

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PAUL D. CEGLIA,

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

Plaintiff,

v.

MARK ELLIOT ZUCKERBERG, Individually, and
FACEBOOK, INC.

**REPLY TO RESPONSE TO OUR
MOTION SEEKING
PROHIBITION ON RELIANCE
ON ALLEGED KOLE EMAIL AND
ATTACHMENT**

Defendants.

MEMORANDUM

“Based on their examination of Ceglia’s computers, Defendants also discovered that Ceglia emailed the authentic contract on March 3, 2004 to Jim Kole....” Doc. No. 237 at 7. Defendants’ claim here is misleading. No witness claims to have sent the email at issue. No witness claims to have received the email at issue. The email itself claims it was sent by Vera Ceglia, Mr. Ceglia’s mother. The email text refers to sending “Page 1” of a document when it is sending Page 2 of what Defendants purport is an authentic document. See Exhibit A.

Defendants offer no evidence satisfactory to the Rules of Evidence to authenticate either the unauthenticated email itself or the unauthenticated digital image attachment.

“Ceglia now says that the authentic contact (sic) and his emails transmitting the contract are actually forgeries that were created by Mark Zuckerberg in 2004.”

Doc. No. 237 at 7. Reviewing Plaintiff's motion on this point, he makes no such claim. He does, however, note that other persons, including Mr. Zuckerberg, had access to all the necessary credentials to send this unauthenticated email. Nowhere does Plaintiff claim that this email was sent at all or sent in any particular year. Defendants do not provide any declaration stating when this unauthenticated email was allegedly sent or received.

Defendants offer no case law or statutory authority for the proposition that Mr. Ceglia's initial claim of privilege on an unauthenticated document somehow, magically, converts that document to authentic. The Rules of Evidence on authenticating photographs and digital images do not contain any such extension for initial claims of privilege equalling authentication. It is an argument without support, expert or legal.

Defendants also claim, without legal support, that "attempts to conceal" the emails (of course, unsupported by any evidence) and "frivolous assertions of privilege" (of course, unsupported by any finding by this court or admission by Plaintiff to be frivolous) also establish authenticity.

The Defense then brands the notion that Defendant Zuckerberg, an acknowledged email account hacker and document forger, would hack an email account and forge a document, as "Ceglia's crazy theory." They urge this court to replace that "crazy theory" with their theory. The Defendants' theory is that Plaintiff, who had multiple email accounts he consistently used to correspond with attorney Jim Kole, on one occasion, and one occasion only, emailed his lawyer

attaching a contract using his mother's email account. And, he used that account despite not having any access to the username or password to the account disabling him from learning about his lawyer's reply to that email unless his mother monitored that account and informed him of a reply. Doc. No. 230 at ¶14. Defendants offer no evidence contradicting Plaintiff's evidence on this point. They offer no evidence of a pattern of Plaintiff operating his professional affairs in this way.

WHAT'S GONE FOR ZUCKERBERG NOW RE-APPEARS

"[Defendant] Zuckerberg doesn't have a copy of the contract...." Doc. No. 94 at 52. The only place Defendants claim to have "found" the "authentic" contract is in digital image format attached to an unauthenticated email. It is certainly convenient that Defendant Zuckerberg discarded his version of this supposed real contract eliminating any opportunity for comparison.

Despite these facts, Defendant Zuckerberg declines to offer a declaration that this unauthenticated digital image is authentic at all waiving any future argument to the contrary. Moreover, as is evident from the email exchanges thus far provided to the court, Defendant Zuckerberg at the time he discarded the supposed real contract knew that litigation was anticipated as he and Plaintiff were already squabbling over payment and other features of the Facebook Contract.

To say that Defendant Zuckerberg had no motivation or foresight to attempt to alter his contract with Plaintiff is frivolous. By the 2003-2004 timeframe, Zuckerberg was actively defrauding early stage investors and individuals from

whom he stole key ideas regarding Facebook. See *ConnectU, et al, v. Facebook, Mark Zuckerberg, et al*, 1:07-cv-10593.

Only Defendants claim these documents originated on Ceglia's computer. And, they do so through computer forensics experts at Stroz Friedberg that this court knows operate less than objectively in this case. The integrity of that search and so-called "find" on Plaintiff's computer is doubtful based upon Stroz's record of declaring emails deleted and then magically "finding" them, as well as their unbalanced methodology searching for data depending on whether it helps Defendants or not.

Until Plaintiff's own experts have a full and fair opportunity to complete all the tasks that Stroz claims to have completed thus far, this court will not have a full and accurate picture of the electronic evidence.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests this court bar Defendants from referencing the unauthenticated email and unauthenticated digital image attachment to that email in any dispositive motion filed during or at the end of Expedited Discovery.

Respectfully submitted,

/s/Dean Boland

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