

STATE OF VERMONT
WINDSOR COUNTY, SS

Olympic Precision, Inc.
Robert Coleman
Plaintiffs

v.

Daniel Thompson
Susan Thompson, Nathaniel Thompson,
Leslie Thompson McWilliams
Defendants

SUPERIOR COURT
Docket No. 43-1-09 Wrcv

DECISION ON MOTION TO PRESERVE EVIDENCE AND MOTION TO COMPEL
COMPUTER IMAGING FROM NON-PARTY

The instant motions involve a request by Plaintiffs to order the electronic preservation of certain data on computers and electronic storage devices. The request is directed at several of the Defendants as well as at third parties, Mark Youden, David Youden, Jeffery Kincaid, and Thomas Lowell, who are or were employees of OPI. Lengthy pleadings concerning this request have been filed by Plaintiffs and by Defendants. A subpoena has been served upon Mark Youden. Youden has filed an objection to the subpoena.

This case involves allegations of misconduct between the parties concerning the operation of OPI, a company engaged in performing precision engineering services pursuant to contracts with the United States Government. Claims include improper use of OPI computers and electronic information to harm OPI's business operations and their contractual relationships.

It is further alleged that certain proprietary information of OPI has been removed or destroyed from OPI computers. In addition, it is alleged, and apparently not disputed, that certain programs and/or electronic information was transported by jump drives from OPI computers to the home computers of one or more Defendants and employees, including Mark Youden.

Robert Coleman asserts he is the majority shareholder of OPI. Defendants Daniel Thompson, Nathaniel Thompson and Leslie Thompson McWilliams allege in a counterclaim that they are the de facto majority shareholders of OPI due to fraudulent conduct by Coleman with respect to shareholder interests.

FILED

MAR 11 2010

WINDSOR COUNTY CLERK

CONFORMED COPY

CONFIRMED COPY

The Court cannot and will not try this case in the context of discovery motions. *Swift v. Superior Court*, 91 Cal.Rptr.3d 504 (Cal Ct. App. 2009). There are competing allegations of improper conduct between the parties. These will be addressed when the merits of the claims are considered.

In the meantime, the Vermont Rules of Civil Procedure, which are based upon the corresponding federal rules, govern the conduct of discovery. The conduct of discovery is within the discretion of the trial court. *Poplaski v. Lamphere*, 152 Vt. 521 (1989). "Discovery is one of the most important legal tools available in the search for truth, the fundamental purpose of litigation. It allows parties to acquire the fullest knowledge of relevant facts so that cases are decided 'by what the facts reveal, not by what facts are concealed.'" *Chrysler Corp. v. Makovec*, 157 Vt. 84 (1991) (citation omitted). The purpose of discovery is to provide an effective means for arriving at the truth at trial and not a battle of wits between counsel. *Williams v. Northern Pacific Railway*, 30 F.R.D. 26 (D. Mont. 1962).

V.R.C.P. 26 specifically authorizes the discovery of electronic information unless that information is not reasonably accessible due to undue burden or cost. Here, OPI agrees it should bear the cost of the forensic preservation of the requested material and the search for the same.

The allegations in this litigation include, inter alia, electronic tampering and improper accessing of company files. The requested electronic discovery may contain evidence relevant to the claims being made and the existence or non-existence of the requested information may be evidence in and of itself.

Vermont has historically taken a liberal view of discovery. V.R.C.P. 26 (b)(1) establishes a broad scope for discovery, allowing the discovery of information that is "reasonably calculated to lead to the discovery of admissible evidence."

The requested information is relevant to the issues before the Court. The motion and subpoena seek to preserve the status quo by preserving documents and information in the face of litigation. This is an obligation which exists in any event when litigation is reasonably to be anticipated and of, course, when litigation is underway. *Pension Committee of the University of Montreal v. Banc of America Securities, LLC*, 2010 WL 184312 (S.D.N.Y. 2010). The movants have agreed to address the privacy concerns related to non-OPI information which may be found on the computers. The opposition to the discovery focuses primarily on the conduct of Plaintiff Coleman rather than on the specific subject of the discovery request. The requested discovery goes to the heart of many of the allegations made here.

Wherefore, the Court will **GRANT** the order to allow preservation of electronic evidence by forensic imaging and to compel electronic imaging from a non-party. These motions are granted subject to the establishment of acceptable protocols to preserve the privacy interests of the persons subject to this order with respect to electronic information

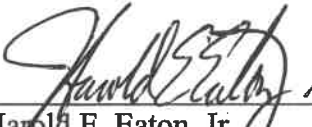
FILED

MAR 11 2010

WINDSOR COUNTY CLERK

on their computers which is not related to this litigation and which is not claimed to be information belonging to OPI.

Dated at Woodstock this 11th day of March, 2010.



Harold E. Eaton, Jr.
Superior Court Judge

CONFORMED COPY

FILED

MAR 11 2010

WINDSOR COUNTY CLERK