

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROOFERS LOCAL 149 SECURITY BENEFIT
TRUST FUND, ROOFERS LOCAL 149 PENSION
FUND, ROOFERS LOCAL 149 VACATION HOLIDAY
FUND, ROOFERS LOCAL 149 APPRENTICESHIP FUND,
ROOFING INDUSTRY PROMOTION FUND,

Plaintiffs,

Case No. : 05-CV-60218

v.

DISTRICT JUDGE JOHN CORBETT O'MEARA
MAGISTRATE JUDGE STEVEN D. PEPE

MILBRAND ROOFING GROUP, INC., A MICHIGAN
CORPORATION, JON K. MILBRAND, INDIVIDUALLY,
MILBRAND ROOFING COMPANY, A MICHIGAN
CORPORATION, JKM ROOFING COMPANY, A
MICHIGAN CORPORATION, WILLIAM RICHARDSON
AND MICHAEL K. ROYE, INDIVIDUALLY,

Defendants.

_____ /

**ORDER GRANTING DEFENDANTS JON K. MILBRAND, JKM ROOFING &
MILBRAND ROOFING GROUP'S MOTION FOR ORDER TO SHOW CAUSE (DKT. #262)
AND
ORDER TO SHOW CAUSE**

On October 11, 2007, Defendants Jon K. Milbrand, JKM Roofing and Milbrand Roofing Group ("Milbrand Defendants") filed a "Motion For An Order To Show Cause Against Executive Construction Management Company For Violating This Court's Order" (Dkt. #262). No other party has filed any response or opposition to these Defendants' motion, and no response or opposition has been served or filed by Executive Construction Management Co. The Milbrand Defendants' motion was referred for hearing and determination pursuant to 28 U.S.C.

§ 636 (b)(1)(A) (Dkt. #263). For the reasons indicated below, **IT IS ORDERED** that the Milbrand Defendants' motion is **GRANTED**.

The Milbrand Defendants' served subpoenas for various documents on (1) Ar-Rita Glosson, (2) Executive Management Co., and (3) Roofers' Local 149. These third parties did not comply with the subpoenas and the Milbrand Defendants filed an August 17, 2007, motion seeking an order to show cause why each should not be held in contempt of court under Fed. R. Civ. P. 45(d). At a September 13, 2007, hearing on this motion, counsel for the Milbrand Defendants indicated that each of these third parties was given a copy of the motion, but did not get formal notice of the hearing date. None of them filed any response to the motion that would have alerted my case manager to notify them as to the hearing date and time.

Attachments to the motion made a *prima facie* showing of proper service of each subpoena, though counsel for Defendant William Richardson indicated at the hearing some question regarding service on Ar-Rita Glosson and on Executive Management Co. Questions were raised by counsel for Plaintiffs and Defendant William Richardson as to the scope and relevance of many of the documents and their availability from other sources or whether they were already in the possession of the Milbrand Defendants or counsel.

Plaintiffs' counsel noted that many of the items sought from Roofers' Local 149 had been provided, and the first five pages of various collective bargaining agreements would be produced. Thus, it was determined that based on these representations, no further production is required from Roofers' Local 149. Before considering any citation for contempt regarding Ar-Rita Glosson and or Executive Management Co., it was determined that a more narrow order be issued to these third parties. At that time, it was indicated that unjustified failure to comply

with such an order might warrant a finding of contempt.

In this Court's September 14, 2007, order, the following notice was given to Executive Management Co. (Dkt. #251):

NOTICE TO EXECUTIVE MANAGEMENT CO.

IT IS FURTHER ORDERED that on or before September 28, 2007, Executive Management Co., through an appropriate agent, provide to Dayna Milbrand, 148 S. Main Street, Suite 100-A, MOUNT CLEMENS, MI 48043:

A. A copy of any document signed by Bill Richardson or Lisa Richardson that relates to (i.) the formation of any joint venture of Milbrand Roofing Company with Executive Management Co., or (ii.) the preparation or submission of a bid for work on the Great Lakes Naval Facility or similarly named government facility or (iii.) any document signed by Bill Richardson or Lisa Richardson related to any contract on that bid but excluding any documents related to the execution of any such contract.

If Executive Management Co. is not in possession of any of the items noted above, Executive Management Co., through an appropriate agent, shall sign a declaration under penalties of perjury pursuant to 28 U.S.C. § 1746 stating that fact and provide that declaration to Dayna Milbrand.

A copy of this order shall be served by the Clerk of Court by first class mail on:

(i.) Ar-Rita Glosson addressed to her c/o Harvard Engineering, 146 Broadway, DETROIT, MI . 48226; and

(ii.) Executive Management Co. addressed to Executive Management Co., 16216 W. Seven Mile Road, DETROIT, MI 48235-2905.

In the Milbrand Defendants' recent motion for an order to show cause, they indicate that Executive Construction Management Co. has not provided any documents to these Defendants,

nor have they provided a statement that they do not possess the documents that Defendants had subpoenaed and that the Court has ordered them to produce. Defendants' counsel, Dayna Milbrand, further indicates that she wrote a letter to Executive Construction Management Co. on October 4, 2007, and delivered it by facsimile and the United States Postal Service after she had telephoned Executive Construction Management Co. on October 3, 2007, requesting compliance with this Court's order.

On October 4, 2007, she spoke with Nathaniel Davenport at Executive Construction Management Co.'s phone number. At Mr. Davenport's suggestion Ms. Milbrand contacted Vincent Jackson. Subsequently on October 4, 2007, a woman identifying herself as "Michelle" from Executive Construction Management Co. left a phone message indicating that she should call Darwin Fair at 313-407-6631 regarding "ECM/MRC." Ms. Milbrand telephoned this number and left her name, telephone number and email address. No one had replied at the time of her filing of the present motion.

Because Executive Construction Management Co. has failed to comply with the September 14, 2007, order enforcing this Court's subpoena on it or provide any reason why it has failed to comply with the Milbrand Defendants' subpoenas or this Court's September 14, 2007, order, the Milbrands Defendants' motion for an order to show cause is **GRANTED**.

A review of the case docket indicates that the September 14, 2007, Order, D/E #251 has not been returned as un-deliverable by the United States Postal Service upon Executive Management Company.

IT IS **ORDERED** that on or before December 11, 2007, Executive Construction Management, Co., shall **SHOW CAUSE** why it should not be held in contempt for failing to

respond to a subpoena for the production of documents served upon it by these Defendants and for failure to comply with this Court's September 14, 2007, order. Failure to comply with this Order may result in the Court assessing fines pending compliance with the subpoena and court order and also costs and attorney fees against Executive Construction Management Co. for violating this Court's Order.

A copy of this **ORDER TO SHOW CAUSE** shall be served by the Clerk of Court by first class mail on:

Executive Management Co. addressed to Executive Management Co., 16216 W. Seven Mile Road, DETROIT, MI 48235-2905.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b) and LR 72.1(d).

SO ORDERED.

Dated: November 27, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Sarah C. Arnold, Michael J. Asher, Dayna Milbrand, David J. Selwocki, Thomas P. Brady, David A. Hardesty, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Milbrand Roofing Co., c/o Michael K. Roye, 2971 Bellevue St., Detroit, MI 48207, Michael K. Roye, 1508 Amelia, Royal Oak, MI 48073, Ar-Rita Glosson, c/o Harvard Engineering, 146 Broadway, Detroit, MI 48226, Executive Management Co., 16216 W.Seven Mile Rd., Detroit, MI 48235-2905

s/ James P. Peltier
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