

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

PINNACLE CONSTRUCTION  
GROUP, INC.,

Plaintiff,

Case No. 18-10846-CBB

vs.

HON. CHRISTOPHER P. YATES

ARCHITECT AT LARGE, LLC;  
and JEFFREY P. HUNT,

Defendants.

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ORDER DENYING MOTION FOR ORDER TO SHOW CAUSE  
FISHER DOOR FOR FAILURE TO COMPLY WITH SUBPOENA

Western lore has it that mule-rental businesses routinely provide each customer with a two-by-four along with each rented mule because the two-by-four is necessary to get the mule's attention. Applying this concept to the discovery process, Defendants Architect at Large, LLC and Jeffrey Hunt have filed a motion seeking an order to show cause why a third party – Fisher Door & Hardware, Inc. – “should not be held in contempt for failure to comply with [a] subpoena” demanding production of records. Never mind that the defendants have not yet asked the Court to issue an order compelling compliance under MCR 2.313(A), so Fisher Door & Hardware, Inc. cannot possibly be in violation of a court order at this point. Never mind that MCR 3.606(A) requires an *ex parte* motion supported by affidavits to initiate the contempt process, but the defendants have not presented an affidavit in support of their motion. Never mind that the defendants have not specified which of the three types of contempt sanctions they are seeking. See Cassidy v Cassidy, 318 Mich App 463, 505 (2017). The defendants simply want the Court to take a two-by-four to Fisher Door & Hardware, Inc.

To be sure, MCR 2.313(B)(2)(d) permits the issuance of “an order treating as a contempt of court the failure to obey an order” to provide discovery, but that language presupposes the issuance of an order compelling discovery followed by disobedience of that order before the Court can employ its contempt powers. Moreover, our Supreme Court has cautioned that “[t]he power to punish for contempt is awesome and carries with it the equally great responsibility to apply it judiciously and only when the contempt is clearly and unequivocally shown.” People v Matish, 384 Mich 568, 572 (1971). As a result, the Court regards contempt as its final option, not its first option. At this point, the Court cannot get on board with the defendants’ overly aggressive response to a discovery issue, so the two-by-four of contempt must be left on the shelf for the time being, even though the Court’s reluctance to stick to the defendants’ plan may be viewed by some as a wooden rejoinder to a third party’s discovery violation. In other words, the defendants’ motion for an order to show cause shall be denied, albeit without prejudice to a future request to initiate a contempt proceeding if, but only if, Fisher Door & Hardware, Inc. remains recalcitrant in the face of a court order requiring a response to the defendants’ subpoena.

IT IS SO ORDERED.

Dated: July 30, 2019



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge