

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	4/20/2006
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

Household's motion for sanctions and an order to show cause why Brian Duffy should not be held in contempt [Doc. 477] is denied.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

The Household Defendants ("Household") have moved this court for sanctions and an order to show cause why Class consultant Brian F. Duffy of Shechtman Marks Devor PC should not be held in contempt. Specifically, Household claims that Mr. Duffy has received access to Confidential Information as described in the governing Protective Order but "cannot be trusted to safeguard the confidentiality of these materials." (Def. Mem., at 1.) Household also claims that Plaintiffs' counsel is "either unable or unwilling to control the consultants" to ensure their compliance with the Protective Order. (*Id.*)

This matter arose during the deposition of Per Ekholdt, who raised a question as to the confidentiality of a particular document submitted as an exhibit. In compliance with the Protective Order, everyone present at the deposition returned the document, but Mr. Duffy apparently attempted to retain a copy for himself and made some related handwritten notes. Mr. Duffy returned the document when asked by Household counsel, but has refused to produce the handwritten notes.

As it turns out, the document in question was not in fact privileged. Household is nonetheless concerned with Mr. Duffy's purported failure to comply with the terms of the Protective Order and his lack of respect for Defendants' privilege assertion. Household also argues that "[b]y failing to compel his agent Mr. Duffy to adhere to the terms of the Protective Order, Mr. Baker [Plaintiffs' counsel] has demonstrated that he cannot be relied upon to ensure that his consultants adhere to the terms of the Protective Order." (Def. Mem., at 4.) Household thus turns to this court seeking an Order (1) enforcing the terms of the Protective Order, and (2) barring Mr. Duffy and his firm from further access to Household's Confidential Information due to his contemptuous "flout[ing of] an explicit order of this Court." (*Id.* at 7.) Household also wants the court to "certify the facts to Judge Guzman and enter an order requiring Mr. Duffy to show cause why he should not be adjudged in contempt and why he and his firm should not be barred from future access to Household's Confidential Information." (*Id.* at 8.)

STATEMENT

“For [a party] to be held in civil contempt, he must have violated an order that sets forth in specific detail an unequivocal command from the court.” *Tranzact Technologies, Inc. v. ISource Worldsite*, 406 F.3d 851, 855 (7th Cir. 2005) (quoting *United States v. Dowell*, 257 F.3d 694, 699 (7th Cir. 2001)). Civil contempt sanctions are appropriate for two reasons: (1) to compel compliance with the court order, and (2) to compensate the complainant for losses caused by the contemptuous conduct. *Id.*

After hearing oral argument on this matter on April 18, 2006, the court declines to hold Mr. Duffy in contempt or to impose any related sanctions. First and foremost, the document in question was not in fact privileged and, thus, not subject to the Protective Order. In addition, the court has reviewed Mr. Duffy’s handwritten notes and finds that they do not violate the court’s Protective Order in any event. Furthermore, Plaintiffs’ counsel assured the court that Mr. Duffy has since affirmed at another deposition that he understands the terms of the Protective Order and will comply with them.

Household’s motion for sanctions and an order to show cause why Brian Duffy should not be held in contempt [Doc. 477] is denied. The court trusts that it will not have to revisit this matter in the future.