

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PORTFOLIO SOLUTIONS, LLC,

Plaintiff,

v

Case No. 14-138394-CK

Hon. Wendy Potts

RICHARD A. FERRI,

Defendant.

OPINION AND ORDER RE: PLAINTIFF'S MOTION TO COMPEL DISCOVERY
RESPONSES AND FORENSIC EXAMINATION OF COMPUTER HARD DRIVES

At a session of Court
Held in Pontiac, Michigan
On

MAY 01 2014

The matter is before the Court on Plaintiff Portfolio Solutions, LLC's motion to compel responses to its written discovery and compel Defendant Richard Ferri to produce two computers for forensic examination of the hard drives.

The Court has discretion to compel discovery. *Cabrera v Ekema*, 265 Mich App 402, 406; 695 NW2d 78 (2005). "Michigan follows an open, broad discovery policy that permits liberal discovery of any matter, not privileged, that is relevant to the subject matter involved in the pending case." *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998).

Ferri first asks the Court to stay the case pending arbitration or bar discovery while arbitration is pending. However, Portfolio claims that there is no arbitration pending yet, and

Ferri provides no evidence that the parties are arbitrating their claims. At most, Ferri demanded arbitration, however, the demand was not issued until April 14, 2014. Even if there was a pending arbitration proceeding, Ferri does not dispute that the operating agreement allows Portfolio to seek injunctive relief for breach of Article 15 of the operating agreement. Thus, Portfolio is within its rights to pursue this claim despite the fact that the parties are arbitrating other claims and the Court will not bar discovery on this ground.

Turning to the substance of the discovery requests, Portfolio asks the Court to compel Ferri to respond to written discovery seeking information about Ferri's claim that he reported Scott Salaske's alleged wrongdoing to the Securities and Exchange Commission. Ferri claims that this request is not relevant to whether Portfolio is entitled to injunctive relief regarding Ferri's alleged breach of Article 15 of the operating agreement. However, Portfolio argues that this discovery request seeks evidence related to its claim Ferri violated Article 15 by revealing confidential company information. Because this discovery request appears to seek relevant information and is reasonably calculated to lead to the discovery of admissible evidence, MCR 2.302(B)(1), the Court orders Ferri to respond within 14 days.

Portfolio next asks the Court to compel Ferri to respond to written discovery seeking information regarding his communications with James Gladney of Liberty Capital Partners, Inc. Ferri asserts that his communications with Gladney are privileged because Gladney is a consulting expert who will not be testifying at trial. See MCR 2.302(B)(4)(b). However, Ferri has not produced any evidence to verify its claim that Gladney is, in fact, a consulting expert. Portfolio asserts, and the Court agrees, that Ferri cannot shield relevant communications with a third-party simply by labeling the other party as a consulting expert. Within 14 days, Ferri must provide Portfolio with evidence that Gladney is a consulting expert. The evidence can be

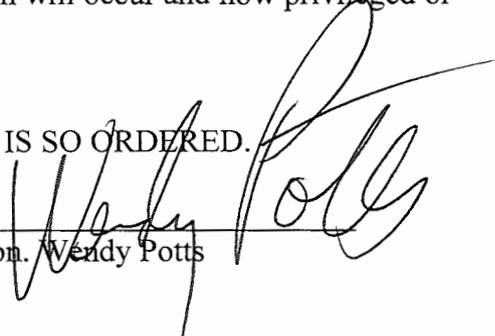
produced subject to the parties' stipulated protective order or another appropriate protective order.

In its final request, Portfolio asks the Court to order Ferri to produce two company-owned computers in his possession for forensic examination. Ferri contends that this request is outside the scope of discovery and intended solely to harass him. However, this request goes to the heart of Portfolio's claim that Ferri violated Article 15 by failing to maintain the confidentiality of company information. Thus, it appears to be seeking relevant information. Although requiring the computer hard drives to be shipped to a third-party would temporarily inconvenience Ferri, that is not a sufficient basis for denying Portfolio's request. The Court orders Ferri to produce the computer hard drives within 14 days. The parties must confer and attempt to reach an agreement on how the forensic examination will occur and how privileged or irrelevant information on the computers will be handled.

Dated:

MAY 01 2014

IT IS SO ORDERED.



Hon. Wendy Potts