

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

XEROX CORPORATION, a New York
corporation,

Plaintiff,

v.

ATLANTA MARKETING
SOLUTIONS, INC., a Georgia
corporation, PAULETTE E.
RAKESTRAW and JEFFREY S.
BRADDOCK,

Defendants.

CIVIL ACTION FILE

NO. 1:10-CV-0130-CC

ORDER AND JUDGMENT ON PLAINTIFF’S MOTION FOR CONTEMPT

This case is before the Court on Plaintiff’s Motion for Contempt of Court filed September 16, 2011 [Docket No. 55] (“Motion for Contempt”). Defendants Atlanta Marketing Solutions, Inc. (“Atlanta Marketing”), Paulette E. Rakestraw a/k/a Paulette Rakestraw Braddock (“Rakestraw”) and Jeffrey S. Braddock (“Braddock”) did not respond and the matter came before the Court at a hearing on May 30, 2012, at which Defendants and counsel for all parties appeared and presented evidence. Upon consideration of the Motion for Contempt, evidence and all matters of record, the Court **GRANTS** the Motion for Contempt and finds as follows:

Plaintiff initiated this action on an equipment lease, on account, and related guaranty by filing a Verified Complaint on January 15, 2010 [Docket No. 1]. After conducting some discovery, Plaintiff filed its initial Motion for Summary Judgment and to Dismiss Counterclaim on July 19, 2010 [Docket No. 20] (the “Initial MSJ”) based primarily on Plaintiff’s First Requests for Admission duly served on April 15, 2010 (the “1st RFAs”), which Defendants failed to answer. Thereafter, Defendants sought to withdraw their admissions to Plaintiff’s 1st RFAs. This Court initially struck Defendants’ Motion to Withdraw Admissions by way of Order dated November 10, 2010 [Docket No. 40]. After Defendants properly filed a Motion for Permission to File Motion to Withdraw Admissions [Docket No. 41], the Court entered an Order on March 28, 2011 [Docket No. 43] (the “March 28 Order”).

In the March 28 Order, this Court, among other things, vacated its earlier order, and granted Defendants’ Motion for Permission to File a Motion to Withdraw Admissions as well as Defendants’ Motion to Withdraw Admissions. This Court also denied, without prejudice to renew, Plaintiff’s Initial MSJ. This Court reopened the discovery period for 90 days and ordered Defendants to respond to all outstanding discovery requests within 10 days, which Defendants did. The March 28 Order also granted Plaintiff’s requests for attorney’s fees and directed Plaintiff to file a document within 10 days to support the amount

requested. Plaintiff's counsel filed an Affidavit on April 25, 2011, requesting \$17,929.60 in attorney's fees incurred in connection with the Initial MSJ. [Docket No. 22].

Thereafter, by way of Order dated July 26, 2011 [Docket No. 53] (the "July 26 Order"), the Court awarded \$17,929.60 in fees to Plaintiff.¹ This Court was very specific on the payment of Plaintiff's fees as follows:

As previously set forth by the Court, Defendants' former counsel, David Pardue, is responsible for payment of half of the fees awarded, \$8,964.80, and Defendants shall be responsible for the remaining, equal amount. These amounts are to be remitted to Plaintiff's counsel **within the next thirty (30) days**. Failure to pay these amounts to Plaintiff's counsel **will result in additional sanctions** (emphasis in original).

(July 26 Order, p. 2). Half of the fees awarded were timely paid by or on behalf of Mr. Pardue, Defendants' initial counsel. However, Defendants have admittedly failed to pay any amount as ordered in the July 26 Order.

Thereafter, counsel for Plaintiff attempted to confer with Defendants' third and current counsel of record, Robert A. Chambers, Esq., to resolve the outstanding attorney's fee issue. On September 1, 2011, counsel for Plaintiff called and wrote Defendants' counsel advising there had been no payment or

¹ As noted on the Court's docket, the July 26 Order was served via first class mail and certified mail, return receipt requested on Defendants' former counsel David L. Pardue, Esq., and served by other means on Defendants' current counsel Robert Chambers, Esq. At the hearing Defendant Rakestraw testified to having received the July 26, Order.

response to the July 26 Order in a good faith effort to resolve the matter. (See Motion for Contempt, Exhibit A) However, until the hearing on the Motion for Contempt, neither Defendants nor their counsel of record had responded in any fashion to the July 26 Order or counsel for Plaintiff.

The July 26 Order is a valid order of this Court that remains in effect. Despite the clear directive of the July 26 Order, there has been no payment of attorneys' fees from Defendants, and the July 26 Order remains unsatisfied after more than ten months. Plaintiff has shown by clear and convincing evidence Defendants' willful refusal to comply with the July 26 Order. Defendants failed to demonstrate they were excused from complying with the July 26 Order. See Taylor v. Teledyne Technologies, Inc., 338 F. Supp. 2d 1323 (N.D. Ga. 2004). Thus, Defendants are and continue to be in contempt of this Court.

"Civil contempt 'may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard.'" Serra Chevrolet, Inc. v. Gen. Motors Corp., 446 F.3d 1137, 1147 (11th Cir. 2006) (quoting Int'l Union, United Mine Workers of Am. V. Bagwell, 512 U.S. 821, 827-28 (1994)) (omission in original). Defendants' actions have delayed the proceedings in this case and have shown lack of respect for the Court, Plaintiff, and Plaintiff's counsel.

Due to Defendants' conduct, it has been necessary for Plaintiff to incur attorney's fees and costs in order to enforce the Court's July 26 Order. It is within

this Court's inherent power to award attorney's fees for willful disobedience of a court order. Taylor, 338 F. Supp. 2d at 1368 (citations omitted). At the hearing, this Court awarded attorney's fees to Plaintiff and instructed Plaintiff's counsel to provide information regarding the amount of fees and expenses incurred in bringing the Motion for Contempt. On June 7, 2011, Plaintiff's counsel complied with this Court's instruction by filing an affidavit setting forth the fees and expenses incurred and attaching an itemization of the services rendered, including a description of services provided and the amount of time devoted to these services. The Court has conducted a review of Plaintiff's filing and finds that both the hourly rate of Plaintiff's counsel and the number of hours devoted as set forth in the affidavit and accompanying materials are reasonable and necessarily incurred, based on the Court's knowledge of this litigation, the prevailing rate charged by attorneys in this district, and the experience and expertise of Plaintiff's counsel. For these reasons, the Court will award Plaintiff \$5,280.00 in attorneys' fees and \$30.97 in expenses.

IT IS HEREBY ORDERED that Defendants shall within ninety (90) days of entry of this Order pay the amount of \$8,964.80 to Plaintiff's counsel as previously directed in the July 26 Order.

IT IS HEREBY ORDERED that, upon Defendants' failure to timely pay said amount, the United States Marshall shall apprehend Defendants and that

Defendants there and then be taken into custody and then be incarcerated until such time as they shall purge themselves of their contempt.

IT IS HEREBY FURTHER ORDERED that Defendants shall pay reasonable attorney's fees and expenses of \$5,310.97 for the costs to Plaintiff of preparing and prosecuting the Motion for Contempt, and the judgment shall issue against Defendants, jointly and severally, in that amount.

This 28th day of June, 2012.

s/ CLARENCE COOPER
Clarence Cooper
United States District Court Judge

Presented by:

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