

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

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TIGERS LIMITED, et al.,	:	
Plaintiffs,	:	
	:	
-vs-	:	Case No. 1:15-cv-947
	:	
	:	
TAMERLANE GLOBAL SERVICES,	:	
et al.,	:	
Defendants.	:	
	:	
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HEARING ON MOTIONS

December 18, 2015

Before: Michael S. Nachmanoff, U.S. Mag. Judge

APPEARANCES:

Katherine L. McKnight, Counsel for the Plaintiffs

Michael C. Whitticar, Counsel for the Defendants

1           NOTE: The case is called to be heard at 10:46 a.m.  
2 as follows:

3           THE CLERK: Tigers Limited, et al. versus Tamerlane  
4 Global Services, et al., case number 15-cv-947.

5           MS. McKNIGHT: Good morning, Your Honor. Kate  
6 McKnight for plaintiffs.

7           THE COURT: Good morning, Ms. McKnight.

8           MR. WHITTICAR: Michael Whitticar for the defendants  
9 and respondents. And I have with me my paralegal, Ms. Heather  
10 Hildreth.

11           THE COURT: Good morning, Mr. Whitticar.

12           This matter comes before the Court on plaintiffs'  
13 motion to compel. I received the position of the defendant.  
14 And as I understand it, there is no opposition that has been  
15 put forth.

16           I will hear from both parties briefly. But unless I  
17 hear something that is dramatically different from what I've  
18 received, I'm going to grant this motion and require full and  
19 complete responses. And I, frankly, see absolutely no basis  
20 upon which the defendant failed to respond in a timely basis.

21           So having previewed my views on the matter, I will  
22 hear briefly, if necessary, from you, Ms. McKnight.

23           MS. McKNIGHT: Well, Your Honor, I don't know that  
24 there is much for me to add. I would agree with your position.  
25 If there is anything for me to respond to defendants'

1 statement, I will.

2 THE COURT: Thank you.

3 MS. McKNIGHT: Thank you.

4 MR. WHITTICAR: Good morning, Your Honor. Michael  
5 Whitticar for the defendants.

6 The history of this case in terms of discovery is the  
7 one thing that's not in the pleadings is that we don't believe  
8 we were ever properly served with the discovery requests to Mr.  
9 O'Brien personally. We received a letter in enclosing the  
10 document requests, the discovery requests to Artemis and  
11 Tamerlane. We scanned those and sent them out to Mr. O'Brien  
12 promptly. The O'Brien requests were not with them. When I  
13 prepared the objections, the O'Brien requests were not with  
14 them.

15 I did discuss that matter with Mr. McIlwee. He sent  
16 me the O'Brien requests by e-mail on November 30. I promptly  
17 objected and timely objected on December 15. And I do believe  
18 that there is an issue with the service of those requests. I  
19 don't think that e-mail is proper service.

20 And I would ask the Court either excuse us from  
21 answering those requests or give us the full 30 days until  
22 December 30.

23 In terms of -- I mean, I do not condone, did not  
24 condone and expressly recommended against my client's decision  
25 to take this unilateral extension until after the 15th to

1 answer the discovery. There was discovery responses in process  
2 at that time. It came as a complete surprise to me. I told  
3 him not to do it. I advised against it. I told him I was  
4 either going to withdraw or disclose to the Court that I  
5 advised against it. He authorized me to disclose to the Court  
6 that I advised against it.

7 But from, you know, from a legal perspective as  
8 someone who is used to dealing with rules and discovery in this  
9 court, I think it's indefensible.

10 From a layman's perspective, I can sort of understand  
11 what he was thinking because, you know, he was going to go out  
12 of business if he lost the case on Monday and, you know, he  
13 didn't want to spend time and money having lawyers go over 150  
14 interrog -- you know, 150 document requests and 50-something  
15 interrogatories if he was going to go out of business anyway.

16 I do believe, however, that certain requests are, you  
17 know, significantly overbroad and that the objections were well  
18 taken to those requests. Those being the requests that say,  
19 you know, describe all facts on which you dispute any  
20 allegation of the complaint or denied any allegation of the  
21 complaint when each party denied over 50 allegations of the  
22 complaint.

23 And then there is another one, all facts on which  
24 you -- on which you base any of your affirmative defenses.  
25 Well, there were five affirmative defenses, so that's 55 parts

1 and subparts right there. And we did timely object to those  
2 interrogatories as being overly burdensome -- overbroad, and  
3 unduly burdensome.

4 And then there are things where they're asking us  
5 for, you know, all of the documents about all of the moves and  
6 jobs between Tigers and my clients. And I think there is  
7 really only one job or one move that is in dispute. They say  
8 we got a \$160,000 payment out of them by promising that we were  
9 going to use it to pay a subcontractor and that was fraud.

10 Our position is, you owed us that money anyway. And  
11 the reason I didn't pay it to the subcontractor was because he  
12 tried to jack up the prices and hold the -- hold hostage the  
13 shipment that was there in Afghanistan.

14 So I think that discovery, at least as to Artemis and  
15 Tamerlane, is due to be compelled. I do believe that there are  
16 some legitimate objections that were timely made, and that the  
17 scope should be limited to facts relating to the move that's at  
18 issue, the alleged fraudulent procurement of the money; and  
19 two, the alter ego issues of the financial and legal  
20 relationships between the clients.

21 And with those exceptions, Your Honor, I don't really  
22 contest the motion to compel. I agree that the discovery is  
23 overdue.

24 MS. McKNIGHT: Your Honor, briefly to respond to a  
25 few points.

1           First, the requests that defendants' counsel was  
2 referring to, the O'Brien requests, were included in the same  
3 mailing as the requests to Artemis and Tamerlane. We're not  
4 sure what happened to them when they were received by  
5 defendants' counsel, but they were included in that same  
6 mailing.

7           Regardless of the facts of that issue, if defendant  
8 had raised -- defendants' counsel had raised that issue in  
9 their response brief this week, we could have provided the  
10 Court with more facts about that issue so you could have made a  
11 ruling on that. We don't think that's been fully briefed.

12           Number two, to the extent that defendants intend to  
13 rely on objections to withhold documents, and again because we  
14 have not received any responses to document requests or answers  
15 to interrogatories, we don't know -- we don't know whether or  
16 to what extent defendants expect to withhold information or  
17 documents subject to their objections.

18           But to the extent they do wish to withhold  
19 information or documents subject to those objections, as you  
20 will see in Exhibit C to our motion, those objections are  
21 boilerplate and, frankly, not legitimate as defendants' counsel  
22 just suggested. Very bare bones objections, boilerplate, no  
23 information or detail about why any of these discovery requests  
24 would be overly broad or unreasonable.

25           Finally, and I touched on this already, but just to

1 make it clear, because we have not received any responses to  
2 the discovery requests or answers to the interrogatories, we  
3 have no idea what exists and what will be withheld in relation  
4 to those discovery requests.

5           So I -- we won't be able to know until they've  
6 responded or answered the interrogatories how we need to  
7 address these boilerplate objections that they've made.

8           THE COURT: Thank you.

9           MS. McKNIGHT: Thank you, Your Honor.

10           THE COURT: Well -- I've heard enough. I'm granting  
11 the plaintiffs' motion to compel. There is zero justification  
12 for not having complied with the Court's deadlines.

13           And I appreciate that sometimes it can be difficult  
14 to persuade clients to cooperate fully, but that's one of the  
15 jobs that lawyers have. And it is simply inexcusable that the  
16 defendants have not fully and completely responded to  
17 discovery. The discovery cutoff is January 15 in this case,  
18 and it is now coming towards the end of December.

19           So I am going to overrule the defendants' objections,  
20 grant the motion to compel, and require that complete  
21 production be made.

22           If the defendants want to stand on any specific  
23 objections, they can do so. And they will do so at their peril  
24 because if there is anything withheld that is not based on  
25 privilege and a privilege log is provided, or has some other

1 truly compelling reason, I can assure you that sanctions will  
2 be imposed for failure to fully comply at this point.

3 Had there been issues about oppressiveness or  
4 overbreadth, counsel had the opportunity to file a motion for a  
5 protective order. If there was a desperate need for additional  
6 time and that couldn't have been worked out collaboratively,  
7 counsel could have filed a motion to continue or extend that  
8 time. None of those things were done, and that cannot be  
9 placed on the responsibility of the client.

10 So the motion is granted and full responses are  
11 required to be produced. Frankly, I'm inclined to require them  
12 to be produced by next Wednesday at noon. I realize this is a  
13 terrible time, but the plaintiffs are now in a position where  
14 discovery closes on January 15.

15 So if counsel want to make an agreement to alter that  
16 date due to schedules, you can do so, but given the situation  
17 that your client has put you in and that you have put yourself  
18 in, I see no other alternative than to order it in that short  
19 period of time.

20 MR. WHITTICAR: All I can say in response, when we  
21 were scheduling depositions my clients told me they are going  
22 on vacation from the 19th to the 28th. But I don't know if  
23 that has any impact on the Court's ruling or not. We did offer  
24 them up for depositions on the 29th and 30th.

25 THE COURT: Well, I will hear from Ms. McKnight. I



1 assume that getting these documents prior to the taking of the  
2 deposition is important.

3 MS. McKNIGHT: That's correct, Your Honor.

4 THE COURT: No, the documents have to be produced by  
5 December 24 at noon.

6 And with regard to those depositions, I know that was  
7 not subject to the motion, but it was referenced I believe in a  
8 footnote. I assume that those have now been sent and will not  
9 be moved because discovery is going to cut off on January 15,  
10 and those depositions need to be taken. Are those set?

11 MR. WHITTICAR: They have not been set, Your Honor.  
12 And that's one of the many reasons I feel I need to withdraw  
13 from this case, including my client not listening to me about  
14 these very matters. Because I have a vacation scheduled from  
15 January 1 through 10th, and I have a full schedule of  
16 depositions and hearings in the month of January.

17 And I was wondering if I might be heard or able to  
18 set some sort of emergency motion to withdraw because they're  
19 insulting me, they are cursing at me, they are threatening Bar  
20 complaints. And there are no Fridays available between now and  
21 the end of discovery for me to move to withdraw. And I am  
22 wondering if I might be heard on an expedited motion to  
23 withdraw.

24 THE COURT: Well, that matter is not before the Court  
25 today. So I can't rule on it today.

1 MR. WHITTICAR: No, I don't want you to rule on it.  
2 I am just wondering if we might be able to set one for next  
3 week.

4 THE COURT: Well, if you file a motion, I will  
5 consider it. The Court, of course, is not going to be  
6 available, but if there needs to be some emergency hearing, we  
7 can arrange one and deal with it by phone.

8 I will tell you that, you know, of course you have an  
9 obligation to advise your clients of the results of this motion  
10 and the results of noncompliance.

11 MR. WHITTICAR: Naturally.

12 THE COURT: And if you're going to withdraw, there  
13 needs to be either consent from the client; or, if there isn't  
14 consent, we need to have them in here or participate in a way  
15 so that they understand the consequence of losing counsel.

16 Individuals can represent themselves pro se, entities  
17 cannot. So, you know, they run the risk of being found in  
18 default and having serious consequences.

19 MR. WHITTICAR: Understood.

20 THE COURT: Okay. Any other matters to address  
21 today?

22 MS. McKNIGHT: No, Your Honor.

23 THE COURT: Okay. Thank you. Court will be in  
24 recess.

25 NOTE: The hearing concluded at 10:59 a.m.

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C E R T I F I C A T E of T R A N S C R I P T I O N

I hereby certify that the foregoing is a true and accurate transcript that was typed by me from the recording provided by the court. Any errors or omissions are due to the inability of the undersigned to hear or understand said recording.

Further, that I am neither counsel for, related to, nor employed by any of the parties to the above-styled action, and that I am not financially or otherwise interested in the outcome of the above-styled action.

/s/ Norman B. Linnell  
Norman B. Linnell  
Court Reporter - USDC/EDVA