

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

SECTOR HR, INC.,

Plaintiff,

vs.

Case No. 2014-98-CZ

GREAT LAKES CLEANING, INC., NEW  
IMAGE BUILDING SERVICES, INC., and  
NEW IMAGE ENTERPRISES, LLC,

Defendants.

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OPINION AND ORDER

Defendants have filed a renewed motion to compel discovery. Plaintiff has filed a response and requests that the motion be denied.

In addition, Plaintiff has a filed a motion for entry of partial judgment. Defendants have filed a response and request that the motion be denied.

*Factual and Procedural History*

Plaintiff filed its complaint on January 13, 2014. On May 28, 2014, the Court entered an Order granting Plaintiff's request for summary disposition as to liability.

On February 4, 2015, Defendants filed their instant renewed motion to compel discovery. Plaintiff has filed a response and requests that the motion be denied. On April 12, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

On April 15, 2015, Plaintiff filed its motion for entry of judgment. Defendants have filed a response and request that the motion be denied. On April 27, 2015, the Court held a hearing in connection with the motion and took the matter under advisement.

The Court will address the two pending motions in turn.

## (1) Defendants' Motion to Compel

### *Standard of Review*

A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been an abuse of that discretion. *Linebaugh v Sheraton Michigan Corp*, 198 Mich App 335, 343-346; 497 NW2d 585 (1993). Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. *Id.*; MCR 2.302(B)(1). MCR 2.313(A)(2)(a) permits the Court to enter an order compelling discovery if a deponent fails to answer a question made during a deposition. Although broad discovery is encouraged, a party opposing discovery must not be subject to "excessive, abusive, irrelevant or unduly burdensome discovery requests." *Hamed v Wayne County*, 271 Mich App 106, 110; 719 NW2d 612 (2006) (internal citation omitted). As such, a court may issue "any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." MCR 2.302(C). Furthermore, discovery should not be extended merely to allow a "fishing expedition." *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004).

### *Arguments and Analysis*

In its motion, Defendants seek to have several categories of documents produced. However, rather than cite to a specific discovery request that they have served on Plaintiff, and that Plaintiff has failed to properly respond to, Defendants now provide a list of 10 categories of documents that it seeks to have produced. The Court finds Defendants' motion procedurally improper. While the Michigan Court Rules permit a party to serve the opposing side with discovery requests, and permits a party to file a motion to compel responses to such requests in

the event that they are not properly answered (*See* MCR 2.313), Defendants have not cited to any authority that would allow a party to file a motion to compel discovery that was not previously requested.

In this case, the only discovery Defendants have served was their May 28, 2014 discovery requests. Those requests were answered and were the subject of an initial motion to compel, which was addressed by the Court on September 8, 2014. Upon reviewing the record, the Court is convinced that the categories of requests requested by Defendants in their instant motion have either already been addressed in connection with the September 8, 2014 hearing, or have not be requested in a procedurally appropriate manner. Consequently, Defendants' motion must be denied.

## (2) Plaintiff's Motion for Entry of Judgment

### *Arguments and Analysis*

In its motion, Plaintiff requests that the Court enter a judgment against Defendants in the amount of \$75,129.41 based on Defendants' failure to pay administrative fees of \$75,427.00, less \$297.59 in office supply savings realized as a result of Defendants' breaches.

In its response, Defendants contend that Plaintiff's requested amount should be further reduced to reflect additional costs Plaintiff saved as a result of not being required to perform any services for Defendants in 2014 due to Defendants' untimely termination on December 19, 2013. Specifically, Defendants contend that Plaintiff, in order to provide Defendants with the services required under the parties' agreements, undoubtedly incurred expenses, including its employees' wages. Further, Defendants contend that such costs were saved in 2014 because Plaintiff did not provide any services to them. However, Defendants have failed to provide the Court with any evidence as to the amount of such saved expenses. Nevertheless, the Court is convinced that

Defendants are entitled to an evidentiary hearing on damages, including the issue of what costs, if any, Plaintiff saved as the result of Defendants' breach. Consequently, Plaintiff's request for entry of judgment is denied at this time, without prejudice.

*Conclusion*

For the reasons set forth above, Defendants' motion to compel discovery is DENIED. Further, Plaintiff's motion for entry of judgment is DENIED, WITHOUT PREJUDICE. An evidentiary hearing on the issue of damages is hereby schedule for June 19, 2015 at 10:00am. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

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

Dated: April 30, 2015

JCF/sr

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