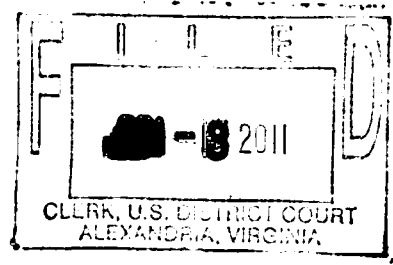


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



AXIOM RESOURCE)
MANAGEMENT, INC.,)
)
Plaintiff,)
)
v.)
)
ALFOTECH SOLUTIONS, LLC, *et al.*,)
)
Defendants.)
_____)

Civil Action No. 1:10cv1011 (LMB/JFA)

REPORT AND RECOMMENDATION

This matter is before the court on two motions filed by plaintiff Axiom Resource Management, Inc. (“Axiom”) against defendants Alfotech Solutions, LLC (“Alfotech”) and Garnel Alford (“Alford”). The first is plaintiff’s Motion to Hold Defendants Garnel Alford and Alfotech in Contempt of Court and Refer Garnel Alford to the United States Attorney for the Eastern District of Virginia to Compel Compliance. (Docket no. 72) (“Motion for Contempt”). The second is plaintiff’s Motion to Impose Sanctions on Certain Defendants for Violation of Order to Compel Production of Documents. (Docket no. 98) (“Motion for Sanctions”). Given the nature of the sanctions that the undersigned believes are appropriate, a report and recommendation is being submitted to the District Judge pursuant to 28 U.S.C. § 636(b).

Procedural Background

This case was initiated by the filing of a complaint by Axiom on September 9, 2010 naming as defendants Alfotech, Alford, five additional named defendants, and ten Doe

defendants.¹ (Docket no. 1) (“Compl.”). Plaintiff’s complaint alleged that defendants engaged in a fraudulent scheme in which they unlawfully withheld or diverted payments from the United States that were due to plaintiff under a subcontract. (See Docket no. 1-2).

Plaintiff’s complaint sought money damages of \$502,812.05 under theories of fraud in the inducement (Count II), constructive fraud/constructive fraud in the inducement (Count III), breach of contract (Count IV), conversion (Count V), unjust enrichment/quasi-contract (Count VII) by all defendants, and violations of Virginia Code § 8.01-27, *et seq.* by Alfotech, Alford, and defendant Carrie Cotton (“Cotton”) (Count VI). Plaintiff’s complaint also sought treble damages of \$1,508,436.15 for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.* (Count I). Finally, plaintiff sought an accounting of all the monies defendants have received from the U.S. government (Count VIII), a pre-judgment attachment of the treble damages sought pursuant to Va. Code § 8.01-533 and -534 (Count IX), as well as punitive damages, attorney’s fees and costs.

Plaintiff filed with the complaint an *Ex Parte* Motion for a Temporary Restraining Order and Preliminary Injunction Seeking an Attachment of Certain Assets Pending a Final Judgment (Docket no. 2) (“TRO Motion”) along with a memorandum in support (Docket no. 3) and a notice of hearing date (Docket no. 4). On September 17, 2010, after hearing the argument of plaintiff’s counsel (Docket no. 7), the District Judge granted the TRO Motion (Docket no. 8).

In the Order issued on September 17, 2010 the District Judge required “that defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, be and are enjoined from withdrawing or otherwise disposing of any funds from Account Number XXXXXXXXXXXXX9466 held by Capitol One Bank located at

¹ The complaint named as defendants “Alfotech Solutions, LLC a/k/a ASI, Garnel E. Alford a/k/a Garnet E. Alford a/k/a Al Alford, George Alford, Jonathan S. Stapley, Francois E. Furman, Gail Alford, Carrie Cotton, and John and Jane Does 1-10.” (Docket no. 1).

1680 Capitol One Drive, McLean, VA 22101, and any and all bank accounts held in the name of defendant Alfotech that plaintiff shall identify.” (Docket no. 8) (“Temporary Restraining Order” or “TRO”). Pursuant to the TRO, plaintiff deposited a bond of \$5,000.00 with the court. (Docket no. 9).

Alfotech and Alford were served on September 20, 2010 by delivery of a copy of the complaint and summons to Gail Alford, wife of Garnel Alford, at 21215 Encino Ash, San Antonio, Texas, 78259; an answer to the complaint from each of Alfotech and Alford was due on October 12, 2010. (Docket nos. 14, 15). The affidavits of service state that Alfotech and Alford were also served with the following documents, in addition to the complaint and summons; plaintiff’s TRO Motion, the notice of hearing on the TRO Motion, the minute entry for the September 17, 2010 hearing, and the Temporary Restraining Order.² (Docket nos. 14, 15).

Pursuant to the TRO, a show cause hearing was held on October 1, 2010; defendants failed to appear and failed to file any objection to the proposed preliminary injunction. (Docket no. 23). That same day, the District Judge converted the Temporary Restraining Order into a Preliminary Injunction. (Docket no. 24) (“Preliminary Injunction”).

On October 26, 2010, defendants Alfotech and Alford filed an answer to plaintiff’s complaint. (Docket no. 38) (“Answer”). A Scheduling Order (Docket no. 33) and a Rule 16(b) Scheduling Order (Docket no. 49) were entered requiring that all discovery be concluded by March 11, 2011. On February 28, 2011, the undersigned granted plaintiff’s request to extend the discovery period until April 11, 2011 in order to implement and execute a settlement agreed to in principle by the parties. (Docket nos. 60, 61). On or around the April 11, 2011 discovery cut-

² The Temporary Restraining Order also ordered “pursuant to Federal Rule of Civil Procedure 65(b) that the defendants shall appear before this Court on the 1st day of October, 2010 at 10:00 A.M. to show cause, if there is any, why this Court should not enter a preliminary injunction enjoining them from conduct temporarily restrained by this Temporary Restraining Order.” (Docket no. 8).

off, the settlement appeared to have fallen apart as plaintiff begun filing various discovery motions and motions seeking a further extension of the discovery period.

A final pretrial conference was held on April 21, 2011, where the District Judge heard argument on a number of motions; plaintiff's Motion Seeking to Extend Discovery and Compel Responses to its Document Demands (Docket no. 65) ("Motion to Compel"), plaintiff's Motion for Contempt (Docket no. 72), and a Motion to Withdraw as Counsel filed by defendants' counsel (Docket no. 79).³ The District Judge permitted defendants' counsel to withdraw. (Docket no. 88). A jury trial was scheduled to begin on July 5, 2011. (Docket no. 87).

The District Judge granted in part plaintiff's Motion to Compel, ordering that "defendants produce all outstanding documentary discovery, including all requested checks, wire receipts, and bank statements, to the plaintiff by May 4, 2011." (Docket no. 89). Also on April 21, 2011, the District Judge issued an Order directing Alford to appear before the court to show cause as to why he should not be held in civil contempt for violating the TRO and Preliminary Injunction entered in this case.⁴ (Docket no. 90) ("Show Cause Order"). Defendant Alford was warned that "failure to appear at the hearing...shall constitute further cause for holding [him] in contempt of court and may result in [his] incarceration." (Docket no. 90). The U.S. Marshals Service served the Show Cause Order on Alford by substituted service on his wife, Gail Alford, at Alford's home at 21215 Encino Ash, San Antonio, Texas, 78259 on April 25, 2011. (Docket no. 96).

On May 6, 2011, plaintiff filed the Motion for Sanctions (Docket no. 98) along with a memorandum in support (Docket no. 98-1). Also on May 6, 2011, the District Judge found it appropriate to enter, in addition to the Show Cause Order, an Order directing that "all monies

³ Argument was also presented on plaintiff's Motion to Amend its Complaint to Add Defendants (Docket no. 67) which was denied by the District Judge.

⁴ Defendant Carrie Cotton was also ordered to show cause, however, the District Judge held that the show cause as to Ms. Cotton was satisfied on May 13, 2011. (Docket no. 108).

paid by the Government to the parties' (Plaintiff and Defendant Alfotech) joint escrow account...be held by an authorized representative and/or agent of TD Bank unless said funds are to be disbursed to Axiom Resource Management under the parties' escrow agreement until further order of this Court." (Docket no. 101). On May 11, 2011, substitute counsel for defendants Alfotech and Alford entered an appearance before the court. (Docket no. 104).

On May 13, 2011, a hearing was held on the Show Cause Order and argument was also presented on plaintiff's Motion for Sanctions. (Docket no. 108). Appearances were made by counsel for the parties and the individual defendants Alford and Cotton also appeared. *Id.* Later that day the District Judge issued an Order (Docket no. 109) holding open the Motion for Contempt (Docket no. 72), the Motion for Sanctions (Docket no. 98), and the Show Cause Order (Docket no. 90) as to Alfotech and Alford until May 27, 2011. The Order specifically required defendants to "fully comply with all outstanding discovery requests by providing the plaintiff with all requested bank records, checks, wire receipts, and other documents, or if such documents are not available, by providing signed and sworn affidavits, under penalty of perjury, to that effect" by May 27, 2011. (Docket no. 109). Further, Alfotech and Alford were ordered to "make a significant cash payment to the plaintiff as earnest money in this matter" by May 27, 2011. *Id.*

On May 27, 2011, counsel for the parties as well as the individual defendant Alford appeared before the undersigned. (Docket no. 111). Counsel for Alfotech and Alford agreed with plaintiff's counsel's representation that not a single document or affidavit as to the unavailability of documents was produced by defendants pursuant to the District Judge's Order of May 13, 2011. Counsel for defendants also stated that neither Alfotech nor Alford has made

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