**MICROSOFT BACKS DOWN AFTER PLAINTIFFS FILE MOTION TO PROTECT THEIR COUNSEL FROM “BULLYING”**

March 20, 2015

Seattle, WA

Former Microsoft Managers Eric Engstrom and Ted Stockwell are claiming an early victory against Microsoft for successfully opposing what their attorney calls “Microsoft’s bullying trial tactics.”

This week the Honorable Sean O’Donnell signed a stipulated order in which each party agreed not to file motions when the other party’s attorneys are unavailable. The order stems from a motion filed by Engstrom and Stockwell claiming that Microsoft was threatening to file emergency motions against them while their attorney was tied up in a two-week jury trial in another case.

Jack Sheridan, the plaintiff’s counsel, said, “I considered their actions to be bullying, so I filed a motion seeking protection, and Microsoft backed down and signed a stipulated order.” According to Sheridan, “The order has two important effects. First, I can focus on my other whistleblower trial, which is in Olympia, without interference from Microsoft, and second, Judge O’Donnell is now protected from being removed from the case by Microsoft.”

Under Washington law, RCW 4.12.050, in a civil case, any party has one opportunity to remove the assigned judge simply by filing what’s called an affidavit of prejudice. The affidavit simply has to state that a party thinks the judge would be unfair, and once filed, the judge is removed. Sheridan said, “The trick is that once a judge makes a discretionary ruling, that judge cannot be removed under the statute.” Sheridan said, “We wanted Judge O’Donnell to stay on this case, because of his reputation for working to protect vulnerable women, and now that he’s signed the stipulated order, he will stay on.” Sheridan said, “We consider Judge O’Donnell a good draw because our case alleges that the plaintiffs were wrongfully discharged for refusing to sign off on expense reports submitted by a subordinate, because they believed that money, allegedly being billed for dinners, included improper payments for prostitutes to benefit potential Microsoft customers in Korea.”

Plaintiffs’ Motion to Enforce Notice of Unavailability claimed that soon after Sheridan came on the case, he learned that Engstrom had made a few audio recordings while at work. According to Sheridan, “Engstrom recorded meetings with a few Microsoft managers to discuss his performance, because he was afraid of what they were doing and that the only witnesses would be his adversaries who he believed were removing him because of the hostess bar issue.” Sheridan said, “Mr. Engstrom didn’t have the benefit of counsel, and didn't realize that his attempt to protect himself with a ‘spy pen’ he bought at Fryes constituted a misdemeanor.”

Sheridan directed that the recordings be placed with a third party and a copy provided to Microsoft.

Sheridan said, “After I returned or safeguarded all the files, I thought I would be able to focus on my upcoming trial.” So on March 5, 2015, Sheridan filed a notice of unavailability, which is a typical filing in King County, and which, in Sheridan’s experience, is honored by attorneys practicing in Seattle, because he had a two-week jury trial beginning in Thurston County on Mary 16, 2015. The notice protects the attorney from having to respond to motions filed in other cases during the trial.

Microsoft’s counsel sent a letter on the 5th, and spoke with Sheridan on March 6, 2015, by telephone. Microsoft’s letter stated:

While Microsoft appreciates your oral representation to me that your clients no longer retain any Microsoft information or recordings and have not used or disclosed such information or materials, the seriousness of this issue requires sworn testimony. ***Given the criminal misconduct***, we cannot wait for the routine discovery process to unfold to ensure Microsoft’s information – and its employees’ rights – are protected.

Microsoft demanded sworn statements from the plaintiffs, which is not required by the Civil Rules. Microsoft went on to demand:

If your clients will not provide sworn statements, Microsoft anticipates seeking assistance from the court to ensure protection of its information and employees.

According to Sheridan, in the phone call, Microsoft’s counsel claimed that the need to get sworn statements from Engstrom and Stockwell was an “emergency,” and unless Sheridan produced sworn statements immediately, he would not promise that Microsoft would not file an emergency motion while Sheridan was tied up in trial, even though, according to Sheridan, there was no emergency since he had safeguarded the files.

According to Sheridan, “After we filed the Motion To Enforce Notice of Unavailability, Microsoft backed down and agreed to honor my notice of unavailability and to sign a stipulation to that effect.”

Also, the “criminal misconduct” alleged in the Microsoft letter, in reference to Engstrom and Stockwell, is describing the same conduct committed by Microsoft’s counsel, which recently lost an appeal in which DWT was a defendant in a case claiming that an attorney in the firm secretly recorded phone calls with a witness using a court reporter.

In DILLON v. SEATTLE DEPOSITION REPORTERS, LLC, a Washington Company; DAVIS WRIGHT TREMAINE, LLP, a Washington Company; and JAMES GRANT, Mr. Dillon met with lawyers at the same law firm as here, and there, the lawyer secretly recorded a witness phone call without telling the witness using a court reporter.

The Court of Appeals sent the case back to trial and wrote:

Although Grant (the lawyer) informed Dillon that "Thad" (the court reporter) was present during the first call, Grant disingenuously introduced [Thad] Byrd as if he were a Davis Wright and Tremaine employee "taking notes," not a third party transcribing the conversation. Even worse, Grant and Kennan never told Dillon about the presence of another person during the second call.

The Engstrom and Stockwell wrongful discharge case against Microsoft is slated to go to a jury trial in 2016.

Copies of the pleadings are available online at www.sheridanlawfirm.com

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