


11-3-2015

HOMELAND SELF STORAGE  
MANAGEMENT, LLC, et al., ORDER ON  
EMERGENCY MOTION FOR ORDER TO  
SHOW CAUSE WHY CAUSES OF ACTION  
SHOULD NOT BE STRICKEN

John J. Goger  
*Fulton County Superior Court*

Follow this and additional works at: <http://readingroom.law.gsu.edu/businesscourt>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

---

**Institutional Repository Citation**

Goger, John J., "HOMELAND SELF STORAGE MANAGEMENT, LLC, et al., ORDER ON EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY CAUSES OF ACTION SHOULD NOT BE STRICKEN" (2015). *Georgia Business Court Opinions*. Paper 357.

<http://readingroom.law.gsu.edu/businesscourt/357>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [jgermann@gsu.edu](mailto:jgermann@gsu.edu).

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**HOMELAND SELF STORAGE  
MANAGEMENT, LLC, et al.,** )  
)  
)  
**Plaintiffs,** )  
)  
**v.** )  
)  
**PINE MOUNTAIN CAPITAL  
PARTNERS, LLC, et al.,** )  
)  
)  
**Defendants.** )

**Civil Action File No.  
2014-CV-246999**

---

**ORDER ON EMERGENCY MOTION FOR ORDER TO SHOW CAUSE WHY CAUSES  
OF ACTION SHOULD NOT BE STRICKEN**

Before the Court is Defendants’ “Emergency Motion for Order to Show Cause Why All Causes of Action Should Not be Stricken, Contempt Sanctions Imposed, and Counsel Disqualified, or Alternatively, for Application of Crime-Fraud Exception and Adverse Inference Because of Plaintiff’s Spoliation of Evidence.” Plaintiff Homeland Self Storage Management, LLC (“Homeland”) filed this case in May of 2014 and the Second Amended Complaint alleges two counts: (1) breach of fiduciary duty and (2) fraud and deceit. Homeland claims that Defendant Irlbeck, former CFO of Homeland, stole money during his employment from 2007 until 2011 and deposited it into his own personal and corporate accounts for Pine Mountain Capital Partners, LLC and Homeland Sports Card Collector, LLC. According to the Complaint, Irlbeck breached his fiduciary duty by failing to pay Homeland property taxes and vendors, failing to perform his accounting duties in a competent manner, and forging Mr. Weiner’s signature. Irlbeck allegedly committed fraud when he misrepresented that he had paid Homeland’s property taxes and vendors, and when he told Weiner that he was signing checks to

transfer money to other Homeland accounts and not Irlbeck's own personal and corporate bank accounts.

A Special Master was appointed by the Court and determined that there was no evidence of money being diverted from Homeland accounts to Irlbeck's corporate accounts. However, there were some payments from Homeland to Irlbeck that were not included in salary or bonuses, and either lacked descriptions or purported to be expense reimbursement payments for which there is no supporting documentation. The Special Master also concluded that "Checks were signed by unapproved check signer" and that there were "many different versions of signatures" for the same person. Homeland claims that Irlbeck was responsible for the financial records during his time as CFO and that he left the records in disarray. However, Bruce Weiner, Homeland's 30(b)(6) representative and an agent of Homeland, admitted that he discarded 50 boxes worth of company documents and records in December of 2011 or early 2012 that had been maintained in storage after Irlbeck's departure.

In addition to the civil case, Weiner filed a police report with Sandy Springs Police Department alleging theft and forgery and Irlbeck was subsequently arrested and released on bond. Weiner and his attorneys have assisted government agencies investigating the matter, despite Homeland's attorney, Mr. Kaufman's since-retracted representations to the contrary.


In their Motion, Defendants claim that Homeland's counsel have made repeated misrepresentations to the Court about the extent of their involvement in the criminal investigation and have misrepresented Homeland's financial documents as "in disarray" when the documents were actually destroyed by Homeland's agent, Weiner. As a result of this conduct, Defendants seek to have all Homeland's claims stricken or to have Kaufman & Forman disqualified from the case as Plaintiff's counsel and held in criminal contempt. At a minimum,

Defendants contend that since Kaufman & Forman has perpetuated a fraud on the Court through misrepresentations, the firm can no longer rely on attorney-client privilege and that Defendants should be allowed to discover documents and communications between attorney and client pursuant to the crime-fraud exception to attorney client privilege. Independently, Defendants assert that Weiner's destruction of potentially exculpatory financial records in 2012 after litigation was contemplated by the parties as early as August of 2011 merits dismissal.

Homeland counters that the records were ultimately disposed of because it was selling the storage spaces and the documents were in a state of disarray. It further asserts that Weiner destroyed the records—nearly three years before the suit was filed—before the contemplation of litigation. The litigation that was threatened in 2011 involved whether Irlbeck was required to return a Homeland laptop, not forgeries, fraud, or breaches of fiduciary duties. The laptop was ultimately surrendered to Sandy Springs Police Department in August of 2011. Homeland's attorneys further note that it took sufficient remedial action to correct any inaccurate statements to the Court about their involvement in the criminal investigation against Irlbeck.

Having considered the briefs submitted, the Motion for an Order to Show Cause is **DENIED**. The parties are ordered to complete discovery by November 1, 2015 and submit its dispositive motions by December 1, 2015 as set forth in this Court's prior Order dated August 3, 2015.

**SO ORDERED this**   3   **day of November, 2015.**

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

**Copies via eFileGA to all registered service contacts:**

Attorneys for Plaintiffs	Attorney for Defendants
<p>Robert J. Kaufman Richard Tillery KAUFMAN, MILLER &amp; FORMAN, P.C. 8215 Roswell Road Building 800 Atlanta, GA 30350 Telephone: (770) 395-6720 Facsimile: (770) 390-9200 rjk@kauflaw.net rjt@kauflaw.net</p>	<p>John Da Grosa Smith Kristina M. Jones SMITH LLC 1320 Ellsworth Industrial Blvd Suite A1000 Atlanta, GA 30318 Telephone: (404) 605-9680 Facsimile: (404) 935-5226 jdsmith@smithlit.com kjones@smithlit.com</p>