



WickFire, LLC v. TriMax Media, LLC, et al

2021 | Cited 0 times | W.D. Texas | September 7, 2021

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION WICKFIRE, LLC,

Plaintiff v. TRIMAX MEDIA, INC.; LAURA WOODRUFF; WREI, INC.; and JOSH WEST,

Defendants

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Case No. 1:14-CV-00034-RP

ORDER Before the Court are and (Dkt. 423), both tlas, filed

July 14, 2021 (Dkt. 431); and the associated response and reply briefs. The District Court referred the motions to the undersigned Magistrate Judge for disposition, pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas (Local Rules).

I. Background Wickfire, L.L.C. and TriMax Media, L.L.C. are competitors in the pay-for-performance search engine marketing business, a form of internet marketing. 1

After a series of disputes, Wickfire filed suit against TriMax Media, owner Laura Woodruff, director of business development Josh West, and WREI, a company owned by West (collectively, TriMax). TriMax filed counterclaims against Wickfire and its cofounders, Jonathan Brown and Chet Hall.

1 The facts are taken from WickFire, L.L.C. v. Laura Woodruff; TriMax Media, L.L.C., 989 F.3d 343, 347- 48 (5th Cir. 2021).

On February 2, 2017, the jury returned a verdict in favor of Wickfire, awarding it a total of \$2,318,000 Dkt. 372. On TriMax appeal, the Fifth Circuit f conspiracy claims, affirmed in all other respects, and remanded for further proceedings. Wickfire,



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L.L.C. v. Laura Woodruff; TriMax Media, L.L.C., 989 F.3d 343, 359 (5th Cir. 2021).

TriMax now asks the court to (1) disqualify Katharine Atlas 2

from serving as counsel for Wickfire; Wickfire; and (3) strike a declaration Atlas submitted in response to the motion for disqualification. Wickfire opposes the motions.

II. Legal Standards *Spears v. McCraw*, 2020 WL 589538, at *2 (W.D. Tex. Feb. 5, 2020) (citing *FDIC v. U.S. Fire Ins. Co.*, 50 F.3d 1304, 1312 (5th Cir. 1995)). To warrant disqualification, there must be a showing of a reasonable possibility that some specifically identifiable impropriety occurred. *Church of Scientology of Cal. v. McLean*, 615 F.2d 691, 693 (5th Cir. 1980). The party seeking to disqualify an attorney bears the burden of proving that *Myart v. Frost Bank*, No. SA-19-CV- 00753-OLG, 2020 WL 33599, at *8 (W.D. Tex. Jan. 2, 2020).

Motions to disqualify are substantive in nature and thus are decided under federal law. *Asgaard Funding LLC v. ReynoldsStrong LLC* considering motions to disqualify, courts should first look to the local rules promulgated by the

local c , 587 F.3d 296, 299 (5th Cir. 2009) (internal quotation marks omitted). Courts consult the following ethical canons in determining whether to

2 As noted *infra*, Atlas married defendant Chet Hall after trial of this case, and TriMax refers to her as Katharine Hall.

disqualify counsel: (1) the Local Rules; (2) the American Bar Association Professional Conduct; and (3) the Texas Disciplinary Rules of Professional Conduct. *Nat'l Oilwell*

Varco, L.P. v. Omron Oilfield & Marine, Inc., 60 F. Supp. 3d 751, 758-59 (W.D. Tex. 2014).

To reopen discovery, TriMax must show good cause

III. Analysis TriMax seeks to disqualify Atlas due to her alleged mishandling of documents it produced Protective Order as restricted to review by outside attorneys (A). Dkt. 12 ¶¶ 5, 9.

Atlas was retained as outside counsel for Wickfire in February 2015. Declaration of Katharine Atlas, Dkt. 427-2 ¶ 3. 3

In 2017, after trial of this case, she began working for Wickfire as Chief Strategy Officer and General Counsel, then as Chief Operating Officer. *Id.* ¶¶ 2, 11. In addition, Atlas states that now married and have a two-year- *Id.* ¶ 12. TriMax asserts: As of the time Ms. Hall took



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a position as Chief Strategy Officer and in-house General Counsel of Wickfire by definition she began violating the Protective Order with respect to AEO information Dkt. 422 at 9.

In her declaration (Dkt. 427-2), Atlas states in part as follows:

5. I always abided by the Protective Order I properly filed a

motion to de-designate the hundreds of thousands of pages of documents TriMax improperly designated as AEO. When Judge Sparks declined to rule on that motion, I maintained confidentiality for these documents as they were designated. We have repeatedly assured opposing counsel that this is the case. 6. After the trial, I destroyed any AEO documents that were still in

my possession.

3 The Court OVERRULES conclusory objections to the declaration of Katharine Atlas and DENIES its motion to strike the declaration (Dkt. 431).

7. the

possession of [Wickfire outside counsel] Susman Godfrey. 8. I have not shared any AEO documents with anyone at Wickfire

or used them for any purpose whatsoever after the trial. 9. I had no continuing access to AEO documents after the trial

ended since the trial.

to the Court, TriMax does not meet its heavy burden to prove that disqualification is warranted. See Myart, 2020 WL 33599, at *8. Instead of a reasonable possibility that some specifically identifiable impropriety occurred, Church of Scientology, 615 F.2d at 693, TriMax offers only speculation, post-trial employment and relationship with Chet Hall. For example, TriMax submits that unrealistic to believe Ms. Hall Wickf , 422 at 10, and

further suggests Protective Order violations. Dkt. 430 at 7, 9. TriMax also first shared its AEO merchant information with Ms. Hall, TriMax began experiencing

exponentially . In support, TriMax cites the Declaration of Josh West, founder and CEO of WREI, Dkt. 422-1. The declaration and exhibits indicate that costs per click for three entities rose in either May or December 2015, but TriMax identifies no evidence that such cost increases are associated with Atlas or her handling of



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TriMax has a reasonable possibility that some specifically identifiable impropriety occurred has failed to meet its burden to disqualify Atlas. For the same reason, TriMax also has failed to show good cause to reopen discovery.

IV. Order Based on the foregoing, , Opposed Motion to Conduct Limited Discovery Regarding Protective Order Violations (Dkt. 423), and 431) are DENIED.

IT IS FURTHER ORDERED that the Clerk REMOVE docket and RETURN it to the docket of the Honorable Robert Pitman.

SIGNED on September 7, 2021.

SUSAN HIGHTOWER UNITED STATES MAGISTRATE JUDGE

