

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

FILED

IN THE GENERAL COURT OF JUSTICE

DISTRICT COURT DIVISION

FILE NO: 18 CVD 345

2018 SEP 26 PM 4:33

HAYWOOD COUNTY, C.S.C.

MCLEAN LAW FIRM, P.A.,

Plaintiff,

vs.

LISA A. KOSIR,

Defendant.

MOTION TO COMPEL

OCT 8 2018

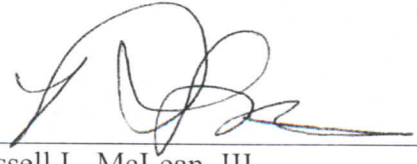
NOW COMES the Plaintiff and moves the court pursuant to Rule 37 (a) of the Rules of Civil Procedure for an order compelling the Defendant Lisa A. Kosir, to make discovery, and respectively shows the Court:

1. On JULY 2ND, 2018, the Plaintiff duly served on Defendant Request for Production of Documents to Lisa A. Kosir
2. A copy of Plaintiff's Request for Production of Documents is attached.
3. Defendants has not responded to Plaintiff's Request for Production of Documents.
4. That on August 30th, 2018 by email, the undersigned council asked the Defendant's attorney to produce the discovery within 10 days, in the document attached. Your undersigned here by certifies that this request was made to Joy McIver, attorney.
5. Plaintiff requests that this verified motion be received as an affidavit.

WHEREFORE, movant requests of the court:

- 1 To compel the Defendant to respond to Plaintiff's Request for Production of Documents.
- 2.. The cost of this motion including reasonable attorney fees be charged to Defendant.
3. For such other and further relief as the court may deem just and proper.

This the 25th day of September 2018.



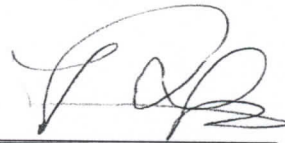
Russell L. McLean, III
Pro Se
P.O. Box 4
Waynesville, North Carolina 28786
(828) 452-2896

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Motion by U.S. Mail to the following:

This the 25th day of September 2018.

Joy McIver
89 Montford Avenue
Asheville, NC 28801



Russell L. McLean, III
Pro Se
P.O. Box 4
Waynesville, NC 28786
Phone: (828) 452-2896
Fax: (828) 356-6517

FILED
2018 SEP 26 PM 4:35
AYWOOD COUNTY, C.S.C.

STATE OF NORTH CAROLINA

HAYWOOD

County

File No.

18 CVD 345

Film No.

FILED

2018 SEP 27 10 09 23

In The General Court Of Justice

District Superior Court Division Small Claims

Name Of Plaintiff/Petitioner

MCLEAN LAW FIRM, PA

VERSUS

Handwritten initials

Name Of Defendant/Respondent

LISA KOSIR

ORDER

DISMISSAL With Prejudice Without Prejudice

This action is dismissed for the following reason:

- The plaintiff elected not to prosecute this action and has moved for dismissal.
- Neither the plaintiff, nor the defendant appeared on the scheduled trial date.
- The plaintiff failed to appear on the scheduled trial date; the defendant did appear on that date and has moved to dismiss this action.
- Other:

DISCONTINUANCE [G.S. 1A-1, Rule 4(e)]

The defendant has never been served in this action, and more than ninety (90) days have elapsed since the last summons was issued.

CONTINUANCE

The trial of this action is continued to the following date and time on motion of the

- Plaintiff
- Defendant
- Judge or Magistrate

Other: (specify)

NOT REACHED

Date Of New Trial

10-29-2018

Time Of New Trial

0900

AM PM

Location Of New Trial

HAYWOOD CO DOMESTIC RELATIONS SESSION

BANKRUPTCY

It is ordered that this action be removed from the active calendar and placed on inactive status because a petition for bankruptcy has been filed staying this proceeding. This action may be reinstated if the claim is not resolved in the U.S. Bankruptcy or District Courts.

Date

09-27-2018

Signature

Handwritten signature: Anne Foye

Judge Magistrate
 Assistant CSC Clerk Of Superior Court

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO: 18 CVD 345

2018 SEP 14

CO., C.S.C.

MCLEAN LAW FIRM, P.A.
Plaintiff

vs.

MOTION TO DISMISS/REPLY/
MOTION FOR SANCTIONS

LISA A. KOSIR
Defendant

MOTION TO DISMISS MOTION AND ORDER TO SHOW CAUSE

NOW COMES the Defendant, pursuant to N.C.G.S. § 1A-1, Rule 12 moving that the Plaintiff's claims for contempt, and seeking an order to show cause, filed August 1, 2018, be dismissed, and in support of this motion the Defendant alleges and says as follows:

1. That the Plaintiff's motion for contempt fails to state a basis upon which relief may be granted.
2. That the Court lacks subject matter jurisdiction to issue the particular relief sought by the Plaintiff based upon the Plaintiff's pleadings and the previously entered consent order.
3. That the Plaintiff has failed to join a necessary party to litigate the ownership of files or documents not owned by the Plaintiff, as constituted in the original complaint and order.

REPLY

Now comes the Defendant replying to the allegations contained in Plaintiff's amended motion to show cause filed August 1, 2018 in the above captioned matter.

1. The allegations contained in paragraph 1 of the Plaintiff's amended motion to show cause are hereby denied.
2. That the allegations contained in paragraph 2 of the Plaintiff's amended motion to show cause are denied.

3. That the allegations contained in paragraph 3 of the Plaintiff's motion are denied.
4. That the allegations of paragraph 4 of Plaintiff's motion are denied, in that it was clear the order directed New Meridian to deliver certain files to each party.
5. That the Defendant is without sufficient information to admit or deny the allegations contained in paragraph 5 of Plaintiff's motion.
6. That as to paragraph 6 of the Defendant's motion, the Defendant is without sufficient information to admit or deny what actions New Meridian took; however, it is admitted that files were opened and/or transferred and that some of them were password protected.
7. That as to the allegations contained in paragraph 7 of the Plaintiff's motion, the Defendant is without sufficient information to admit or deny what New Meridian has the capability to do or not to do.
8. That the allegations contained in paragraph 8 of the Plaintiff's motion are hereby admitted in that the Plaintiff's counsel at the time Russell McLean, who was acting as his own attorney at the time, contacted the undersigned attorney by text and asked about a password, and that the undersigned provided a password on the same day.
9. That the Defendant is without sufficient information to admit or deny the allegations contained in paragraph 9.
10. That the Defendant is without sufficient information to admit or deny the allegations contained in paragraph 10 of the Plaintiff's motion.
11. That as to the allegations contained in paragraph 11 of the Plaintiff's motion the Defendant says as follows:
 - a. It is admitted that the Defendant's attorney attempted to provide additional password possibilities, but is without sufficient information to admit or deny what was or was not opened.
 - b. That it is admitted that the Defendant's sister tendered to Russell McLean, after speaking Defendant, an additional possible password, which opened the QuickBooks Trust Account and Operating Accounts.
 - c. That it is denied that Tennessee total property, Total house cost, and Lisa and Rusty File are properties of McLean Law Firm, P.A.

12. That the allegations contained in paragraph 12 do not have sufficient specificity to allow the Defendant to admit or deny the same, as the Defendant has provided all passwords to which she has access or knowledge.
13. That the allegations contained in paragraph 13 of the Plaintiff's motion are hereby denied.
14. That the allegations contained in paragraph 14 of Plaintiff's motion are hereby denied.
15. That the allegations contained in paragraph 15 of Plaintiff's motion are hereby denied.
16. That the allegations contained in paragraph 16 of Plaintiff's motion are hereby denied.
17. That the allegations contained in paragraph 17 of Plaintiff's motion are hereby denied.
18. That the allegations contained in paragraph 18 of Plaintiff's motion are hereby denied.

MOTION FOR SANCTIONS

Now comes the Defendant pursuant to North Carolina General Statute 1A-1, Rule 11 and seeks to have Plaintiff sanctioned for the filing of a motion which he and his attorney know, or should know, contains false and misleading statements resulting in document which is both legally and factually inappropriate to be filed.


1. That the consent order April 17, 2018, states that "All programming of trust account ledgers and any other programs owned by the Plaintiff or the Defendant, or Lisa A. Kosir, PLLC, shall be delivered to the respective party/person and the compute purged of proprietary information of the Plaintiff or the Defendant/Lisa A. Kosir, PLLC.
2. That the files sought by the Plaintiff, are not files of McLean Law Firm, P.A., and are, at best, files of either Russell Mclean in his personal capacity or the Defendant, or the Defendant and Russell Mclean individually. That at no point has Russell McLean interplead himself personally into this action.
3. That all passwords known to the Defendant have been provided to Plaintiff, and Plaintiff has been told on, at least two, occasions that all known passwords were provided, including a statement to Russell McLean in open court during the motion to remove counsel, that all passwords known to "Lisa" had been given to him, and current counsel made no inquiry as to the knowledge Mrs. Kosir had prior to the filing of this action.

4. That upon information and belief there are other avenues to retrieve allegedly lost passwords, which may require calling companies and email verification.

WHEREFORE, the Defendant prays judgment as follows:

1. That the motion and order to show cause obtained by the Plaintiff be dismissed.
2. That the Plaintiff have and take nothing from this action.
3. That the Court sanction the Defendant and Defendant's counsel for the filing of this action.
4. That the cost of this frivolous action be taxed against the Plaintiff.
5. For any other and further relief the Court deems just and proper.

This is the 30th day of August, 2018.



Bill Jones, Attorney for Defendant
89 Walnut St.
Waynesville, NC 28786
828-456-2886
Bar No: 25594

VERIFICATION

2018 SEP 14 AM 11:21

Lisa A. Kosir, being first duly sworn, deposes and says that she is the Defendant in the foregoing action and that the allegations set forth in the Pleadings are true to the best of her knowledge and belief, except for those allegations set forth upon information and belief, and as to those allegations, she believes them to be true.

This the 30th day of August, 2018.

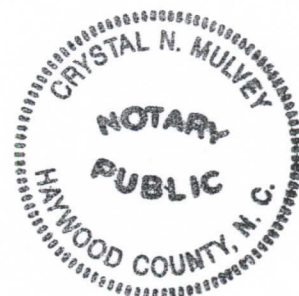
Lisa A. Kosir
Lisa A. Kosir, Defendant

State of North Carolina
County of Haywood

Sworn and subscribed before me this the 30th day of August, 2018.

Crystal N. Mulvey
Crystal N. Mulvey
Notary Public

April 18, 2021
My Commission Expires:



CERTIFICATE OF SERVICE

2018 SEP 14 AM 11:21
07/00, 0.0.0.
This is to certify that I have this day served the foregoing document, upon each party to this cause, or the attorney(s) of record for said party, in accordance with Rule 5 of the NC Rules of Civil Procedure by:

Personal delivery by myself or an employee or agent of my office

Depositing a copy of the same in a receptacle of the United States Postal Service, with adequate postage affixed thereon

Facsimile

Email

Virginia Jordan Song, Attorney at Law
Law Office of Virginia Jordan
154 N. Main Street, Suite 1
Waynesville, NC 28786

This the 14th day of September, 2018.



Bill J. Jones, Attorney at Law, P.A.
89 Walnut Street
Waynesville, NC 28786
Phone: (828) 456-2886
Fax: (828) 456-2887
Bar No: 25594

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF HAYWOOD DISTRICT COURT DIVISION

FILE NO: 18-CVD-345

HAYWOOD CO., C.S.C.
BY

MCLEAN LAW FIRM, P.A.,
Plaintiff,

vs.


LISA A. KOSIR,
Defendant.

ORDER TO APPEAR AND SHOW CAUSE

THIS CAUSE coming on to be heard and being heard before the undersigned District Court Judge, upon a Motion of the Plaintiff that an order issue directing the Defendant to appear and show cause, if any, why the Defendant should not be punished for Contempt of the Order of This Court; and it appearing to the Court that the Plaintiff's motion should be allowed;

NOW THEREFORE, IT IS ORDERED, JUDGED AND DECREED that the Defendant, Lisa A. Kosir, appear before the Honorable Judge H. S. Sellers at the Haywood County Civil term at the Haywood County Justice Center on the 24 day of September 2018 at 9:00 A.M. or as soon thereafter as the matter can be heard and show cause, if any, why she should not be punished as for contempt of the Court therein.

This is the 31 day of Aug, 2018.


District Court Judge Presiding

8. That on or about the morning of Friday, May 18, 2018, the Plaintiff contacted the Defendant's attorney who, in the afternoon of that same day, provided a password to the Plaintiff.
9. That the Plaintiff attempted to open the trust account and operating accounts with the password provided, as well as variations of the use of the password, but was nevertheless unable to gain access to the files.
10. That New Meridian Technologies staff suggested leaning on the Defendant's attorney to secure the correct password because of the prohibitive efforts needed to breach the password and open the files.
11. Thereafter, the Plaintiff's counsel contacted the Defendant's attorney over the weekend, who on late Sunday afternoon provided a second password, which was then used but failed to open the accounts and programs. Thereafter on May 25 of 2018 the defendant's sister in Canada provided a third password which opened only the QuickBooks trust account and the QuickBooks operating account but has failed to open the three other accounts which include Total house cost ; Tennessee total property; and the Lisa and Rusty file which included plaintiff's clients information
12. That to date, the Defendant has also failed to provide passwords to other QuickBooks files regarding the Plaintiff's other properties.
13. That it has now been 119 days since the Plaintiff has had access to its clients' trust account files and is in desperate need of accessing those files for legal purposes to utilize the clients' funds.
14. That the Plaintiff has no other remedy other than to seek the aid of the Court in obtaining an Order to Show Cause as to why the Defendant should not be held in contempt.
15. That despite the conditions agreed upon in the Consent Order from April 17, 2018, the Defendant has failed to comply with the conditions as agreed upon and ordered by the Court.
16. That the April 17, 2018 order remains in force, that the purpose of said order may still be served by compliance with the order, and the non-compliance by the Defendant is willful.
17. That the actions of the Defendant are without legal justification or excuse.
18. That the Defendant has the means to comply with the order, is able to comply with the order, or is able to take reasonable measures which would enable her to comply with the order.

WHEREFORE, the Plaintiff prays of the Court as follows:

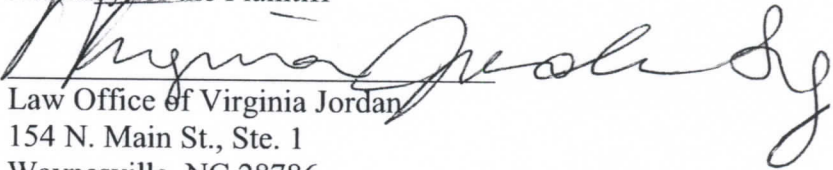
1. That the Court enter an order directing the Defendant to appear and show cause on a date certain as to why she should not be held in contempt for failing to disclose the password

necessary to access the Plaintiff's trust account and operating account files.

2. That the Plaintiff have and receive reasonable attorneys fees for the prosecution of this motion.
3. That the Defendant be incarcerated in the Haywood County Detention Center until she complies with the April 17, 2018 order.
4. That the costs of this action be taxed to the Defendant.
5. For such other and further relief as the Court deems just and proper.

THIS the 1 day of August, 2018.

VIRGINIA JORDAN SONG
Attorney for the Plaintiff



Law Office of Virginia Jordan
154 N. Main St., Ste. 1
Waynesville, NC 28786
Tel: (828) 246-6800
Fax: (828) 479-0334
NC Bar No: 37769

VERIFICATION

FILED

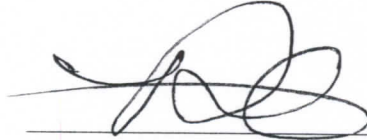
STATE OF NORTH CAROLINA
HAYWOOD COUNTY

2018 AUG -1 PM 4:44

HAYWOOD COUNTY, C.S.C.

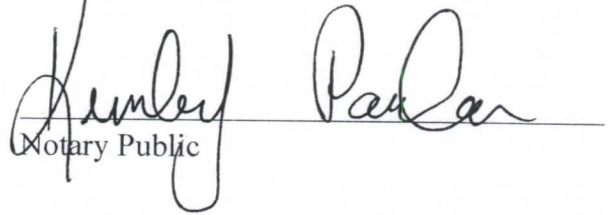
Comes now, RUSSELL L. McLEAN III, being first duly sworn, ~~deposes and verifies the~~ contents of this action herein to his own knowledge of those facts known to him and believes truthfully upon information and belief of the contents of those matters.

This the 31 day of July, 2018.



RUSSELL L. McLEAN III

Sworn to and subscribed before me this the 31 day of July, 2018.


Notary Public

My Commission Expires:

KIMBERLY PARILLA
Notary Public, North Carolina
Haywood County
My Commission Expires
July 18, 2020