Management Registry, Inc. v. A.W. Companies, Inc. et al

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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

Management Registry, Inc.,

Plaintiff, v. A.W. Companies, Inc., et al.,

Defendants.

Case No. 0:17-cv-05009-JRT-KMM

ORDER

Motion to Compel ECF No. 193.) The plaintiff, Management Registry, Inc. -Compliance with LR 7.1(a) and o. 200.) For the reasons that follow, the Court denies the motion without prejudice.

Rule 37 allows a party seeking discovery to move for an order compelling another party to make a disclosure or provide discovery. Fed. R. Civ. P. 37(a)(1). Every faith conferred or attempted to confer with the person or party failing to make

37(a)(1); D. Minn. LR 7.1(a), LR 37.1(a). This obligation is only fulfilled when parties have engaged in a genuine and good-faith discussion about each discovery request that is in dispute. Shuffle Master, Inc. v. Progressive Gams, Inc., 170 F.R.D. 166, 170 171 P]rior to making a motion to compel engage in two-way communication with the nonresponding party to meaningfully

discuss each contested discovery dispute in a genuine effort to avoid judicial comply with a discove . In other words, it

is not enough for an attorney to send an email or letter to opposing counsel essentially

Communications in This Case Based on the record, the Court concludes that in this case the defense has failed to comply with the obligation to engage in good-faith efforts to resolve discovery disputes before seeking judicial intervention. Mr. Loftus entered his appearance for Ms. Brown and the other defendants less than a month ago, substituting as counsel for their previous lead attorney, Richard

Pins. (ECF Nos. 184, 186.) Before the substitution, the parties had raised several discovery issues before the Court. However, the Court, Mr. Pins, and counsel for MRI addressed those disputes thoroughly, and it appeared that what began as a somewhat contentious discovery process was going more smoothly in recent months. productive and substantive discussions attempting to resolve disagreements about the

scope of discovery as they arose.

Unfortunately, unproductive contentiousness appears to have recently returned to this litigation. Around mid-April 2019, Mr. Loftus raised concerns regarding discovery through correspondence Mr. Loftus sent Mr. Morris a letter on April 18, 2019, asserting that answers to certain interrogatories and production required by several document requests were insufficient and indicating 5.)

Mr. Loftus filed the pending motion to compel on April 26, 2019. When it was filed, the Court reviewed the motion. It appeared that the parties had not adequately engaged in the meet-and-confer process required by the applicable procedural rules. This reality was reflected not only in the meet-and-confer statement submitted by the defendants, but in the lengthy laundry list of relief sought in the motion itself. The Court emailed the parties on April 29, 2019, instructing them to communicate further:

Meeting and conferring by email is generally inadequate to satisfy the - disagreement. It is particularly inadequate in this case, where several disagreements have been raised to the Court already that could have been resolved through genuine efforts by counsel. I considered striking the motion filed by the defendants and requiring counsel to engage in a meet and confer process before permitting it to be refiled. At this time I am not going to employ such a heavy hand. However, I am going to require that a meaningful meet and confer through direct conversation take place as soon as possible. (E-mail from Menendez, M.J., to Messrs. Loftus and Morris (Apr. 29, 2019) (on file with the Court) (emphasis in original).) Instead of f instructions, Mr. Loftus indicated in an email to Mr. phone done and done ag Loftus to Mr. Morris (Apr. 29, 2019) (on file with the

Court).) Mr. Morris nonetheless attempted to schedule a telephone conversation so that counsel could discuss whether any of the identified discovery disputes could be resolved short of a court order, but Mr. 10.) Mr. Loftus eventually agreed to have a phone conversation to discuss only one issue of the twenty-four raised in his motion; specifically, he asked for verbal confirmation from Mr. Morris that MRI would not produce internal emails, meaning correspondence that did not include any of the defendants as a sender or recipient at some point in the string 11.)

Mr. Morris was concerned that Mr. e s Obj. at 11 12.) He emailed Mr. Loftus indicating that he was

e Mr. Loftus intended to participate in a complete meet-and- Obj. at 11.) Mr. Morris stated that Mr. Loftus was not seeking to confer about the full

scope of the discovery issues raised myopic understanding of the isolated issue raised in your e-

On May 1, 2019, shortly after that exchange, Mr. Loftus filed a certification that he attempted to meet and confer with Mr. Morris concerning the pending motion to compel. (ECF No. 198.) He stated:

I do not bring motions for sport nor do I engage in pointlessly rehashing what has been previously discussed ad nauseum by my predecessor and covered via email. This is ultimately a pretty run of the mill commercial dispute that has been needlessly over litigated and stalled on fairly routine issues such as the production of internal emails raised in the instant Motion to Compel. Sadly, this issue has spun for over a year rather than getting ruled on or the documents being produced so we can move on with this matter. On May 1, 2019, I invited Mr. Morris to confirm his refusal previously stated in multiple calls with Mr. Pins including one I and my associate participated in and via email to me ... with a telephone call on May 2, 2019 and it was met with more circular reasoning ultimately refusing to call unless I agreed there was some middle road to achieve and accusing me of bad faith if I stood on my position requiring production where Plaintiff has refused to produce its internal emails and Defendant has a right to those communications as detailed in the Motion. (ECF No. 198.) Failure to Comply

Based on its careful review of the record, the Court finds that Mr. Loftus failed to meet and confer with counsel for MRI in good faith prior to filing either the motion to compel or the certification submitted a week later. Mr. Loftus May 1, 2019 certification focus on his apparent belief that further discussion regarding

the motion to compel is useless because there is no middle ground to be reached regarding the production of . However, that is by no means the only question he raised in his motion to compel. There are five document requests iden 195.) But Mr. Loftus s motion seeks an order

mandating the production of much more than those internal emails. brief also lists nineteen recently served document requests seeking mirror images of

several potential an array of electronically stored information, and numerous other documents Mem. at 8 11.) Even after the Court s email reminding him of the need for meaningful issues before bringing them to the Court, Mr. Loftus never modified any portion of the motion to present a narrower dispute that is ripe for judicial intervention. He also failed to acknowledge the expansive scope of the motion he filed in both his May 1st certification and in his correspondence with Mr. Morris A meaningful, good-faith meet-and- confer process for a motion citing twenty-four separate discovery requests requires that the parties discuss all twenty-four issues, not just a small subset of those requests. counsel directly despite the requirements imposed by Rule 37, the Local Rules, and a

direct email from the Court instructing him to do so to be astonishing.

To be clear, the Court email directive in this case did not impose the meet- and-confer requirement as a command that Mr. Loftus compromise on any issue presented in the motion to compel. The Court requires the parties to meet and confer to ensure that the defendants ultimately present a clearly defined set of disputes ripe for judicial resolution. Had Mr. Morris taken Mr. Loftus up on his offer to discuss the lone issue of , that purpose would not have been served. The narrow discussion would have left the Court in precisely the position it found itself when it reviewed the motion to compel shortly after it was filed the exact nature of the regarding the significant majority of issues raised in the motion would have remained a mystery to be solved at the hearing. Such an inefficient way to conduct a hearing would and would unnecessarily burden the Court and counsel.

Under the circumstances here, the Court declines to address the meri response to a subset of the discovery placed at issue in the motion. The parties must

make sincere efforts to engage in the direct meet-and-confer process concerning every discovery request presented in a motion to compel prior to seeking the C intervention. Because Mr. Loftus filed the defense motion to compel without a

meaningful discussion about the vast majority of the issues raised, the motion is denied without prejudice. See Patrick v. Teays Valley Trustees, LLC, 297 F.R.D. 248, 266 67 denying

rvice to Based on the foregoing, IT IS HEREBY ORDERED THAT:

1. The hearing on motion to compel, which is scheduled for May 14,

2019, is CANCELLED; 2. Ms. motion to compel (ECF No. 193) is DENIED WITHOUT PREJUDICE; 3. The parties are ordered to meet and confer, through a telephone conversation,

within 14 days of the date of this Order regarding any specific discovery request that Ms. Brown believes is insufficient. Date: May 8, 2019 s/ Katherine Menendez Katherine Menendez

United States Magistrate Judge