

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

ANTHONY LORENZO,

Plaintiff,

v.

CASE NO.: 2008 CA 8108 SC

CITY OF VENICE, et al. ,

Defendants.

**MOTION FOR ISSUANCE OF SHOW CAUSE ORDER, CONTEMPT AND
IMPOSITION OF SANCTIONS AGAINST DEFENDANT SIMMONDS**

Plaintiffs, by and through undersigned counsel, move for the entry of an Order to Show Cause why Defendant Simmonds should not be held in contempt and imposing sanctions of attorney's fees and costs against him for failure to obey an Order of the Court dated September 10, 2008, and as grounds therefor would show as follows:

1. This Court initially ordered Defendant Simmonds to produce public records from his computer on July July 9, 2008. See Exhibit A, attached hereto. Simmonds subsequently sought and received an extension of time until August 28, 2008, from Plaintiffs to extend the deadline to produce the public records.
2. When that deadline expired, Simmonds sought another extension of thirty days, but the Court allowed only two weeks, or until September 12, 2008, to produce the public records. See Exhibit B, attached hereto.
3. Simmonds has failed to produce the requested records. More important, Simmonds has not even attempted to retrieve the public records from his computer. Simmonds failure to comply with the Court's Order is intentional.
4. Plaintiffs have incurred costs and attorneys fees for bringing this motion.

WHEREFORE, plaintiff respectfully prays this Honorable Court enter an Order to Show Cause why Simmonds should not be held in contempt of court and imposing sanctions of attorneys fees and costs as a result of Plaintiffs efforts to secure compliance with the Court's Orders.

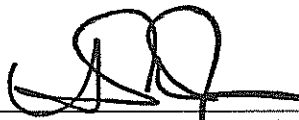


ANDREA FLYNN MOGENSEN, Esquire
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Regular U.S. Mail on September 14, 2008, to: DALE SCOTT, Bell, Roper & Kohlmyer, P.A., 2707 E. Jefferson Street, Orlando, FL 32803; ROBERT ANDERSON, Hall & Anderson, 1314 E. Venice Ave., Ste E, Venice, Florida 34285; A. LAMAR MATTHEWS, 1777 Main St Ste 500, Sarasota, Florida 34236-5841; ROBERT K. ROBINSON, 2070 Ringling Boulevard, Sarasota, FL 34237; and DAN BOONE, 1001 Avenida Del Circo, Venice, FL 34285.



ANDREA FLYNN MOGENSEN, Esquire

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

CITIZENS FOR SUNSHINE, INC., a
Florida not-for-profit corporation, and
ANTHONY LORENZO,

Plaintiffs,

v.

CASE NO.: 2008 CA 8108 SC

CITY OF VENICE, ED MARTIN, SUZANNE LANG,
JOHN K. MOORE, JOHN SIMMONDS, NICHOLAS
CARLUCCI, ROBERT BARTANOWICZ, SUSAN
BALSINGER, and UNKNOWN MEMBER(S) OF
THE AIRPORT ADVISORY BOARD,

Defendants.

FILED FOR FLEMING
VENICE 07/10/08
2008 JUL 10 AM 10:40
KAREN L. JENNINGS
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FLORIDA

AGREED ORDER MODIFYING TEMPORARY INJUNCTION
ORDER DATED JUNE 13, 2008

BEFORE THE COURT is Defendant John Simmonds' Motion to Adopt Defendant John K. Moore's First Amended Motion to Vacate or Modify the Court's Temporary Injunction. The Order Defendant Simmonds seeks to vacate or modify is this Court's June 13, 2008 "Order on Emergency Motion to Preserve Evidence and Allow Inspection of Public Records" (the "Temporary Injunction").

Prior to the hearing on this matter, counsel agreed to a modified form of the relief sought. The Court has reviewed the stipulation, the Court file, heard from counsel, and is otherwise advised in the premises.

IT IS THEREFORE ORDERED AND ADJUDGED that:

1. Defendant Simmonds' motion is granted in part.
2. The Temporary Injunction shall remain in place except as modified herein.



Exhibit A

3. John Jorgensen is appointed as a Special Master in this matter and shall act as an officer of the court in this matter and execute a Confidentiality Agreement attached hereto as Exhibit A. Mr. Jorgensen shall ensure chain of custody of the physical evidence and shall maintain written copies of the chain of custody of all electronic and physical evidence processed. Upon request, any party shall be entitled to copies of the chain of custody reports.

4. Mr. Jorgensen shall cooperate with each party's designee in explaining the process by which the forensic bit-for-bit imaging is performed.

5. The Clerk of the City of Venice shall continue to maintain custody of Defendant Simmonds' personal and city-issued computers and not permit anyone access to it (including Defendant Simmonds), until such time as Mr. Jorgensen takes custody of it.

6. Mr. Jorgensen is directed to take custody of Defendant Simmonds' personal and city-issued computers from the Clerk of the City of Venice at the earliest opportunity, but no later than seven days from the date of this Order.

7. At his earliest opportunity, but no later than fourteen days from the date of this Order, Mr. Jorgensen shall make four forensic bit-for-bit copies of the hard drives of the personal and city-issued computers using an ImageMASSter Solo III Forensic Hardware Device. The imaging process shall be conducted in Mr. Jorgensen's offices in Sarasota County, Florida. Mr. Jorgensen shall use United States Department of Justice standards and guidelines for the bit-for-bit imaging and shall include all file slack and unallocated space of the hard drive. The imaging shall include proper cataloguing and intake of the digital media, and utilize write-blocking technology to ensure integrity of the digital evidence. During acquisition, an MD-5 hash or algorithm shall be applied against the data as evidence that it has been unaltered by the process. The original and four copies shall be stored or disposed as follows:

A. after the four bit-for-bit images are created, the original hard drives shall be secured by Mr. Jorgensen in a sealed condition in his fire resistant safes in Sarasota County, Florida, and he shall not permit anyone access to the original hard drives (including Defendant Simmonds) unless ordered by the Court. Moreover, no search of the original hard drives will be permitted unless ordered by the Court.

B. the First Forensic Copy of each hard drive shall be secured by Mr. Jorgensen in a sealed condition in his fire resistant safes in Sarasota County, Florida, and he shall not permit anyone access to the First Forensic Copy (including Defendant Simmonds) unless ordered by the Court. Moreover, no search of the First Forensic Copy is permitted unless ordered by the Court.

C. the Second Forensic Copy of each hard drive shall be transmitted by Mr. Jorgensen into the custody of the Clerk of Circuit Court. The Clerk of the Circuit Court is directed to maintain the Second Forensic Copy in a sealed condition and shall not permit anyone access to the Second Forensic Copy (including Defendant Simmonds) unless ordered by the Court. Moreover, no search of the Second Forensic Copy is permitted unless ordered by the Court. Counsel for Defendant Simmonds shall coordinate with the Clerk of the Circuit Court for the transfer of custody of the Second Forensic Copy. The Clerk of the Circuit Court is directed to provide Mr. Jorgensen a receipt.

D. the Third Forensic Copy of each hard drive shall be installed by Mr. Jorgensen into Defendant Simmonds' personal and city-issued computers. At that time, Mr. Jorgensen shall deliver to Defendant Simmonds his personal and city-issued computers with the Third Forensic Copy, and Defendant Simmonds is not restrained in any manner by this Court with the use of his computers and the Third Forensic Copy.

E. the Fourth Forensic Copy of each hard drive shall become the property of Defendant Simmonds. Defendant Simmonds is not restrained in any manner by this Court with the use of the Fourth Forensic Copy.

8. Plaintiff and Defendant Simmonds may each have, but are not required to, one representative each observe Mr. Jorgensen make the four forensic bit-for-bit copies of the original hard drive. Neither Plaintiff nor Defendant Simmonds may observe the data during the imaging process. Counsel for Defendant Moore shall be lead in coordinating schedules with Plaintiff and Mr. Jorgensen to permit this observation.

9. Defendant Simmonds may retain an expert for the purpose of retrieving any and all records responsive to Plaintiff's public records request dated May 20, 2008, and June 10, 2008.

10. Defendant Simmonds shall be initially responsible for paying Mr. Jorgensen's fees and costs as well as any fees and costs for the expert who may assist him in retrieving public records responsive to Plaintiff's public records requests. The Court reserves jurisdiction to address entitlement of the reimbursement of any party's costs associated with this matter.

11. Within thirty (30) days of the date of this Order, Defendant Simmonds shall produce a privilege log with respect to any digital media that is not a public record or is otherwise exempt or confidential under a statutory exemption. If Simmonds contends a statutory exemption is applicable, he shall provide the statutory citation for the asserted exemption and shall state in writing, and with specificity, the reasons for the exemption and the conclusion that the record is exempt or confidential. See section 119.07(1)(c) and (d), Fla. Stat.

12. The Court reserves jurisdiction to determine the necessity and propriety of a forensic analysis of the digital media in the event either party is dissatisfied with Simmonds' supplemental response to plaintiff's public records request.

13. Any person or entity responsible for the improper release of any information from the original hard drive or any of the forensic images shall be subject to contempt of Court.

14. Although the Special Master shall not conduct any search or view any data contained on the hard drives or any Forensic Copy obtained from the hard drives, in the unlikely event that any privileged information is divulged or obtained by the Special Master during the course of the acquisition and copying of the bit-for-bit images, the parties agree and the Court expressly orders that no party or person will be permitted to claim or otherwise argue that a waiver of that privilege has occurred. *See Equity Analytics, LLC v. Lundin*, 248 F.R.D. 331 (D.D.C. 2008); *Hopson v. Mayor*, 232 F.R.D. 228, 232 (D. Md. 2005); *Cardiac Pacemakers Inc. v. St. Jude Medical Inc.*, 2001 WL 699850, No. IP96-1718-C-H/G (S.D. Ind. May 29, 2001).

15. Plaintiff shall not be required to post a bond.

DONE AND ORDERED in Chambers, Sarasota County, Florida, this 9 day of July, 2008.



CIRCUIT JUDGE

Copies furnished to:

Andrea Flynn Mogensen, Esq.
Dan Boone, Esq.
Dale Scott, Esq.
Robert Anderson, Esq.
A. Lamar Matthews, Esq.
Robert K. Robinson, Esq.

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ANTHONY LORENZO,

Plaintiff,

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CITY OF VENICE, et al.,

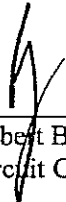
Defendants.

ORDER FURTHER MODIFYING COURT ORDER DATED JULY 9, 2008

This matter came before the Court and was argued by the parties involved and the Court being fully advised in the premises, it is:

ORDERED AND ADJUDGED that Defendant SIMMONDS' Motion To Modify This Court's Order Dated July 9, 2008 As To Deadline To Furnish Emails is granted and that Defendant Simmonds will have until September 12, 2008 to furnish the deleted emails.

DONE AND ORDERED in chambers, Venice, Sarasota County, Florida this 10
September
day of ~~August~~ 2008.


Robert B. Bennett, Jr.
Circuit Court Judge

Copies furnished to:

Andrea Flynn Mogensen, Esq.
Michael J. Roper, Esq. and
Dale Scott, Esq.
Robert C. Anderson, Esq.
Jackson Kracht, Esq. and
Robert K. Robinson, Esq.
A. Lamar Matthews, Jr., Esq. and
Hunter W. Carroll, Esq.

FILED FOR RECORD
VENICE BR/AM
2008 SEP 11 AM 9:09
KAREN E. LEE
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

Case: 2008 CA 008108 SC
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001: ORD

Exhibit B