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HOMELAND SELF STORAGE
MANAGEMENT, LLC, et al., Various Discovery
Motions

John J. Goger
Fulton County Superior Court

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

HOMELAND SELF STORAGE)	
MANAGEMENT, LLC, et al.,)	
)	
Plaintiffs,)	Civil Action File No. 2014CV246999
)	
v.)	
)	
PINE MOUNTAIN CAPITAL)	
PARTNERS, LLC, et al.,)	
)	
Defendants)	

ORDER

Before the Court are: (1) Plaintiffs' Motion to Permit Plaintiffs to Request or Subpoena Plaintiffs' Documents in the Possession of the Special Master; (2) Bruce Weiner's Motion to Quash or Limit Specific Requests in Defendants' Subpoena to New Cingular Wireless PCS, LLC; and (3) Plaintiffs' Motion to Compel Production of Documents and for Attorneys' Fees. Upon consideration of the motions and briefs submitted the Court finds as follows:

1. **Plaintiffs' Motion to Permit Plaintiffs to Request or Subpoena Plaintiffs' Documents in Possession of the Special Master**

Plaintiffs filed this motion in an effort to receive copies of checks which they had issued to Defendant Irlbeck that are currently in the Special Master's possession and are no longer available from SunTrust Bank due to its retention policies. The Court ordered both Plaintiffs and Defendants to subpoena certain financial records related to the allegations from banks, including SunTrust, on behalf of the Special Master. The documents were ordered to be for the Special Master's eyes only. Subsequently, Plaintiffs subpoenaed SunTrust for copies of the same checks reviewed by the Special Master, but it did not have all of the checks due to its retention policy.

The Special Master's Report found, among other things, that 51 checks totaling \$68,017.85 had been issued from Plaintiffs' account to Irlbeck for which no description existed;

the Special Master also noted there were some checks which were signed by an unapproved signer. When Plaintiffs later subpoenaed SunTrust for copies of these checks, it provided Plaintiffs with only 16 of the 51 checks referenced by the Special Master. SunTrust did not have copies of the other checks sought because it has a record retention policy of only keeping copies of checks for five years. Plaintiffs argue that at the time the latest subpoena to SunTrust was propounded at least an additional 15 checks would have been available. Since SunTrust no longer has these copies, Plaintiffs filed this motion in an effort to obtain any checks that the Special Master may have that are no longer available directly from SunTrust.

Defendants have argued that the checks are not relevant to the claims, the copies of the checks identified by the Special Master are now his privileged work product, and Plaintiffs seek an unfair advantage by attempting to second guess the Special Master's conclusions and engage in a fishing expedition. However, Plaintiffs are simply requesting copies of their own issued checks that are otherwise not available from another source. Therefore, Plaintiffs' motion is **GRANTED** and the Special Master is instructed to provide any copies of the 51 SunTrust checks in his possession to both parties on or before December 31, 2015.

2. **Bruce Weiner's Motion to Quash or Limit Specific Requests in Defendants' Subpoena to New Cingular Wireless PCS, LLC**

Bruce Weiner, an interested non-party, filed this motion to quash or limit the scope of Defendants' subpoena to New Cingular Wireless. The subpoena requests all of Weiner's phone records for certain time periods in 2014. Weiner has argued that the information the subpoena requests is overbroad, invasive, and irrelevant to the current action and as a result should be quashed. This Court agrees. The allegations in this case concern whether Defendant Irlbeck siphoned money from Homeland Storage to his personal accounts between 2007 and 2011, not whether Weiner in 2014 was acting in concert with law enforcement agencies or others to

slander or aid in a criminal prosecution of Irlbeck. Defendants have not made a showing that the phone records are relevant to the claims at issue. As a result, Weiner's motion is **GRANTED**.

3. Plaintiffs' Motion to Compel Production of Documents and for Attorneys' Fees¹

In response to discovery requests, Defendants asserted their Fifth Amendment right against self-incrimination as a basis not to produce corporate records. Georgia law does not provide such a defense to production for corporate records. *Thompson v. State*, 294 Ga. App. 363, 364-65 (2008). Therefore, Corporate Defendants are **ORDERED** to amend their responses to remove this unfounded objection and to produce any corporate records withheld under an asserted right against self-incrimination.

Defendants also objected to certain requests for production because the documents sought related to alleged claims that were barred by the statute of limitations. The Court finds that this is not a well-founded objection to production, particularly since there has been no ruling by the Court on the tolling of the applicable statute of limitations in this case. Therefore, Defendants are **ORDERED** to amend their responses to remove this unfounded objection and to produce any documents withheld due to potential statute of limitations defenses.

Defendants objected to the production of certain documents because they asserted that the documents are either in Plaintiffs' possession or were in Plaintiffs' possession before Plaintiffs destroyed them. Specifically, Defendants requested (1) documents regarding Irlbeck's expenses that were submitted for reimbursement through payroll, (2) documents related to payments made to Plaintiffs' third-party vendors from Defendant Pine Mountain, and (3) documents regarding payments made by any Defendant to Plaintiff Homeland. To the extent any documents were withheld solely because the other party already presumably has them, and not subject to another

¹ No response to the Motion was filed within the thirty day period to respond.

asserted objection, Defendants are ORDERED to amend their responses to remove this unfounded objection and to produce any documents withheld under this objection.

Defendants objected to certain requests because the information sought was not relevant. This objection appears in response to requests for documents related to expense reimbursements to Irlbeck and amounts paid by Defendants to Homeland Storage's vendors. The Court finds that the requests are narrowly tailored and relevant to the case. Defendants are ORDERED to amend their responses to remove this unfounded objection and to produce any documents withheld under this objection.

Finally, Defendants asserted that they were withholding particular documents that were work product or attorney-client privileged communications. To the extent that such documents were withheld, the Court ORDER Defendants to comply with Uniform Superior Court Rule 5.5 by January 15, 2016.

As stated herein, Plaintiffs' Motion to Compel is **GRANTED**.

SO ORDERED this 15 day of December, 2015.



Judge John J. Goger
Superior Court of Fulton County
Atlanta Judicial Circuit

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