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IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2015-020574-CA-01

GREEN TREE SERVICING, LLC,

Plaintiff.

vs.

WILSON MARIN, PAOLA SIBON, et al.,

Defendants.

_____ /

Proceedings had and taken place before the
Honorable Pedro Echarte, one of the Judges of said
Court, at the Miami-Dade County Courthouse, 73
West Flagler Street, Miami, Florida, on Thursday,
the 16th day of November 2017, commencing at the
hour of 9:33 a.m., and being a Hearing.

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APPEARANCES:

Appearing on behalf of the Plaintiffs:

GLADSTONE LAW GROUP
1515 South Federal Highway, Suite 100
Boca Raton, Florida 33432
561-338-4101
Amcneil@gladstonelawgroup.com
BY: AMINA MCNEIL, ESQUIRE

Appearing on behalf of the Defendant:

JACOBS KEELEY, PLLC
169 East Flagler Street, Suite 1620
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305-358-7991
Efile@jakelegal.com
BY: BRUCE JACOBS, ESQUIRE

1 (Thereupon, the following proceedings were
2 had:)

3 THE COURT: Announce your appearances,
4 please.

5 MS. MCNEIL: Amina McNeil on behalf of the
6 Plaintiff.

7 MR. JACOBS: Good morning, Your Honor. Bruce
8 Jacobs on behalf of the defense.

9 THE COURT: Okay. I believe it's your
10 motion. You may approach the lectern, but give me
11 one second while I open my computer.

12 Did you draft the motion?

13 MR. JACOBS: It was my motion, yes.

14 THE COURT: It's excellent.

15 MR. JACOBS: Thank you, Your Honor.

16 THE COURT: You may proceed.

17 MR. JACOBS: So, Your Honor, we are here on a
18 motion for order to show cause against the
19 Plaintiff for violating Your Honor's order, for
20 violating rule 1.380, and also, under the Florida
21 Rules of Judicial Administration, 2.420, for
22 filing an improper motion to seal records.

23 To be clear. Ms. McNeil and I have worked
24 together on many cases. This was not Ms. McNeil's
25 doing. She was accompanied by a managing partner

1 of her firm at the deposition that was held at
2 midnight on Sunday morning pursuant to the Court's
3 order. I just want to make sure that the Court
4 understands when --

5 THE COURT: Did you guys really show up for
6 the midnight depo?

7 MR. JACOBS: Absolutely.

8 THE COURT: I want you guys to know that I've
9 been doing that for 20 years and you two are the
10 first that couldn't agree on a normal reasonable
11 date and time for a deposition. Shame on both of
12 you.

13 I want to know why you guys didn't reach an
14 agreement and I want to hear from Plaintiff. Why
15 didn't you reach an agreement about the
16 deposition?

17 MS. MCNEIL: Your Honor, leading up to the
18 deposition --

19 THE COURT: Why didn't you reach an agreement
20 on the date and time of the deposition?

21 Why did all of you idiots go to a deposition
22 at midnight on Sunday?

23 MS. MCNEIL: The dates that worked for our
24 client compared to the dates that were offered by
25 opposing counsel, the only date that would work

1 was that Friday before deposition. That Friday
2 before deposition, opposing counsel indicated that
3 the deposition would have to start in the morning
4 and that it would have to cut off at a certain
5 time of day due to his sabbath.

6 THE COURT: Who?

7 MS. MCNEIL: The 21st was one of the dates
8 that we felt could work based on the dates that
9 were -- there were four dates proposed by opposing
10 counsel.

11 THE COURT: Who needed to terminate the depo
12 early?

13 MS. MCNEIL: Mr. Jacobs would've had to
14 terminate the deposition by a certain time of the
15 day because his sabbath begins at sundown.

16 THE COURT: Okay. So what's wrong with that?

17 MS. MCNEIL: There's nothing wrong with that,
18 Your Honor. Our witness could not start the
19 deposition until the afternoon and in the
20 discussions --

21 THE COURT: Well, I'm glad you had fun at
22 midnight. All right. Back to you.

23 MR. JACOBS: Your Honor, to properly explain
24 what went down, we sent out -- June 30th was the
25 first email saying we need to get this deposition

1 going. We asked them for dates. June -- July
2 10th, 10 days later, they said we have one day,
3 July 21st at 2:00 in the afternoon.

4 THE COURT: Don't worry about it. This isn't
5 about --

6 MR. JACOBS: But it is important, Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. JACOBS: So what happens is they say
9 we're not agreeing. We set it for Saturday night.
10 The Thursday before the depo, I meet the
11 Plaintiff's witness in court. We had a trial that
12 didn't go forward. He came over to me saying what
13 are we doing? We're trying to get the training
14 manuals together. What can we do about the depo?

15 I said look, this is so silly. I don't want
16 to be there on a Saturday night. You don't want
17 to be there. I will make my office -- I will have
18 a court reporter on standby. You're in trial all
19 day Friday.

20 At some point, you're going to be sitting
21 around doing nothing, come to my office. If you
22 need to take a break, you will go back over. I'm
23 right down the street. It won't be a problem.

24 I sent an email over to Plaintiff's counsel
25 saying that's what's going on. Their response was

1 you talked to our client without our permission.
2 I said I was just trying to get -- he asked me
3 about scheduling. I said I will make myself
4 available all day on Friday. I called multiple
5 times. No response.

6 Their only answer was would you agree to a
7 confidentiality provision. I said what is
8 confidential about these records if the witness is
9 every day saying I reviewed these records and this
10 is what they say?

11 They're testifying to the contents of the
12 records every day. There's not even a good faith
13 basis to claim they're confidential. To which, I
14 got no response, and then I show up on Saturday
15 night. I walk into my office.

16 There's two lawyers, the managing partner,
17 plus the witness and Ms. McNeil. They sit down
18 and they say we're not giving you the records. I
19 said why did you make me come here? We already
20 did the deposition of the witness.

21 THE COURT: Listen, I reviewed your motion.

22 MR. JACOBS: Okay.

23 THE COURT: Let me hear from Plaintiff. Who
24 decided to not turn over the records?

25 MS. MCNEIL: Our office --

1 THE COURT: Your office doesn't make
2 decisions. Who decided?

3 MS. MCNEIL: Our client, Your Honor, in
4 discussion with their legal department.

5 THE COURT: Huh?

6 MS. MCNEIL: Our client, Green Tree slash
7 Ditech and --

8 THE COURT: Give me the name of a person
9 because I want to know who goes to jail, along
10 with the lawyer.

11 MS. MCNEIL: Your Honor, if I may respond and
12 make some argument on this issue?

13 THE COURT: You may.

14 MS. MCNEIL: Your Honor, before this
15 deposition took place, at the case management
16 conference, as both of our motions mentioned, the
17 Court ordered that we turn over these documents.
18 This was after --

19 THE COURT: Was there any part of the order
20 that you did not understand?

21 MS. MCNEIL: No, Your Honor, there was not.

22 THE COURT: Okay. So it isn't confusion over
23 what my order said?

24 MS. MCNEIL: Correct, Your Honor. However,
25 our position has been and has always been the

1 same, that the documents being asked for are
2 confidential. They're privileged and they're work
3 product.

4 THE COURT: None of those positions were
5 taken in either your motion, your objection. This
6 is the first time I hear that you're pretending
7 that there's some privilege or confidentiality
8 with respect to those records.

9 MS. MCNEIL: Your Honor, in our initial
10 motion for protective order, we did say that we
11 had an issue with the request for duces tecum --

12 THE COURT: Show me where that motion
13 mentions the word privilege.

14 MS. MCNEIL: I have a copy of the motion,
15 Your Honor.

16 THE COURT: I reviewed it yesterday. I'm
17 confident that it does not. As soon as you find
18 that, you're going to direct my attention to the
19 privilege log you filed.

20 MS. MCNEIL: We did not file a privilege log,
21 Your Honor.

22 THE COURT: I know that, nor did you contend
23 that this was in any way privileged. You're
24 telling me privileged now. Show me where the
25 motion says it, counsel.

1 MS. MCNEIL: In our motion to seal them, Your
2 Honor. If I may? When we cited it in paragraph
3 --

4 THE COURT: Motion to seal?

5 MS. MCNEIL: And bar dissemination of
6 confidential materials, Your Honor, in paragraph
7 --

8 THE COURT: Where does it say privileged?

9 MS. MCNEIL: In paragraph five where we argue
10 that Florida courts specifically hold that company
11 policies, procedures, manuals, and training
12 materials are considered irrelevant, privileged
13 work product, and should not be disclosed.

14 Then we cite our case law backing up that
15 argument, Your Honor.

16 THE COURT: I ordered that they be produced.
17 You could have taken an appeal and you chose not
18 to do it. Somebody made a conscious decision to
19 violate my order. That person or persons will
20 soon regret that decision.

21 MS. MCNEIL: Your Honor --

22 THE COURT: So I will give you a very brief
23 moment to convince me to not report you, your
24 partners to the Florida Bar and to start holding
25 contempt hearings on this issue.

1 MS. MCNEIL: Yes, Your Honor.

2 In response to the motion, Your Honor,
3 despite the position of opposing counsel and also,
4 I fully understand the Court's positions.

5 THE COURT: No, you don't. You really don't
6 because you would have turned over the materials
7 if you understood my position. You would have
8 made sure that this matter doesn't come to my
9 attention. Bad things are going to happen now.
10 Continue.

11 MS. MCNEIL: We truly do have a concern about
12 the training -- not the training manual, the
13 specific training document that our witness
14 referenced as part --

15 THE COURT: I don't care if you have a
16 concern about it. I ordered it to be produced.

17 MS. MCNEIL: But we know that that document
18 based on conversations with opposing counsel that
19 he wants those documents to be public to paint our
20 client in a bad light. We feel that --

21 THE COURT: Public?

22 MS. MCNEIL: Public, yes, Your Honor.

23 THE COURT: Public?

24 MS. MCNEIL: Public.

25 THE COURT: How so?

1 MS. MCNEIL: In discussions with opposing
2 counsel on this matter, he has already indicated
3 to me personally that he has no issue at all with
4 letting this manual that we turn over be released
5 to the public, so that he can show everyone that
6 the banks are liars, are crooked, or that the
7 boarding process that was --

8 THE COURT: What action did you take other
9 than willfully violate my order?

10 MS. MCNEIL: This is why we felt that
11 legally, our best course of action was to file the
12 motion to seal -- the motion to seal and permit
13 dissemination --

14 THE COURT: It's clearly a legally
15 insufficient motion.

16 MS. MCNEIL: To try to reach an agreement
17 with opposing counsel --

18 THE COURT: Why didn't you file a legally
19 sufficient motion and schedule it for hearing?

20 MS. MCNEIL: We tried. We did submit the
21 motion on an emergency basis, Your Honor. We were
22 informed that the motion would not be heard on an
23 emergency basis and that we would have to set it
24 for hearing.

25 Given the amount of time between when the

1 motion was submitted and the time --

2 THE COURT: How many motion calendars have I
3 had since then? I have one every Monday and every
4 Wednesday.

5 How many motion calendars have I had?

6 MS. MCNEIL: You have one every week that I
7 know of.

8 THE COURT: No. I have two every week. How
9 many have I had since you filed your motion,
10 counsel?

11 MS. MCNEIL: Approximately, it's been four
12 months if my calculations are correct. 16 times 2
13 would be 32, Your Honor.

14 THE COURT: You couldn't get on any of those
15 motion calendars?

16 MS. MCNEIL: This one will have to be a
17 special set motion. I have --

18 THE COURT: Why would it have to be a special
19 set motion? You don't think that I could do that
20 in like one minute?

21 This is not going well for you. Are you
22 getting that drift?

23 MS. MCNEIL: Yes, Your Honor, I am.

24 THE COURT: Oh, good. So what do you suggest
25 that we do before bad things happen?

1 MS. MCNEIL: Turn over the material.

2 THE COURT: Did you bring it?

3 MS. MCNEIL: I do not have a copy on me, Your
4 Honor, but I could produce it by the end of the
5 day.

6 THE COURT: You're going to produce it before
7 noon, before noon today.

8 MS. MCNEIL: Yes, Your Honor.

9 THE COURT: Do I understand that?

10 MS. MCNEIL: Yes, Your Honor.

11 THE COURT: All right.

12 MS. MCNEIL: May I have further access to the
13 record, Your Honor?

14 THE COURT: Counsel?

15 MR. JACOBS: Yes, Your Honor.

16 THE COURT: You will prepare an order to show
17 cause against each lawyer involved and against the
18 party. Who is the individual that appeared for
19 the deposition?

20 MR. JACOBS: Chris Ogden (phonetic).

21 MS. MCNEIL: Chris Ogden is our witness.

22 THE COURT: I'm going to issue an order to
23 show cause. It's going to be for indirect
24 criminal contempt. Okay?

25 MR. JACOBS: Yes, Your Honor.

1 THE COURT: It's going to recite the facts as
2 set forth in your motion. It's going to advise
3 each of the people that the order is directed
4 against that they have a right to counsel. This
5 is a criminal matter.

6 Each one has a right to counsel and if they
7 cannot afford counsel, one will be appointed for
8 them. If anyone pretends that they cannot afford
9 counsel, keep in mind that your finances will
10 become public record. Am I clear?

11 MS. MCNEIL: Yes, Your Honor.

12 THE COURT: All right. If you're found in
13 contempt of court because it's indirect criminal
14 contempt, you may be facing jail. You may be
15 facing an adjudication. You may be facing
16 probation. You may be facing other sanctions.

17 If I find any lawyer to be in contempt of
18 court, the matter is going to be referred to the
19 Florida Bar. You will leave a blank for date and
20 time that each of these people must appear in
21 court to show cause why they should not be held in
22 indirect criminal contempt.

23 Give me one moment.

24 The order will provide that failure to appear
25 at the show cause hearing as ordered by the Court

1 will result in a writ of bodily attachment being
2 issued for the immediate arrest of whoever does
3 not appear.

4 MR. JACOBS: To be clear, it's Ms. McNeil,
5 Ms. Hudson were the two lawyers involved and then
6 Chris Ogden is the witness. Those are the only
7 three people you want named.

8 THE COURT: Those are the three people that
9 seem to warrant an order, but give me a moment
10 because I want to make sure that I cover
11 everything.

12 I take good notes. The wherefore part of the
13 order will indicate that the name of the
14 individual must slash shall appear before this
15 Court on blank date and time.

16 It will have the courtroom number, courthouse
17 address for arraignment on the order to show cause
18 why he or she should not be held in indirect
19 criminal contempt for the apparent willful
20 violation of this Court's order requiring the
21 production of the training manual if the named
22 individual fails to appear as ordered, a warrant
23 for his or her arrest shall be issued.

24 At arraignment, if whoever it is pleads
25 guilty, a sentencing hearing shall be scheduled.

1 At which time, the individual shall have an
2 opportunity to show cause why sentence should not
3 be pronounced and shall also have the opportunity
4 to present evidence of mitigating circumstances
5 prior to any sentencing.

6 If the individual pleads not guilty, the case
7 shall be properly set for trial and if the
8 individual is found guilty, the individual shall
9 have the opportunity to show cause why sentence
10 should not be pronounced and shall also have the
11 opportunity to present evidence of mitigating
12 circumstances prior to any sentencing.

13 The body of the order must advise the
14 individual that he or she has the right to be
15 represented by an attorney. If he or she cannot
16 afford the services of an attorney, they must ask
17 the Court for the appointment of an attorney and
18 must demonstrate the financial inability to retain
19 counsel.

20 I'm appointing you to prosecute this indirect
21 criminal contempt.

22 MR. JACOBS: Yes, Your Honor.

23 THE COURT: And the order shall so reflect.
24 I strongly suggest criminal lawyers as opposed to
25 civil lawyers.

1 MS. MCNEIL: Yes, Your Honor.

2 THE COURT: But I will let you decide that.

3 MS. MCNEIL: Your Honor, may I have access to
4 the record?

5 THE COURT: Sure, as soon as I'm done.

6 MS. MCNEIL: Yes, Your Honor.

7 THE COURT: You can file whatever you want to
8 file. I'm not going to sit here and listen to
9 you. You need to understand you have the right to
10 not incriminate yourself. You should be very,
11 very careful. If these documents are not turned
12 over by noon today, I'm going to issue a second
13 order to show cause. There will be two.

14 Do you understand me?

15 MS. MCNEIL: Yes, Your Honor.

16 THE COURT: All right.

17 MS. MCNEIL: I do have a question. The
18 document has passwords on it and log in
19 information. May that information be redacted?

20 THE COURT: I don't know what that
21 information -- passwords?

22 MS. MCNEIL: Like log in information, it has
23 log in information on --

24 THE COURT: That may be redacted. Feel free
25 to work this out before I see you.

1 MS. MCNEIL: Yes, Your Honor.

2 THE COURT: Everybody, have a good day.

3 (Off the Record).

4 MS. MCNEIL: The Court has ordered criminal
5 contempt against counsel of record, including the
6 managing partner and the witness that appeared at
7 deposition.

8 The Plaintiff would note that her -- the case
9 law stated in Moakley v. Smallwood, 826 So. 2d
10 221, which is a Florida Supreme Court case, that
11 while the Court has an inherent authority to
12 impose sanctions, that such authority should be
13 used with restraint and consider due process as
14 well.

15 The Court in that case also notes that just
16 like sanctions for bad faith conduct -- strike
17 that. That as contempt should be held in the same
18 regard as bad faith conduct, such course of action
19 should only be used in the most extreme cases of
20 bad faith conduct being avowed.

21 The Plaintiff states in its own defense that
22 this is the first instance in this matter that
23 Plaintiff has not complied with a court order.
24 Plaintiff appeared -- counsel for Plaintiff
25 appeared before the Court today and did attempt to

1 explain its reasonings, which they do still
2 maintain were taken in good faith in an effort to
3 zealously represent its client, to come to a
4 resolution with opposing counsel to resolve the
5 issue as to turning over of the training manuals.

6 This reasoning has not been accepted by the
7 Court. However, that does not mean that it is
8 inherently bad faith or it is an extreme
9 indication of bad faith.

10 At best, the actions taken by Plaintiff
11 leading up to the deposition may be negligent, but
12 they certainly are not willful, extreme, or in bad
13 faith. Plaintiff asserts Moakley versus Smallwood
14 as cited, as well as the Kozel factors that also
15 discuss sanctions and other actions against
16 Plaintiff should be taken. That the behavior of
17 the Plaintiff does not meet the standard.

18 And we would ask the Court to consider
19 issuing criminal contempt sanctions, which is the
20 most extreme sanction of all, against the parties.
21 That's it.

22 (The proceedings were concluded at 10:05
23 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, Aaron Arcella, Court Reporter, certify that I was authorized to and did report the foregoing proceedings, and that the transcript is a true and correct transcription of my notes to the proceedings.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Signed this 17th day of November, 2017.

Aaron Arcella, Court Reporter