

LAW OFFICE OF GREGORY BERRY

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February 23, 2015

Hon. Ronald L. Ellis, United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, New York, New York 10007

VIA ECF

Re: *Walker v. Carter et al*, Case No. 12-cv-05384(ALC)(RLE)
Request for guidance/intervention to compel participation
in discovery from Shawn Carter's attorney

Dear Judge Ellis:

I represent the plaintiff Dwayne D. Walker, Jr., in the above-referenced action. At our status conference on February 17, 2015, you instructed me to come to you if Ms. Lackman, Defendant Carter's attorney, refuses to provide me with an answer to something.

I have requested from Ms. Lackman the name and contact information of Shawn Carter's general manager, the man that she claims conducted the search of Mr. Carter's e-mails (which search, she claims, uncovered no documents). She has refused to respond to this request:

I am not inclined to respond to a request to provide personal information for a document search witness where no request has been formally posed. Please point me to where this information has been previously requested, or put it in an interrogatory, to which I reserve my right to object on grounds of untimeliness, relevance or any other ground.

I have been struggling for months to communicate to your honor the inappropriateness of Ms. Lackman's conduct during this case. The e-mail quoted here is how she responds to every request I make. I appreciate how tedious it would be to read attorneys' e-mails, but I respectfully beg your honor to take a moment nonetheless to read the attached exchange between us. The above e-mail serves no purpose but to obstruct discovery and waste mine and the Court's time. If she wishes to move the Court to quash a subpoena, she may do so.

I will be writing the Court a separate letter motion by the end of the week regarding a search of Mr. Carter's phones, and a letter motion to compel the corporate defendants to conduct a global search of their servers.

Very truly yours,

/s/ Gregory Berry

Gregory Berry

cc: All attorneys of record via ECF

Attachments

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Subject: texts

From: gberry@gregoryberrylaw.com

Date: Wed, Feb 18, 2015 9:39 am

To: "Eleanor Lackman" <ELackman@cdas.com>, "Scott Sholder" <SSholder@cdas.com>

Cc: "Cynthia Arato" <carato@shapiroarato.com>, "Jeremy Licht" <jlicht@shapiroarato.com>, "Lionel Dale" <dsmith@law-smith.com>

Dear Eleanor,

Per our conference with the Court yesterday, please provide me with your reasons for believing that it would be unreasonable to search Carter's phones for relevant text messages.

Thanks,

Greg

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Subject: Carter documents

From: gberry@gregoryberrylaw.com

Date: Fri, Feb 20, 2015 1:28 pm

To: "Eleanor Lackman" <ELackman@cdas.com>, "Scott Sholder" <SSholder@cdas.com>

Cc: "Cynthia Arato" <carato@shapiroarato.com>, "Jeremy Licht" <jlicht@shapiroarato.com>, "Lionel Dale" <dsmith@law-smith.com>

Dear Eleanor,

I wrote you on Wednesday with a couple questions and I have not heard back from you. (1) What are your reasons for thinking it is not reasonable to expect Carter to have responsive communications on his phone? (2) What are Carter's personal e-mail addresses?

I have two additional questions. In your e-mail describing the ostensible search of Carter's documents, you did not mention his personal computer/laptops/tablets. What about them? Second, it has never been made clear where Carter keeps his personal documents. Those need to be searched. Where are they?

When can I expect an answer to these questions?

Thanks,

Greg

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Subject: RE: Carter documents

From: "Eleanor M. Lackman" <ELackman@cdas.com>

Date: Fri, Feb 20, 2015 2:17 pm

To: "gberry@gregoryberrylaw.com" <gberry@gregoryberrylaw.com>

Cc: Cynthia Arato <carato@shapiroarato.com>, Jeremy Licht <jlicht@shapiroarato.com>, Lionel Dale <dsmith@law-smith.com>, Scott Sholder <SSholder@cdas.com>

Greg,

I was out of the office for 10 days prior to the conference, and I have been putting out other fires ever since; because you never gave me a deadline or any reason to believe you needed a response immediately, I didn't give you one. Nor can I give you a complete answer now for reasons just stated.

Here's what I can tell you off the top of my head. First, you already have the reasons why it is not reasonable to search my client's phone. Because the reasons don't appear to be clear to you, I will undertake to provide you with a list of all the reasons and hopefully that will end the issue. Second, what's your reason for asking for my client's "personal" email addresses? His emails have already been searched, as you know, so there is no basis whatsoever to ask for the information. If you cannot state a reasonable basis and still want them, you will have to go to the court, but be advised that we will seek sanctions pursuant to Rule 37.

As to your new questions, I believe I have already answered them as well. As I've told you and the court, we've done a comprehensive search of all places likely to have documents. I explained that search to you in detail, and I'll note that you have never made any effort to reciprocate. This will be fully documented to Judge Ellis if you continue to press, so please govern yourself accordingly.

I will go through our correspondence again and, to the extent that any response has not been clear, I'll look into it and get back to you in due course. However, I do need some explanation from you on your last request: when you say "personal documents," what do you mean? Do you mean documents relating to the issues in this case? If so, what types of documents would these be?

Regards,
Eleanor

From: gberry@gregoryberrylaw.com [mailto:gberry@gregoryberrylaw.com]

Sent: Friday, February 20, 2015 1:28 PM

To: Eleanor M. Lackman; Scott Sholder

Cc: Cynthia Arato; Jeremy Licht; Lionel Dale

Subject: Carter documents

Dear Eleanor,

I wrote you on Wednesday with a couple questions and I have not heard back from you. (1) What are your reasons for thinking it is not reasonable to expect Carter to have responsive communications on his phone? (2) What are Carter's personal e-mail addresses?

I have two additional questions. In your e-mail describing the ostensible search of Carter's documents, you did not mention his personal computer/laptops/tablets. What about them? Second, it has never

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Subject: RE: Carter documents

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Date: Fri, Feb 20, 2015 3:39 pm

To: "Eleanor M. Lackman" <ELackman@cdas.com>

Cc: "Cynthia Arato" <carato@shapiroarato.com>, "Jeremy Licht" <jlicht@shapiroarato.com>, "Lionel Dale" <dsmith@law-smith.com>, "Scott Sholder" <SSholder@cdas.com>

Dear Eleanor,

Please provide me with a time when I can expect answers to my questions. (You are right, I did not give you a deadline. It is discourteous and unprofessional to give opposing counsel a deadline for answering a simple request--I always ask you when I can expect it.)

- (1) Yes, please provide a list of all the reasons the search of Carter's phones will not be reasonable. Not just his current phone, but his old phones. (I don't need a list of all possible reasons; rather a list of your actual reasons for thinking it is unreasonable.)
- (2) My understanding of your previous e-mails on this subject is that nothing was done since the commencement of this suit to ensure Carter's e-mails were preserved. I may need to subpoena his e-mail providers to see if they have back-ups of any that might have been deleted. It is also a standard discovery question, to determine the locations of possible responsive documents. Also, please provide me with the name and address of the general manager who searched the e-mails.
- (3) Eleanor, I have the list of the places you have searched. My question is where does Carter keep his personal documents. Personal documents would include (but are not limited to) things like notepads on which he writes lyrics, receipts for jewelry, old photographs, other kinds of personal notes or letters he may have sent or received, things like that.
- (4) What about personal computers/laptops/tablets?

Eleanor, I have a request to ask of you. I apologize if this sounds rude. I don't mean it to be, but I don't know how else to ask. When you write to me in response to my e-mails, you always go into great detail about what was already said. It takes you more time to explain what was already said than it would take to just say it, and frequently in the end you don't even answer the question. I am asking you if, as a professional (or even personal) courtesy to me, you could keep your e-mails short, succinct, and to the point? I think it would save all of us a lot of time. I would really appreciate it!

Thanks,

Greg

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Subject: RE: Carter documents

From: "Eleanor M. Lackman" <ELackman@cdas.com>

Date: Fri, Feb 20, 2015 3:44 pm

To: "gberry@gregoryberrylaw.com" <gberry@gregoryberrylaw.com>

Cc: Cynthia Arato <carato@shapiroarato.com>, Jeremy Licht <jlicht@shapiroarato.com>, Lionel Dale <dsmith@law-smith.com>, Scott Sholder <SSholder@cdas.com>

OK. Will get back to you next week or early the following. As to your characterization of my style of response, I don't know what you're talking about or why you found it appropriate to even say it, so I'll just ignore that part.

From: gberry@gregoryberrylaw.com [mailto:gberry@gregoryberrylaw.com]

Sent: Friday, February 20, 2015 3:39 PM

To: Eleanor M. Lackman

Cc: Cynthia Arato; Jeremy Licht; Lionel Dale; Scott Sholder

Subject: RE: Carter documents

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Thanks,

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Subject: RE: Carter documents

From: gberry@gregoryberrylaw.com

Date: Mon, Feb 23, 2015 6:20 pm

To: "Eleanor M. Lackman" <ELackman@cdas.com>

Cc: "Cynthia Arato" <carato@shapiroarato.com>, "Jeremy Licht" <jlicht@shapiroarato.com>, "Lionel Dale" <dsmith@law-smith.com>, "Scott Sholder" <SSholder@cdas.com>

Thank you, Eleanor. Would it be possible for you to get me the name and address of the general manager by tomorrow? I don't think that should take any research on your part.

Thanks,

Greg

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----- Original Message -----

Subject: RE: Carter documents

From: "Eleanor M. Lackman" <ELackman@cdas.com>

Date: Fri, February 20, 2015 3:44 pm

To: "'gberry@gregoryberrylaw.com'" <gberry@gregoryberrylaw.com>

Cc: Cynthia Arato <carato@shapiroarato.com>, Jeremy Licht <jlicht@shapiroarato.com>, Lionel Dale <dsmith@law-smith.com>, Scott Sholder <SSholder@cdas.com>

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From: gberry@gregoryberrylaw.com [<mailto:gberry@gregoryberrylaw.com>]

Sent: Friday, February 20, 2015 3:39 PM

To: Eleanor M. Lackman

Cc: Cynthia Arato; Jeremy Licht; Lionel Dale; Scott Sholder

Subject: RE: Carter documents

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Subject: RE: Carter documents

From: "Eleanor M. Lackman" <ELackman@cdas.com>

Date: Mon, Feb 23, 2015 6:22 pm

To: "gberry@gregoryberrylaw.com" <gberry@gregoryberrylaw.com>

Cc: Cynthia Arato <carato@shapiroarato.com>, Jeremy Licht <jlicht@shapiroarato.com>, Lionel Dale <dsmith@law-smith.com>, Scott Sholder <SSholder@cdas.com>

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Regards,
Eleanor

From: gberry@gregoryberrylaw.com [mailto:gberry@gregoryberrylaw.com]

Sent: Monday, February 23, 2015 6:20 PM

To: Eleanor M. Lackman

Cc: Cynthia Arato; Jeremy Licht; Lionel Dale; Scott Sholder

Subject: RE: Carter documents

Thank you, Eleanor. Would it be possible for you to get me the name and address of the general manager by tomorrow? I don't think that should take any research on your part.

Thanks,

Greg

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Subject: RE: Carter documents