

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 12

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IN RE 91ST STREET CRANE COLLAPSE LITIGATION:

Index No. 771000/10E
Date: 3/30/2011

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THIS DOCUMENT RELATES TO: ALL CASES
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CASE MANAGEMENT ORDER NO. 11

PAUL G. FEINMAN, J.:

I. In Camera Review of Tibor Varganyi's Personal Computers

Since CMO #10 was issued on March 23, 2011, the New York Crane defendants have written to the court seeking to modify the portion of that order requiring defendants to produce a privilege log by March 31, 2011. This privilege log is to cover materials located on the hard drive submitted by defendants for in camera review on March 10, 2010. The hard drive contains the complete contents of nonparty Varganyi's Sceptre personal laptop computer. Instead, defendants requested an unspecified "extension of time to produce the non-privileged contents of the [l]aptop as the number of files which must be reviewed by the New York Crane Defendants in order to complete the production exceed[s] 160,000" (Doc. 746).

In support of this extension, defendants enclosed the affidavits of a forensic examiner and forensic manager that had been retained to perform the duplication of the laptop. The Affidavit of Kyle Poppenwimer, Forensic Examiner from T&M Protection Resources, describes the duplication process. Data was separated into two categories: (1) System Related Files, consisting of program files or program file related data, operating system data, and unallocated space; and (2) User Related Files, consisting of data contained in areas most likely created by the laptop's

user, as well as all recovered content that were not System Related files, such as documents, spreadsheets and multimedia files. The System Related Files category includes 12,569 separate folders, containing a total of 1,031,544 files. The User Related Files category includes 128 folders, containing a total of 166,789 files.

These matters were considered by the court in drafting CMO #10. Nonetheless, production of the privilege log was set for March 31, 2011, three weeks after the hard drive had been submitted to the court. In part, this date was selected because defendants' letter and affidavits did not discuss the timing and process for moving forward this production. Thus, the intent was to encourage discovery of relevant matters expeditiously. If the New York Crane defendants could not produce a privilege log by that time, the hope was that the deadline would provide sufficient motivation for them to engage in good faith efforts to find a resolution with plaintiffs. For whatever reason, it appears as though the parties have not been able to reach any sort of agreement.

The court has conducted a cursory review of the contents of the hard drive. From this brief and sporadic examination, it appears that a significant number of files are not privileged and are material and necessary to the prosecution of the causes of action and defenses in this action. However, there appears to be an even larger amount of highly personal materials bearing no relevance to this case. This is not too surprising, given this hard drive comes from a personal computer belonging to a nonparty. The goal must be to provide plaintiffs with the relevant materials as soon as possible, while protecting any applicable privileges or undue embarrassment that would result from production.

Typically, relevance review of electronically-stored information may be conducted either

by keyword searching or reviewing each document individually. Here, there are 15 gigabytes in the User Created Files alone, which amounts to roughly 7 million pages, according to defendants. Thus, a page-by-page review would be an immense burden on defendants, while causing further delay to the plaintiffs. Therefore, the more efficient approach would be conducting a keyword search in order to isolate particular files for review. Defendant has requested plaintiffs stipulate to search terms in their letter, dated March 25, 2011. However, it appears to the court that plaintiffs have not responded to this request. Accordingly, both parties must e-file their list of proposed search terms to the master index number by April 4, 2011. The court will review each proposal, and provide a final list by the end of the next compliance conference.

Also at the next compliance conference, which is currently scheduled for April 7, 2011, the court will address all outstanding issues involved in the production of Varganyi's Sceptre laptop.

Accordingly, the portion of CMO #10 requiring production of a complete privilege log for the contents of the hard drive by March 31, 2011, is vacated. The parties shall submit their proposed search terms by no later than April 4, 2011.

This constitutes the order of the court.

Dated: 3/30/2011
New York, New York



J.S.C.

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