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

RESPONSE IN OPPOSITION TO SIXTH MOTION TO COMPEL

MEMORANDUM

Defendants raise the alarm about information that this court did not order be produced and that their expert had full access to. Defendants' motion to compel is more correctly a motion for additional discovery.

First, this motion spent pages and pages trying to mislead the court. Plaintiff is in full compliance with this court's orders. Item 379 was produced to Defendants **including all attached files**. Therefore, no attachments of any kind related to anything this court has ordered be produced are being withheld or concealed. Defendants' claim of concealment is false. It took Defendants' eight pages to say that within the body of an email, item 379 that Plaintiff produced in total with all attachments, is a reference to another email that had attached to it, another letter that now, they have decided they would like to see.

Plaintiff is in compliance with this court's orders and the court has so ruled.

Doc. No. 348.

Defendants' expert provided a privilege log including item 379 which was eventually produced, including all five attachments to that email message. That production requirement is currently before the District Court Judge on a timely objection filed by Plaintiff.

This court permitted Defendants, reliant upon their now groundless motion to dismiss for fraud on the court citing intrinsic fraud, to have full access to Plaintiff's email accounts within which they claim this communication still resides. Their expert's incompetence at being able to retrieve an email that they now claim exists in that email account does not equate to concealment. It equates to them seeking a motion to compel us to chase after information that their experts were unable to find despite it being within an account to which they had full access.[1]

Defendants sought Plaintiff's counsel's assistance in obtaining a document this court had never ordered be produced. Plaintiff responded with correspondence outlining Plaintiff's position on the document. See Exhibit A.

The email and attorney to attorney correspondence attached to it are protected from disclosure by the attorney client privilege because it is a confidential communication regarding the litigation sent by Plaintiffs former counsel, Mr. Marks, to another former counsel, Dennis C. Vacco, and copying certain other

[1] This is not the first time that Stroz has handled data and the result has been damage. They caused, still unexplained by them, formatting differences and changes in Harvard email evidence from "technical issues" that they refuse to take accountability for or explain. This calls into question the validity of their conclusions in any declarations and reports they have submitted in this case. It is the undersigned's experience that qualified, competent forensic experts do not ordinarily rely on non-experts to plug holes in their shoddy work.

former and curent counsel, specifically, Paul Argentieri, Robert W. Brownlie, Gerard A. Trippitelli and Kevin J. Cross.

Moreover, this court ordered and Plaintiff complied with that order by disclosing in an August 29, 2011 declaration the electronic copies of the contract in the possession of various former lawyers including the Kasowitz firm. The declaration included listing various consultants, including the Kasowitz firm and its computer forensics consultant, Capsicum Group LLC ("Capsicum"). See Supplemental Declaration of Paul D. Ceglia iiii 11-12,32-34, 74-76, 88-90, 115-117, 120-122. Doc No. 339. The forensic images obtained by the Kasowitz firm and Capsicum were transferred to Project Leadership Associates ("PLA") and made available to Defendants' experts at Stroz Friedberg, who visited PLA's Chicago office on July 19, 2011.

Stroz Friedberg obtained all of Ceglia's email record pursuant to court orders. Stroz obtained access to all electronic versions of the contract within the possession of Kasowitz. It is axiomatic that Ceglia concealed nothing when Defendants' experts were in his email account with the precise access Ceglia has to that account.

Plaintiff identified item 379 as privileged, including the attachments to that email. This court overruled that designation and Plaintiff produced item 379 and all attachments to it. Now, Defendants claim an email within the email that is item 379 was also supposed to be produced.

As Defendants make plain, this communication was between lawyers involved in Plaintiff's matter. No third parties were copied on this email. This

email involved, as Defendants reveal, analysis and discussion of evidence in the case, attorneys' personal views of that evidence and conclusions between what is obviously competing views of that evidence.

No part of this email, even were it not privileged, lends any credibility to Defendants now spiralling claims that the contract in this matter is anything other than genuine as Plaintiff's experts have confirmed. Likewise, there is no longer any question that the emails Zuckerberg and Plaintiff exchanged are genuine and represent the damning evidence Zuckerberg has so delicately avoided in this case.

CONCLUSION

For the foregoing reasons, Mr. Ceglia respectfully requests this court deny Defendants' motion to compel and also deny the substance of their motion which is a motion for additional discovery. When Plaintiff detected emails within emails of Defendants' Harvard production (something **they** had and continue to have complete control over) they responded defiantly that they had done all they could. Now, with their experts having had two opportunities to review the supposedly discoverable attorney to attorney communication they seek, they claim concealment to paper over obvious ineptitude.

Respectfully submitted,

/s/Dean Boland

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