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Morris Hardwick Order on Motion for Protective Order

Melvin K. Westmoreland
Fulton County Superior Court, Judge

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

MORRIS HARDWICK SCHNEIDER, LLC,)	
and LANDCASTLE TITLE, LLC,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action File No.: 2014CV250583
)	
NATHAN E. HARDWICK IV, and DIVOT)	
HOLDINGS, LLC,)	
)	
Defendants.)	

ORDER ON MOTION FOR PROTECTIVE ORDER

This matter is before the Court on Non-Party Bobbie Christian Leftwich’s (“Christian”) Motion for Protective Order. Having considered the arguments presented, the Court finds as follows:

Plaintiffs served Requests to Produce to Google, Inc., in late December, 2015, seeking the “header information” concerning the e-mail account of Christian. Christian served as Defendant Nathan Hardwick’s assistant for more than 20 years and was employed by Plaintiff Morris Hardwick Schneider, LLC during the period of the alleged conversion of millions of dollars of its funds. “Header information” is a data log that identifies the e-mail addresses involved in a communication, as well as the time and date of same, and other specific routing information. Header information does not contain the contents or subject line of any e-mail; it is much like a telephone record that shows the existence of a communication. Plaintiffs seek this information in an effort to understand the frequency and timing of e-mail communications between Hardwick and Christian during the time when Hardwick is suspected of the conversion of millions of dollars of Plaintiffs’ funds, specifically focusing on the time period from January

1, 2009, through the date of the response. Plaintiffs argue this information will help narrow their requests to Christian to produce documents before her upcoming deposition.

Christian argues (1) the request exceeds permissible limits of discovery because it is not calculated to discover information which would lead to admissible evidence; (2) the requests seek information which contains trade secrets, confidential information and attorney-client privileged communications; and (3) the Civil Practice Act and O.C.G.A. § 9-11-26 do not provide for the disclosure of non-party emails to which the non-party has a reasonable expectation of privacy through a request to the email host.

In Georgia, “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party.” O.C.G.A. § 9-11-26(b)(1). Under O.C.G.A. § 9-11-26(c), the Court may “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” “The trial court in its discretion balances the right of a party to obtain discovery and the right of individuals to be protected from unduly burdensome or oppressive inquiries.” *In re Callaway*, 212 Ga. App. 500, 501 (1994).

I. Request Does Not Exceed Scope of Discovery

The Court finds the header information is within the broad scope of discovery afforded by both O.C.G.A. § 9-11-26 and the Civil Practice Act. “The broad purpose of the discovery rules, under the Civil Practice Act, is to enable the parties to prepare for trial so that each party will know the issues and be fully prepared on the facts The use of the discovery process has been held to be broadly construed.” *Int’l Harvester Co. v. Cunningham*, 245 Ga. App. 736, 738-

39 (2000). As such, the Court is satisfied that, under the Civil Practice Act, the requests for header information are valid discovery requests.

Further, O.C.G.A. § 9-11-26 allows for the discovery of material that is not privileged as long as it relates to the claim or defense of the party seeking discovery or the claim or defense of another other party. *See* O.C.G.A. § 9-11-26(b)(1). The Court is satisfied the requests fall within the scope of discovery under O.C.G.A. § 9-11-26, as the requests seek information related to the Plaintiffs' claim against Hardwick.

Christian also attempts to argue the emails being sought are not discoverable under the Civil Practice Act or O.C.G.A. § 9-11-26 because she is a non-party who has a reasonable expectation of privacy in her personal e-mails. However, Christian has not cited any law supporting this argument.

II. There is No Risk of Disclosing Trade Secrets, Confidential Information or Attorney-Client Privileged Communications

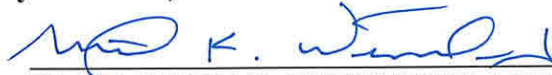
The Court is not persuaded trade secrets or other confidential information including attorney-client privileged communications will be disclosed as a result of Plaintiffs' request. By the nature of requesting header information, Plaintiffs seek a log of incoming and outgoing emails, but not the content or even the subject of those emails. Even if the header information contained privileged or confidential information, the existing Protective Order entered on May 28, 2015, provides a mechanism for protecting this information from public disclosure.

III. The Discovery Request is Not Unduly Burdensome on Christian

The Court also finds Plaintiffs' discovery request to Google, Inc. for Christian's header information is not unduly burdensome on Christian. Google is the actual custodian of records and the target of the Requests, and Google routinely produces this type of data and has already done so with five other e-mail addresses associated with this case.

As such, Non-Party Christian's Motion for Protective Order is **DENIED**.

SO ORDERED, this 9th day of March, 2016.



HON. MELVIN K. WESTMORELAND, JUDGE
Fulton County Superior Court – Business Case Division
Atlanta Judicial Circuit

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