

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BLUE STAR LAND SERVICES,)
)
Plaintiff,)
)
vs.)
)
THEO C. COLEMAN; JEFFREY D.)
MORRIS; AMARA S. JOHNSON f/k/a)
AMARA SINCLAIR; and ROCK)
CREEK LAND AND ENERGY)
COMPANY, LLC,)
)
Defendants.)

No. CIV-17-931-C

FILED UNDER SEAL

ORDER GRANTING *EX PARTE* CIVIL SEIZURE

Plaintiff seeks an *Ex Parte* Civil Seizure based on Defendants’ alleged theft of trade secrets. In support of their allegations, Plaintiff filed a lengthy Complaint along with numerous exhibits outlining their allegations against Defendants. Plaintiff then filed the present Motion which seeks relief pursuant to the Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.* (“DTSA”).

According to Plaintiff, Defendants are former employees who left their employment and began a competing business. Plaintiff alleges that prior to their departure, Defendants downloaded a significant amount of data containing trade secrets as defined by the DTSA. Defendants have then used that information to start their new business. According to Plaintiff, Defendants’ actions also violate terms of their employment agreements with Plaintiff as well as the fiduciary duty owed to Plaintiff.

The DTSA permits an ex parte seizure when “necessary to prevent the propagation or dissemination of the trade secret that is the subject of the action” 18 U.S.C. § 1836(b)(2)(A)(i). Prior to issuing the Order, the Court must find eight elements: 1) that an order issued pursuant to Rule 65 of the Federal Rules of Civil Procedure or another form of equitable relief would be inadequate to achieve the purpose; 2) Plaintiff will suffer an immediate and irreparable injury if such seizure is not ordered; 3) the harm to Plaintiff in denying the application outweighs the harm the Defendants may suffer to their legitimate interests and substantially outweighs the harm to any third parties who may be harmed by such seizure; 4) Plaintiff is likely to succeed in showing that Defendants took a trade secret(s) by improper means or conspired to use improper means to misappropriate the trade secret(s); 5) Defendants have actual possession of the trade secret(s) and any property to be seized; 6) the application describes with reasonable particularity the matter to be seized and, to the extent reasonable under the circumstances, identifies the location where the matter is to be seized; 7) if given notice prior to seizure, Defendants, or persons acting in concert with Defendants, would destroy, move, hide, or otherwise make the trade secret(s) inaccessible to the court; and 8) Plaintiff has not publicized the requested seizure.

After review of Plaintiff’s Complaint and the supporting documentation, the Court finds that Plaintiff has alleged facts demonstrating Defendants have improperly obtained trade secrets in violation of the DTSA. Given the manner in which Defendants allegedly took the trade secret(s), their alleged duplicity with Plaintiff, and considering the nature of the trade secret(s), an Order pursuant to Fed. R. Civ. P. 65 would be ineffective. Defendants could easily copy the information onto another computer or other storage

media without the knowledge of Plaintiff or the Court. Further, Defendants' prior actions demonstrate a willingness to evade or ignore the law. Plaintiff has outlined the harm it will suffer if the seizure is not ordered, and the Court finds that harm cannot be remedied by other means. Any harm to Defendants from the seizure is outweighed by the harm to Plaintiff of denying the request. Plaintiff has as narrowly as practical identified the items to be seized and the type of search to be performed.

Accordingly, it is ORDERED that:

1. The United States Marshal shall seize any of the following materials located, on information and belief, on and through the below-described devices at Defendants' business location, 330 NW 10th Street, Oklahoma City, OK 73103:

- Any computers, computer hard drives, or memory devices in Defendants' possession that may contain the Blue Star Trade-Secret Information downloaded to Defendants' personal devices and accounts (any of the following electronic devices that might be on or about Defendants' work space, including: smart phones, tablets, desktop computers, laptop computers, and disks, memory files, flash drives, hard drives, thumb drives, and the like);
- The username and password information for the above-described devices, including any codes required to overcome encryption; and
- The username and password information needed to access the Defendants' Dropbox accounts and/or Rock Creek email accounts. And after a third-party forensic analyst reviews the obtained forensic images, the username and password information needed to access any and all devices and locations (including email) where Blue Star's Trade-Secret Information is found or strongly suspected to be housed (collectively with all the above "Property Subject to Seizure").

2. Ernst & Young will image the Property Subject to Seizure by accessing the devices or storage locations, to preserve the evidence located thereon by imaging and then

review the contents for Blue Star's alleged Trade-Secret Information. As used herein, the Trade-Secret Information are those documents specifically identified by filename on Exhibits 1-2 through 1-8 and in Exhibit 26 (Trade-Secret Exhibit) of Plaintiff's Verified Complaint (Dkt #3).

3. To effectuate seizure of the Trade-Secret Information on cloud-based storage facilities, the United States Marshal, with any necessary assistance of the third-party forensic analyst, is ordered to temporarily change the passwords to the cloud locations or specific folders/sub-folders housing Trade-Secret Information (as well as take any related, necessary steps to ensure the security of the information, *e.g.*, temporarily changing the authorized controller of the account to the Court, so no one but the Marshal at the Court's direction can change the password on the account by simply calling Dropbox). This shall be accomplished in the most reasonably narrow manner available that also fully protects the seized information from access.

4. Neither Defendants nor Plaintiff shall have access to any of the seized information until the hearing on this matter is completed.

5. Any entrance onto Defendant's premises for the seizure set forth herein shall occur between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. Defendants are Ordered to provide access to all areas and property necessary to effectuate the terms of the seizure ordered herein.

6. The U.S. Marshal on behalf of the Court will hold all materials seized. The only party granted access to any seized material shall be representatives of Ernst & Young who are serving as forensic examiners in this matter.

7. A copy of this Order and Plaintiff's Complaint and accompanying exhibits shall be provided to Defendants at the time the seizure occurs.

8. This matter is set for hearing at 10:00 a.m. on Thursday, September 7, 2017, in Courtroom 501.

9. As required by 18 U.S.C. § 1836(b)(2)(B)(vi), Plaintiff shall post a bond in the amount of \$250,000.00 to protect against any damages for wrongful seizure. The seizure ordered herein shall not occur until the bond has been posted.

10. IT IS ORDERED that Ernst & Young shall not disclose any information learned or obtained by its examination to any party until further Order of the Court. See 18 U.S.C. § 1836(b)(2)(E).

As set forth more fully herein, Plaintiff's Motion for Ex Parte Civil Seizure Order (Dkt. No. 4) is GRANTED.

IT IS SO ORDERED this 30th day of August, 2017.


ROBIN J. CAUTHRON
United States District Judge