told this court there was no way they would conclude anything but what was helpful to Defendants.

That is not commenting about the bias in his experts, but their willingness to game the system and reach conclusions helpful to Defendants despite the evidence.

All of the above tests, and more, are completed. None of Facebook's current experts are willing to declare the Facebook Contract is fake. In fact, one of their experts that had previously made the "amateurish forgery" claim, has now pulled back and offered nothing to bolster that claim despite having ten hours to examine the actual document on July 14, 2011. It is not difficult to know why. Defendants' experts are not reaching the conclusions that Defendants want them to reach.

Mr. Ceglia has provided declarations by two highly qualified experts, one of whom trained Defendants' expert Gerald LaPorte. They concur in the complete absence of any indicia of fraud in the Facebook Contract. No matter what authentication opinion Defendants experts produce it can do no more than become, as this court noted early on in this litigation, dueling experts.

Defendants and their counsel have fraudulently held out on Plaintiff, hiding and attempting to destroy evidence, continually slamming Plaintiff without any proof at all. The court has given Defendants and their counsel wide latitude, unprecedented latitude for this court,

FAILED PROMISES

This court was promised by Defendants that Expedited Discovery would bring a quick resolution to this matter. Doc. No. 94 at 51. It has not. Defendants promised all experts would agree that the Facebook Contract was a fake. They have not. They promised the emails Mr. Ceglia exchanged with Defendant

Zuckerberg would be proven frauds. They have failed.

We have shown this court that if anything, Defendants are struggling with the fact that their experts agree with ours. Our experts' declarations are now in, answering the questions Snyder himself needed to be answered. No such smoking gun exists, only evidence of additional frauds committed by Defendants.

EXPEDITED DISCOVERY PREMISED ON NOW FAILED PROMISES

Defendants promised they would quickly dispose of this case proving the Facebook Contract and associated emails were fakes. They bolstered those initial promises which lured the court into the "unusual request" (Doc. No. 94 at 50) of Expedited Discovery by claiming they have found the "smoking gun" real contract. Even Defendant Zuckerberg will not back them up on this claim with a declaration.

PENDING FRAUD RULINGS ARE RELEVANT

It is important to consider the context for all of Defendants' claims of Ceglia's non-compliance. Defendants argue Mr. Ceglia's non-compliance with orders that Defendants and their counsel have obtained and maintained via fraud.

They obtained the initial order without disclosing the existence of relevant evidence. Doc. No. 232. They claimed Mr. Ceglia's emails were frauds because of their absence in Zuckerberg's email record, knowing their argument was a fraud. Id. They actively sought to destroy relevant evidence throughout this litigation while blasting Mr. Ceglia at every opportunity for unproven claims of fraud. Id.

To allow Expedited Discovery to continue in the face of this fraud rewards Defendants for the most egregious conduct attorneys and parties can engage in

during federal litigation. They have scored the hat trick of fraud, hiding evidence, false arguments in contradiction to that hidden evidence and attempting to destroy evidence. The continuation of Expedited Discovery to the benefit of Defendants and their counsel while they commit these frauds, and perhaps other frauds to be uncovered, profoundly and unfairly prejudices Plaintiff.

Finally, there is no reason for this court to credit any statements, arguments, assertions of fact, etc. made by Defendants or their counsel Mr. Snyder with any validity because of their acknowledged fraud. The complete breakdown of respect for this court's authority by Defendant Zuckerberg (known in previous cases to be dishonest, falsifying documents, etc) Defendant Facebook (known to glorify criminals by hiring them following the publication of their criminal acts) Defense Counsel Oren Snyder (admitting to knowing about, failing to disclose and filing pleadings and making fraudulent arguments involving suppressed evidence) and co-counsel, the Orrick Law Firm entitles Defendants to not one more day of Expedited Discovery. The conduct summarized in the previous sentence is the subject of a list of additional sanctions sought in Doc. No. 232.

The attempted spoliation of relevant evidence (Doc. No. 232), the contract spoliation, the email spoliation and the fraud by Defendants and their counsel Mr. Snyder are independent grounds by which the court should end expedited

discovery.¹ It is appropriate in light of the above for a 16(b) conference to be held and for this case to be put on a normal discovery track.

Another support for expedited discovery was Defense counsel's assertion that Frank Romano, a so-called expert, declared the Facebook Contract an "amateurish forgery." Doc. No. 94 at 61. Of course, this esteemed expert concocted this opinion from viewing a *photocopy* of the Facebook Contract. One wonders why he bothered to appear at all on July 14, 2011 to examine the document. He has so easily dismissed it as a fraud, it was surely redundant for him to examine the actual document. Suspiciously, Mr. Romano's voice and his declaration are nowhere to be found in Defendants' submissions. Has his opinion faltered now that he is no longer examining a photocopy? Nowhere in the ASTM standards manuals submitted by Defendants' experts is it declared that viewing a photocopy is suitable evidence for an expert to speak on a document's authenticity. Amidst their flurry of expert declarations, not one of them even attempts to declare the Facebook Contract a fraud. It seems that Romano's unsupported and unsupportable "amateurish forgery" armchair theory is awfully challenging to confirm once the experts examine the actual document.

CONCLUSION

Instead of confronting facts, the Defendants spew adjectives without

¹ Additional sanctions including a Default Judgment in favor of Plaintiff, dismissal of Defense counsel from the case, jury instruction that the contract is valid and the payment of all Plaintiff expert and attorney fees and expenses to date are all reasonable sanctions Plaintiff will seek for Defendants and their counsel's admitted fraud on this court and on Plaintiff.

evidence. They continue to move the goal post of demanded information, focusing on the irrelevant at nearly every turn (native format copies of all reference images of the Facebook Contract captured by Ceglia's experts) while themselves failing to present any evidence at all.

They are flailing about in this sea of digital information hoping against reality that somehow that digital information is going to completely disprove that a paper contract is authentic. There is no reasonable belief Defendants and their counsel can now have they any evidence they produce is sufficient to meet the standard of clear and convincing evidence of fraud on this court. Ceglia, however, has an excess of such evidence revealing Defendants and their counsel's fraud on the court on multiple occasions and in multiple ways. For all of their overblown promises, all Defendants have now is results of testing completed five months ago that they have suspiciously not presented. Even if they present those testing results today or some day soon, the best that can be said about them is they contradict Plaintiff's experts. That, after all, is the stuff of trials, not dismissals for fraud and especially not dismissals for fraud after only one side has had discovery while the other has suppressed evidence, mislead the court in arguments while failing to disclose that evidence and being caught in the act of attempting to destroy that evidence.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests this court issue an order that effectively ends expedited discovery and schedules all necessary events to transition this case to the regular discovery schedule.

Respectfully submitted,

/s/Dean Boland

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