

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

R & E AUTOMATED SYSTEMS, LLC,

Plaintiff/Counter-Defendant,

vs.

Case No. 2013-3550-CB

DENNIS YENGLIN, JR., PHANTOM ROBOTICS,  
INC., MPS CONTROLS, INC., STUART ROGERS,  
and ANDREW VANDAGRIFF,

Defendants,

and

DENNIS YENGLIN, JR.,

Defendant/Counter-Plaintiff.

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OPINION AND ORDER

Plaintiff has filed a motion for sanctions and costs against Defendants based on alleged discovery abuses. Defendants Phantom Robotics, Inc., MPS Controls, Inc., Stuart Rogers and Andrew Vandagriff (collectively, "Respondents") have filed a joint response and request that the motion be denied.

*Facts and Procedural Background*

From 2000 through May 2009, Defendant Yenglin co-founded and co-owed a robotics programming company named Complete Robotics. Defendant Yenglin then worked for Spectrum Robotics until April 2012. When Defendant Yenglin left Spectrum Robotics he discussed founding a new programming company with Defendants Andrew Vandagriff and Stuart Rogers. Defendant Yenglin ultimately began working for Plaintiff on April 25, 2012. Defendants Vandagriff and Rogers proceeded to found Defendant Phantom Robotics, Inc.

(“Defendant Phantom”). Defendant Rogers also is the owner of Defendant MPS Controls, Inc. (“Defendant MPS”).

Defendant Yenglin executed a non-compete agreement when he began working for Plaintiff. Plaintiff alleges that during his employment Defendant Yenglin, in violation of his employment contract, began working with the other Defendants to wrongfully and unfairly compete against Plaintiff. Defendant Yenglin’s employment with Plaintiff ended in October 2013. Plaintiff alleges that Defendant Yenglin has continued to violate the non-compete agreement by conspiring and acting in concert with the other Defendants.

On November 7,, 2013 Plaintiff filed its first amended complaint against Defendants. Plaintiff asserts claims for: Count I- Breach of Contracts against Defendant Yenglin, Count II- Breach of Promissory Note against Defendant Yenglin, Count III- Breach of Fiduciary Duty against Defendant Yenglin, Count IV- Fraud and Misrepresentation against Defendant Yenglin, Count V- Silent Fraud against Defendant Yenglin, Count VI- Misappropriation of Trade Secrets against all Defendants. Count VII-Tortious Interference with Contractual and Business Relations against all Defendants; Count VIII- Tortious Interference with Employment Contracts against all Defendants, Count IX- Unfair Competition against all Defendants, Count X- Civil Conspiracy against all Defendants, Count XI- Concerted Action against all Defendants, Count XII- Fraudulent Concealment against Defendant Yenglin, and Count XIII- Temporary Restraining Order/Preliminary Injunction/Permanent Injunction.

On May 27, 2014, the Court granted Plaintiff’s request to forensically examine the computers of Defendants Vandagriff and Rogers, as well as one of their employees, Hayley Garcia. At the hearing, Plaintiff requested that the examinations be done at Defendants’ expense.

While the Court denied the request, it indicated that it would be willing to revisit the issue after the examinations were completed.

Plaintiff has since had the computers examined and now renews its request to have Defendants cover the cost of the examinations. Further, Plaintiff also requests that a default be entered and that it be awarded attorney fees.

### *Arguments and Analysis*

#### (1) Defendant Vandagriff's Records

In its motion, Plaintiff asserts that the examination of Defendant Vandagriff's computer uncovered hundreds of previously unproduced documents that should have been produced in response to its previous discovery requests. Further, Plaintiff asserts that out of 2,300 emails found on Defendant Vandagriff's computer, the only emails deleted were those that dealt with Defendant Yenglin, which it contends evidences that the emails were deleted in an attempt to spoil evidence and conceal the truth. Based on the fact that documents were not properly produced and its contention that Defendant Vandagriff deleted the emails in bad faith and in an effort to spoil evidence, Plaintiff requests that costs and attorney fees be assessed against Defendant Vandagriff.

While Plaintiff has attached a number of emails and other documents that were discovered by examining Defendant Vandagriff's computer, Plaintiff has not identified which previous discovery request(s) they should have been produced in response to. Further, while the Court is convinced that sanctions would be appropriate in the event that Plaintiff were to produce evidence that only documents referencing Defendant Yenglin have been deleted, Plaintiff has not done so at this time. Rather, Plaintiff's counsel has simply stated that those documents were the only ones deleted. Consequently, the Court is convinced that Plaintiff's request for sanctions

with respect to the examination of Defendant Vandagriff's computer must be denied without prejudice.

(2) Defendant Rogers Records

In response to the Court's May 27, 2014 Order, Defendant Rogers produced two computers. However, the computers in question were not the computers he used in connection with his role in Defendants Phantom or MPS. As a result, the examinations of those items did not produce any relevant documents. When Plaintiff inquired as to whether there was another computer that Defendant Rogers used in connection with his business activities, Defendant Rogers advised Plaintiff that the computer sought had "crashed" on two occasions and was subsequently lost.

During the course of this litigation, Plaintiff has been very clear that its desire to inspect Defendants' computers was based on its need to discover any materials related to Dennis Yenglin's alleged inappropriate involvement with Defendants. Despite this clear objective, Defendant Rogers produced two computers that he knew or certainly should have known were not the computers being sought and did not advise Plaintiff that the computer being sought had been lost until after Plaintiff had spent the time and expense having the other two computers examined. Under these circumstances, the Court is convinced that sanctions are appropriate. MCR 2.313(A)(4) provides that an evasive response to discovery is to be treated as a failure to answer. Further, failure to allow a proper inspection is grounds for sanctions. MCR 2.313(D). In this case, the Court is satisfied that Defendant Rogers engaged in evasive actions in an attempt to circumvent the purpose of the inspection permitted by the Court. Consequently, Defendant Rogers shall reimburse Plaintiff the cost it incurred in having the computers examined, as well as

the attorney fees and costs Plaintiff has incurred in connection with the May 27, 2014 and August 4, 2014 hearings.

*Conclusion*

For the reasons discussed above, Plaintiff's motion for sanctions and costs against Defendants based on alleged discovery abuses is GRANTED, IN PART, DENIED, IN PART and DENIED WITHOUT PREJUDICE, IN PART. Specifically, Plaintiff's request for a default is DENIED and Plaintiff's request for costs and attorney fees from Defendant Vandagriff is DENIED, WITHOUT PREJUDICE. Plaintiff's request for costs and attorney fees from Defendant Rogers is GRANTED. Defendant Rogers shall reimburse Plaintiff the cost Plaintiff incurred in having his two computers examined, as well as the attorney fees and costs Plaintiff has incurred in connection with the May 27, 2014 and August 4, 2014 hearings.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: September 4, 2014

JCF/sr

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