

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.:09-60202-CIV-COHN-SELTZER

THE CONTINENTAL GROUP, INC.
A Florida Corporation,

Plaintiff,

v.

KW PROPERTY MANAGEMENT, LLC
d/b/a KW PROPERTY MANAGEMENT
AND CONSULTING, LLC, a Florida
Limited Liability Company; KW HOLDING
ONE, LLC d/b/a KW PROPERTY
MANAGEMENT AND CONSULTING,
LLC, a Florida Limited Liability Company;
THE GRAND PRESERVE AT NAPLES
LLC d/b/a KW PROPERTY
MANAGEMENT AND CONSULTING,
LLC, a Florida Limited Liability Company;
and MARCY KRAVITT, an individual,

Defendants

DEFENDANTS' MOTION FOR TEMPORARY RELIEF

Defendants, KW PROPERTY MANAGEMENT, LLC, and KW HOLDING ONE, LLC (collectively referred to as "KW"), by and through their undersigned counsel, file this their Motion for Temporary Relief, and in support thereof state as follows:

1. On February 18, 2009, the Court entered an Order Granting in Part Motion to Clarify and Amend Order to Expedite Discovery [D.E. 22] which, in part, directed the parties' counsel to cooperate to filter out, and not produce, documents or images to which an attorney-client or work product privilege is asserted in good faith.

2. Pursuant to the Court's Order, Defendants' counsel has contacted Plaintiff's counsel six times and informed Plaintiff's counsel of their proposal to filter out documents or images which are attorney-client or work product privileged. *See* emails between Franklin Zemel and Joan Canny attached as Composite Exhibit "A" hereto.

3. Specifically, Defendants' counsel proposed that once the laptops are imaged, that the images be "escrowed" – that is, held aside until Defendants' counsel can immediately thereafter review the laptops for privileged information and log such privileged information appropriately. The subject laptops are currently in sealed boxes in the law office of Franklin Zemel, Esq., (in Broward County as per the Court's Order) to preserve chain of custody until Plaintiff's expert can image them, which is why the KW Defendants' counsel has not already reviewed the laptops' contents for privileged information. That can only be done once the laptops are imaged, and the images escrowed pending our review of the laptops. Because some procedure to filter or remove such information from the escrowed images themselves would still be necessary, Defendants' counsel proposed that Defendants' computer consultant, under the supervision of Plaintiff's computer consultant, identify and move the logged (privileged) information onto a separate CD to further be held in escrow, pending a further determination by the Magistrate or Judge. This way, the chain of custody is maintained, the images are preserved, and the Court's Order is complied with.

4. Defendants' counsel repeatedly asked Plaintiff's counsel to propose a reasonable alternative if the above proposal was not acceptable. However, Plaintiff's counsel insists that Defendants' counsel has not provided a specific proposal for the filtering of potentially privileged communications, and Plaintiff's counsel has not provided a reasonable alternative. *See* Composite Exhibit "A."

5. Defendants, in an abundance of caution, filed this Motion for Temporary Relief so as to not inadvertently breach the Court's Order.

6. The Court's Order requires that the computers be imaged at Defendants' counsel's office in Broward County. Franklin Zemel's office is in Broward County. As indicated to Plaintiff's counsel numerous times, the laptop computers are in sealed boxes in Franklin Zemel's office, and the data contained within them is safe and secure.

7. Defendants have exhausted their efforts to cooperate with Plaintiff's counsel, as directed by the Court's Order. However, the parties have not come to an agreement as to how to filter out documents or images to which an attorney-client or work privilege may apply, and Plaintiff's Motion for Further Clarification of the Court's Orders to Expedite Discovery is pending. Thus, Defendants should not be required to produce the laptops for imaging at 11:00 am tomorrow.

WHEREFORE, Defendants respectfully request that their Motion for Temporary Relief be granted.

CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2009 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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