

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE STOKES : CIVIL ACTION
 :
 v. :
 :
 THE HOME DEPOT U.S.A., INC. : NO. 06-1684

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE March 12 , 2007

In the Complaint in this case, the Plaintiff alleges that certain employees of Home Depot had him arrested for attempting to shoplift a cart of drywall for which he had paid. Plaintiff now brings this suit for defamation, false imprisonment, malicious prosecution, intentional infliction of emotional distress, conspiracy to commit fraud, and breach of contract. According to the Plaintiff, on April 20, 2005, he made several purchases at Home Depot, but was unable to transport them from the store, due to their size. He returned the next day and was arrested while attempting to remove a cartload of drywall, for which he had previously paid.

In his Motion to Compel, the Plaintiff contends that the Defendant has failed to produce a videotape of the incidents in question - the original purchase of the items and Mr. Stokes' subsequent return to the store to pick up the items he had purchased. Relying on the deposition testimony of Allan Brown, the former Loss Prevention Manager at Home Depot, the Plaintiff insists that a video of the incidents exists and that the Defendant has intentionally concealed the tape.

During his deposition, Mr. Brown stated that he reviewed a digital video recording of Mr. Stokes making his purchases the night before his arrest, and retrieving his purchases the following day. (Brown Dep., at 24). According to Mr. Brown, he obtained the

video footage from the backup company and had them email the security footage from April 19th to the 25th to his personal email account. (Brown Dep., at 25-26). However, when asked for details about the video footage, Mr. Brown stated that he had found a piece of video showing Mr. Stokes entering the store. He was not sure if this was on the day he made the purchases or the day he attempted to retrieve them. (Brown Dep., at 29). Unfortunately, before he made any further review of the video footage, Mr. Brown's employment with Home Depot was terminated for reasons unrelated to this investigation. (Brown Dep., at 29-30).

In response to the motion, the defense calls into question the veracity of Mr. Brown's deposition testimony by pointing out that Mr. Brown failed to produce the video that he was allegedly sent, despite the fact that he was served with a subpoena. The defense also notes that the memory required to review such footage would surpass the memory capabilities of Mr. Brown's personal laptop computer. (Response, at ¶ 3). In addition, the defense notes that no video footage was used to justify Plaintiff's stop and detention. (Response, at ¶ 4).

While all of these points may be factually valid, there comes a time when "[t]he [defendant] doth protest too much, methinks." *Hamlet*, Act III, Scene 2, line 242. For, what is noticeably absent from the Defendant's response is a statement that no such video exists. If no such video footage exists, the Defendant shall so certify. However, reviewing Mr. Brown's deposition, it seems that any such video might be in the possession of a backup company. Therefore, in making a certification that no such video footage exists, we will require the defense to inquire of any company that backs up their security video. Despite the fact that the Defendant claims that any such video played no part in the detention of Mr. Stokes, if such video exists, the Defendant shall produce it immediately.

The Plaintiff has also requested a photograph that was used by the defense in Mr. Brown's deposition. The photograph shows the cart of drywall that Mr. Stokes was accused of attempting to steal. In the Complaint, Plaintiff claims that the drywall had been marked "Stokes paid 4-20-05." (Complaint, at ¶ 7). Plaintiff's counsel seeks to have the photograph enlarged in the hopes of ascertaining whether there is any indication on the drywall that it had been purchased. (Plaintiff's Motion, at ¶ 8). Plaintiff's counsel also states that there is some question about the origin of the picture. However, a review of Mr. Brown's deposition testimony clears up any question.¹ Home Depot shall produce the Polaroid photos of the cart and allow the Plaintiff to have them enlarged.

Plaintiff also complains generally about the Defendant's failure to respond to Plaintiff's Interrogatories. A review of the responses reveals that the Defendant prefaces even the most basic response with an objection that the interrogatory is overly broad, vague, and not reasonably calculated to lead to the discovery of admissible evidence. See Answers to Interrogatories. The Plaintiff specifically complains that the Defendant requires execution of a confidentiality agreement before it will produce certain written policies and procedures and statistical information regarding arrests for theft at the store in question.

Reviewing the Answers to the Interrogatories, it appears that the Defendant requires a confidentiality agreement before it will release even the most basic information about

¹When Mr. Brown first saw the photograph during his deposition, he thought it might have been a still shot taken from the surveillance video camera. (Brown Dep., at 73). However, upon further examination, Mr. Brown realized that the picture was not taken from the surveillance camera. (Brown Dep., at 75). In fact, during the deposition, defense counsel produced the original Polaroid pictures, confirming that the picture did not come from any video. (Brown Dep., at 75).

the incident involving Mr. Stokes.² In fact, it appears from the answers to the interrogatories that the Defendant even refuses to produce a copy of the Apprehension Report for the incident without the execution of a confidentiality agreement. See Responses to Interrogatories, 9 - 12. Requiring a confidentiality agreement for much of the information sought is preposterous.

In Pansy v. Borough of Stroudsburg, the Third Circuit discussed the entry of confidentiality orders and concluded that “[i]n the context of discovery, it is well-established that a party wishing to obtain an order of protection over discovery material must demonstrate that ‘good cause’ exists for the order of protection.” Pansy, 23 F.3d 772, 786 (3d Cir. 1994)(citing Fed.R.Civ.P. 26(c); Smith v. Bic Corp., 869 F.2d 194, 199 (3d Cir. 1989)).

Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity. Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing. The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order.

Id., at 786-87.

²The Defendant has refused to produce/answer the following without execution of a confidentiality agreement: the internal reports of the incident (Interrogatory 9), names of anyone who has investigated the incident on behalf of Home Depot (Interrogatory 10); a description of the incident (Interrogatories 11, 28); any statements made by Home Depot employees at the time of the incident (Interrogatory 12); a description of the Defendant’s encounter with the Plaintiff (Interrogatory 19); a description of the role each employee played in the incident (Interrogatory 21); the conversations/statements that occurred between Plaintiff and any representative of Home Depot (Interrogatories 22, 24); and a description of the Plaintiff’s response to being arrested (Interrogatory 25). In addition, in response to a request for information regarding other incidents where an individual was charged for retail theft, the Defendant has offered to produce a list of any incidents in which a customer alleged false arrest for the prior three years upon the execution of a confidentiality Agreement. (Answer to Interrogatory 59).

At this point, all we have before us are the answers to Interrogatories. We have no briefing from the Defendant justifying the need for protection. In response to the Motion to Compel, the Defendant has stated that certain internal policies and procedures contain “proprietary information [that is] commercially confidential.” (Response, at ¶12). From the pleadings currently before the court, we cannot assess what protectable interest the Defendant has in much of the information sought by the Plaintiff. Surely, the Plaintiff’s interest in the Apprehension Report of the incident outweighs any privacy interest that Home Depot seeks to protect. See Pansy, at 787 (“the court must balance the requesting party’s need for information against the injury that might result if uncontrolled disclosure is compelled”).

To the extent Home Depot maintains that responsive information will not be produced absent the entry of a confidentiality agreement, it shall provide a brief detailing the responsive documents and the interests a confidentiality agreement would serve to protect. If necessary, Plaintiff could then submit a response. Until the issues are fully briefed, however, we will not speculate on the balancing of the interests to be protected.³

An appropriate order follows.

³To the extent the Defendant claims attorney/client, work product or other privilege, the documents need not be produced.

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ORDER

AND NOW, this 12th day of March, 2007, upon consideration of the Plaintiff's Motion to Compel, the response, thereto, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART. IT IS ORDERED that the Defendant shall produce: (1) any video recording of the relevant incidents in its possession or the possession of any video storage or backup company; (2) the Polaroid pictures used during Mr. Brown's deposition; and (3) the Apprehension Report referred to in its Responses to Interrogatories. IT IS FURTHER ORDERED that the Defendant shall supplement its answers to interrogatories. To the extent the Defendant seeks a confidentiality agreement as to any document or class of documents, it shall file a brief showing the need for such agreement within ten days of the date of entry of this Order. Any document or class of documents not covered by Defendant's brief shall be promptly provided to the Plaintiff.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE