

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

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SPORT & WHEAT CPA PA, a Florida	:	
corporation, individually and on behalf of	:	
a class of similarly situated businesses and	:	Case No. 3:20-cv-05425-
individuals,	:	TKW-HTC
	:	
	:	
Plaintiff,	:	
	:	
	:	
v.	:	
	:	
SERVISFIRST BANK INC.; SYNOVUS	:	
BANK; THE FIRST, A NATIONAL	:	
BANKING ASSOCIATION; and	:	
TRUIST BANK,	:	
Defendants.	:	
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SYNOVUS BANK’S OBJECTIONS TO PLAINTIFF’S MOTION TO SEAL

The Court’s July 2, 2020 Order directed Synovus to file its written objections to Plaintiff S&W’s “motion for leave to file, under seal, certain text messages in connection with Defendant Synovus Bank’s Motion to Terminate Rule 30(b)(6) Deposition.” Pursuant to that Order, Synovus hereby objects on the following grounds.

First, Synovus objects because Plaintiff has never provided those “certain text messages” to Synovus despite Synovus’ multiple requests that Plaintiff do so.

Those “certain text messages” referenced in Plaintiff’s motion to seal appear to be, based on the representations of Plaintiff’s counsel, the *un*redacted copies of text messages that Synovus requested both during its Rule 30(b)(6) deposition and immediately following the deposition. Plaintiff’s counsel refused to provide unredacted copies of the text messages during the deposition, while he sought to use copies he had himself redacted. Then, after the deposition, Plaintiff’s counsel stated that he would “make production of the full set of documents that we have, including all of the texts,” but Plaintiff’s counsel has refused and failed to do so. *See* ECF Doc. 52-6. In other words, Synovus objects to Plaintiff’s motion to seal because Synovus obviously cannot in good faith represent to the Court that documents should be sealed from public view when Synovus has never even been provided with the copies of those documents in Plaintiff’s possession.

Plaintiff admits it has never provided complete unredacted copies of the text messages in its possession to Synovus. Plaintiff’s motion to seal states that “Synovus has all of those texts which were *used with the witness at the deposition.*” ECF Doc. 63 at 2. The “texts which were used with the witness at the deposition” are, of course, the text messages *as redacted by Plaintiff’s counsel*;

that's what was attached by Plaintiff's counsel as exhibits to the deposition transcript—not the *un*redacted text messages that S&W now seeks to seal.¹

Second, Synovus objects because the unredacted text messages that Plaintiff's counsel refused to provide to Synovus both before and during the Rule 30(b)(6) deposition and continues to conceal from Synovus are simply irrelevant to Synovus' Motion to Terminate. The motion to seal filed by Plaintiff's counsel is merely a sideshow intended to try to distract the Court from the misconduct by Plaintiff and Plaintiff's counsel. It cannot credibly be denied that the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and professional courtesy all *required* Plaintiff's counsel to provide Synovus with *un*redacted copies of the text messages when he sought to use parts of those texts messages *during* the Rule 30(b)(6) deposition. *See* ECF Doc. 52 (Synovus' Motion to Terminate). In fact,

¹ Plaintiff's counsel also continues to make the baseless assertion that Synovus has "always had access" to these text messages. ECF Doc. 63 at 2. Plaintiff's counsel knows that is not true. After promising on May 29, 2020 that he would identify the mysterious "Borrower C" whom Plaintiff claimed was a PPP customer of Synovus whom Plaintiff assisted (ECF Doc. 21 at ¶99), Plaintiff's counsel then refused to do so before the Rule 30(b)(6) deposition, making it difficult if not impossible for Synovus to investigate whether any employee had in fact had any contact with S&W on the one supposed PPP loan made by Synovus that is referenced in the Amended Complaint. Additionally, as Synovus explained both during its Rule 30(b)(6) deposition and in its Motion to Terminate it is contrary to bank policy for employees to do bank business via text message. 6/18/20 Synovus 30(b)(6) Deposition Transcript at 65:15-23. (Synovus does not issue company cellphones to its employees; cellphones are the personal property of Synovus' employees. *Id.* at 65:1-5.)

Plaintiff's counsel should have provided any text messages he intended to use, unredacted, *before* the 30(b)(6) deposition: Before the deposition, Synovus counsel asked Plaintiff's counsel to provide any communications S&W had had with Synovus, including "texts between Sport & Wheat, or someone at Sport & Wheat, and someone at Synovus" – obviously to prepare the 30(b)(6) witness. Plaintiff's counsel failed to do so.²

Third, Synovus objects because Plaintiff S&W's stated reasons for seeking to seal these text messages simply do not hold water. For example, S&W contends that it seeks to seal the text messages out of concern for "the privacy of the [S&W] employee" involved in the text message exchanges who "likely [did not] anticipate[] that [her] private text messages would wind up on the public docket." ECF Doc. 63 at 3. However, the person involved in the text messages is not an "S&W employee" at all – she is the first-named principal of the firm, Jill Sport.³ That S&W partner/principal was obviously involved in the decision to file this lawsuit on "the public docket." That S&W partner/principal made the decision to turn the subject text messages over to Plaintiff's counsel for use in this lawsuit.

² The time to ask that unredacted text messages remain sealed until the parties could reach agreement or the Court could decide a sealing issue was both before and during the deposition – that is what is customarily done by lawyers exercising professional courtesies who are not seeking to unnecessarily clutter up the Court's motions docket.

³ Jill Sport is identified in Plaintiff's Amended Complaint as a Partner in S&W. Doc. 21 at ¶130.

S&W even made the decision to file on the public docket copies of some text messages from the same S&W partner/principal with S&W's response to Synovus' Motion to Dismiss. The very first text message S&W filed on the public docket appears to show this S&W partner/principal sitting at her work desk with a bottle of vodka. *See* ECF Doc. 56-1 at 2.

S&W also argues that the unredacted text messages should be sealed in light of S&W's "obligat[ion] under Fla. Stat. § 90.5055, the accountant-client privilege, to safeguard its clients' information from public disclosure." ECF Doc. 63 at 3. That is an exceedingly odd argument for S&W to make *now*, given that Plaintiff's counsel disclosed copious amounts of confidential information concerning S&W's clients to all the adverse defendants attending the Synovus' Rule 30(b)(6) deposition, without seeking any protective order or asking for 'confidentiality' pending Court decision of a motion for a protective order. Both of S&W's principals attended that deposition and knew that this confidential information was being disclosed in the course of a public proceeding. S&W chose to disclose its client's confidential information when it perceived that doing so would benefit it, again proving that Plaintiff's motion to seal is nothing but a deliberate sideshow/diversion.

Fourth and finally, Synovus notes that Plaintiff's motion to seal proves the necessity of an order granting Synovus's Motion to Terminate its Rule 30(b)(6)

Deposition. Plaintiff claims that it needs to provide unredacted copies of the text messages to the Court under seal so that the Court can “see what was ‘redacted’ and why that was done” because Plaintiff “*has a right to defend itself*,” referring to Synovus’ Motion to Terminate. ECF Doc. 63 at 2 (emphasis added). Certainly the Court should “see what was ‘redacted’” – so should Synovus and the other defendants. But that’s irrelevant to the question whether the unredacted text messages should be “sealed,” again proving that Plaintiff’s motion is a deliberate sideshow. But that statement by Plaintiff reveals more: clearly Synovus—as a Defendant that S&W filed a lawsuit against—also “has a right to defend itself.” Plaintiff and Plaintiff’s counsel decision to conceal the unredacted text messages before, during, and after the 30(b)(6) deposition defeated Synovus’ ability and right “to defend itself” by conducting a complete *direct* examination of the Synovus 30(b)(6) witness about the text messages. Plaintiff’s counsel made the deliberate decision to prevent a complete Record being made in the deposition – that was the very purpose of his concealment of the unredacted text messages before, during, and after the deposition.

When Plaintiff attempted to use redacted documents during Plaintiff’s cross-examination of Synovus’ Rule 30(b)(6) corporate representative, the Federal Rules of Civil Procedure, the Federal Rules of Evidence, and professional courtesy gave Synovus the right to review unredacted copies of those documents in their entirety

so that Synovus could conduct a complete direct examination of its witness based on those documents and thereby “defend itself.” Indeed, Plaintiff admits in its motion to seal that the redacted portions of the text messages Plaintiff attempted to use during the deposition purportedly contain information that Synovus likely would have wanted its corporate representative to consider on direct examination. For example, Plaintiff contends that those portions of the text messages contain information that allegedly “may not paint the bank employees in the best light.” ECF Doc. 63 at 3. It is inconceivable that anyone would contend that Plaintiff’s counsel may withhold such information from Synovus during the course of a Rule 30(b)(6) deposition in which Plaintiff’s counsel was clearly attempting to attribute statements made by those same “bank employees” to Synovus. By refusing to provide Synovus with unredacted copies of the text messages before, during, and after the 30(b)(6) deposition, Plaintiff’s counsel deprived Synovus of its right to determine which portions of the text messages should be considered by the witness, in both the witness’ responses to questions during Plaintiff’s cross-examination and on later direct examination by Synovus. Synovus was entitled on its direct examination to have access to the complete document so that Synovus could address any inaccuracies in the characterizations by Plaintiff’s counsel of the text message exchanges.

Respectfully submitted, this 6th day of July, 2020.

By: /s/Philip A. Bates

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LOCAL RULE 7.1(F) WORD LIMIT CERTIFICATION

Pursuant to Northern District of Florida Local Rule 7.1(F), I certify that this Motion to Terminate Rule 30(b)(6) Deposition is in compliance with the Court's word limit. According to the word processing program used to prepare this motion, the document contains 1,565 words, exclusive of the case style, signature block, and this certification.

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