

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, MISSOURI

CONCERNED CITIZENS OF CRYSTAL CITY,)	
ET AL,)	
)	
PLAINTIFFS,)	
)	
v.)	Case No. 07JE-CC01264
)	
CITY OF CRYSTAL CITY, ET AL,)	
DEFENDANTS.)	

ORDER AND JUDGMENT

On November 24, 2009, this cause came on for hearing on Plaintiffs' second motion for sanctions and on the Intervenor and Defendants' motion for sanctions. Having considered the memoranda and arguments of counsel, the Court makes the following findings and judgment:

1. On June 3, 2009, the Court entered its order sustaining the motion of Intervenor, Wings Enterprises, Inc. motion to compel discovery. Among other things, the Court ordered that:

- (a) Plaintiff William Ginnever shall produce a full and complete copy, in native format, of all information in his possession or control, that has been posted on the domain <http://www.clearpillar.com>. Alternatively, Ginnever may choose to make this information available to Wings' designee, for inspection and copying during normal business hours, for a period sufficient to inspect and copy that material.
- (b) Deponents, including Plaintiff William Ginnever and Defendant Pamela Portell, shall answer deposition questions regarding the identity of users posting to the forum on the website <http://www.clearpillar.com>.

2. In response to the Court's order, Plaintiffs filed an application for a writ of prohibition with the Court of Appeals for the Eastern District. The Court of Appeals denied Plaintiffs' application for a writ on July 28, 2009.

3. Plaintiffs then filed an application for a writ of prohibition in the Missouri Supreme Court. The Supreme Court denied Plaintiffs' application for a writ on August 25, 2009.

4. On September 9, 2009, in response to Plaintiff's request, the Court extended the deadline for complying with the Court's June third order for an additional seven days.

5. On September 14, 2009, Plaintiffs filed a certificate of service of their response to Defendants' motion for production of documents. The Plaintiffs stated that they had produced DVDs containing information pertaining to the website <http://www.clearpillar.com>.

6. The Plaintiffs admit that they did not produce *all* of the information from the website, as the Court ordered.

7. In their responses to Intervenor and Defendants' motion for sanctions, Plaintiffs repeat their previous arguments about why they should not have to comply with the Court's order. These arguments have been overruled by this Court, and denied by the Court of Appeals and the Supreme Court. In addition, Plaintiffs argue that because they claim that they are entitled to judgment in their favor, they should not be compelled to comply with the discovery order. Most litigants assert that they will ultimately prevail. This argument cannot be properly addressed to a motion for sanctions.

8. In the civil discovery process, each side can be compelled to produce information that is relevant and not privileged, whether it relates to a claim or to a defense. This includes not only admissible evidence but information reasonably calculated to lead to the discovery of admissible evidence. A party may compel discovery not only of intangible information but also of tangible things and the identity and location of any persons having knowledge of any discoverable matter. Rule 56.01(b)(1).

9. The website, <http://www.clearpillar.com>, is maintained by Plaintiff, William Ginnever. The site is a forum for discussion of the dispute at the heart of this case.

10. In a simpler time, <http://www.clearpillar.com> would have been a box of letters about the proposed smelter project; letters solicited by Plaintiff Ginnever, signed pseudonymously and made available by Ginnever for anyone to read. However, only Ginnever would know the return addresses of the writers. There is no question that in this example, those letters and the return addresses would be discoverable.

11. In fact, the postings on Ginnever's website contain comments from individuals who may be parties to this lawsuit, or who may be witnesses to relevant events or who may know of statements by parties or witnesses. Plaintiff's site is a voluminous "box" containing many "letters" which may be relevant to this lawsuit and which may lead to other evidence admissible at trial.

12. In an earlier stage of this litigation, the Defendants disputed Plaintiffs' discovery requests. The Plaintiffs' discovery requests were voluminous and burdensome. It was literally a room full of documents. The Defendants argued that these documents had been produced to some of the Plaintiffs outside the formal discovery process. Nonetheless, the Court ordered Defendants to produce the requested documents.

13. Just as Plaintiffs were entitled to search Defendants' records, Intervenor and Defendants are entitled to search Plaintiff Ginnever's collection of statements about this dispute. Intervenor and Defendants are also entitled to know, to the extent the information exists, the identity of the individuals who made those statements.

14. Plaintiff Ginnever could have avoided the problem of disclosing the addresses of those posting to the website by setting up the site so that the postings would be completely anonymous. Instead, he chose to have access to the addresses of those posting to the site and now Plaintiffs claim a right to deny this information to Defendants.

15. **There is no authority that allows Plaintiffs to restrict access to the requested information.**

16. No matter how repetitious or vehement Plaintiffs' argument may be, at this point that argument has exceeded reason and legitimacy. Plaintiffs have no legal right to decide for themselves what Defendants may or may not discover in this case. That is an issue of law and it has been decided by the highest court in this state. Still, Plaintiffs refuse to abide by the Court's order.

17. Rule 61.01(d) provides that if a party's objections to discovery have been overruled, and that party continues to refuse to produce the discovery, the court may strike that party's pleadings.

18. In this case, Plaintiffs have refused to provide the information which the Court has ruled they must disclose. Intervenor and Defendants will be denied a fair trial if they are denied the information in Plaintiffs' possession. Plaintiffs choose to stand upon their self-declared right of non-disclosure rather than abide by the rules of discovery applicable to every other litigant in this state.

19. Plaintiffs have suggested that it is unfair to dismiss all their claims when only Plaintiff Ginnever controls the website. This is untrue. Were the Court to dismiss Plaintiff Ginnever, one less named plaintiff would make no difference to the litigation. If the remaining Plaintiffs succeed, Ginnever would share equally in their success. Further, dismissing Ginnever does not end the dispute. If Ginnever is dismissed, he would still possess the information and the Intervenor and Defendants would be entitled to discover it by subpoena. The facts thus far suggest that Ginnever would continue to resist. Ginnever could be held in contempt but the Intervenor and Defendants would still be denied a fair trial if Ginnever was willing to suffer the consequences.

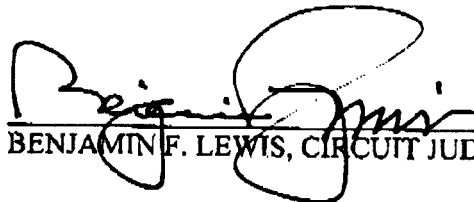
20. There is no appropriate remedy except to strike Plaintiffs' pleadings and dismiss Plaintiffs' action with prejudice and at Plaintiffs' cost.

21. Under the circumstances of this case, it is not necessary to award Intervenor and Defendants their attorneys' fees as requested.

22. Plaintiffs' second motion for sanctions is overruled.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that Plaintiffs' pleadings herein are stricken and held for naught. Plaintiffs' cause is dismissed with prejudice. Costs are assessed against the Plaintiffs and in favor of Defendants and Intervenor. Plaintiffs' second motion for sanctions is overruled. Intervenor and Defendants' request for attorneys' fees is denied. Any other relief requested in the motions before the Court which is not specifically granted herein is denied.

11/24/2009
DATE


BENJAMIN F. LEWIS, CIRCUIT JUDGE

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