


FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SEP 05 2023

TAMMY H. DOWNS, CLERK
By:  DEP CLERK

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

LAURA LYNN HAMMETT, an
individual,

Plaintiff,

vs.

PORTFOLIO RECOVERY
ASSOCIATES, LLC, a Limited
Liability Company; DOES 1-99

Defendants

Case No.: 4:21-CV-00189-LPR

Brief in Support of Plaintiff's Motion to Settle the Record to Correct Errors and
Omissions in the Transcript of December 1, 2021 Hearing [260]

FACTS:

I. A dialogue defining confidentiality was omitted.

The Court Reporter Stephen Franklin omitted significant dialogue from the transcript of the 12/1/2021 hearing filed on 8/15/2023. The dialogue occurred between page 6 line 13 and page 8 line 13. [Affidavit ("Aff.") ¶ 4]

During the hearing I explained to the Court my hesitation with stipulation to the protective order that was written by PRA because I thought it would create a "Star Chamber". I remember using that term because I thought I might be overusing it. I had written it in my response to PRA's motion to adopt the protective order [Doc. 30 (at page 3 ¶ 10 and page 4 ¶ 16) and Doc. 27 respectively]. The term is missing from the transcript. [Aff. ¶ 5]

In my opposition [30] I quoted heavily from my emails that were presented as exhibits in PRA's motion for protective order [27-2]. One example: "PRA may not increase the burden to the unrepresented, modest means litigant by deeming everything 'Confidential' without first asking agreement of the other party or the Court." [Aff. ¶ 6]

The record does not reflect my significant argument against adopting the protective order and the Court's assurance that my concerns were unwarranted.

I specifically elicited an explanation of what evidence would be allowed to be deemed “Confidential” by asking the Court a direct question. The proposed protective order appeared to create confidentiality for everything in the documents designated “Confidential”. My question was whether facts already known to me or the public would become confidential by PRA’s arbitrary designation as confidential. [Aff. ¶ 7]

The Court gave a thorough answer. He confirmed the rule. The rule the Court confirmed is that if PRA designated account records as confidential, and the same form of account records was disclosed in another case, with different data, that the information is allowed to be shared with the public despite the confidential designation.[Aff. ¶ 8]

He explained that no confidentiality would be granted to information that I learned of independently of PRA’s production of documents. [Aff. ¶ 9]

The Court was eloquent. I understood his meaning but cannot quote him verbatim. That is why I ordered the transcript, to use the Court’s language in my appeal. Using the Court’s exact words as a quote would also show that allowing impermissible confidentiality to PRA was an abuse of discretion and evidence of bias, because the Court knows better. [Aff. ¶ 10]

I was disappointed, but sadly not surprised to see the dialogue missing from the transcript. [Aff. ¶ 11]

One indication that the dialogue occurred is that I discussed it in “Plaintiff’s Opposition to Motion to File Entire Exhibit Containing Emails (Doc. 159-3) Under Seal; Brief Within.” [163 page 3 to 4] [Aff. ¶ 12]

“In an earlier hearing, the Court patiently explained confidentiality to Hammett. Hammett’s understanding of that explanation is that she is not bound to confidentiality of the portions of [‘]confidential[‘] documents that are already a matter of public record. But Hammett is still uncomfortable because sealing publicly available information shifts the burden of proving its non-confidentiality to Hammett. Hammett does not want to face motions for contempt, even if the court should dismiss them and especially if there is a change in judge.

“For example, Hammett told PRA about finding PRANet and call log documents extremely similar to those filed under seal in this case in a case called Evans v. PRA, USDC New Jersey, 1:15-cv-1455. (Doc 159-3, page 105) Those documents are attached as Exhibits D and E. The similar documents were filed in this case as Exhibits D and E to the Motion for Summary Judgment, Doc 76-7 and 76-8) PRA refused to remove the confidential designation from these documents without Hammett filing a motion.”

That explanation went unchallenged.

The “earlier hearing” I referred to was the December 1, 2021. The Court discussed the sentiment in part during the hearing of March 16, 2022. [124, page

13, line 19 to page 4 line 5] PRA made an argument that, if adopted by the Court, would limit the freedom to discuss parts of the “Confidential” documents that were already known to the public. The Court’s position on December 1st is in conflict with the way the Court interprets and applied the protective order. Based on the altered position, the Court upheld confidentiality to many forms that were filed in other cases and policies that PRA recites over the telephone to alleged debtors using words similar to “our policy is”.

The Court’s definition of what confidentiality means was deleted from the official transcript.

I was in the hearing, know that I asked about the definition of confidentiality and heard the response.

I have a legitimate concern that I will be found in contempt of court or have sanctions imposed when I write about the case or discuss the case with other news or administrative agencies following the definition of confidentiality presented by the Court but omitted from the transcript. [Aff. ¶¶ 13, 14]

The Court admonished me at the hearing of March 16, 2022 that I was in danger of violating a court order and might be ordered to pay PRA’s attorney fees and costs if I continued to follow the Court’s words that were left out of the 12/1/2021 hearing. [124, page 6, line 12 to page 7 line 16] [Aff. ¶ 15] In hearings after December 1, 2021 and when ruling on my motions to revise the protective

order or privacy designations, the Court followed a different standard than he proffered in the hearing.

The Court has in fact charged me PRA's costs. [263]

II. The amount of the highest Offer of Judgment was incorrect (which may have been me misspeaking).

The Court Reporter transcribed a number for the amount that I gave as an example of the amount of the offer of judgment. The error may have been mine. I may have misspoken. The amount of the OOJ was \$5,000. I ask the Court to order redaction of the erroneous number as it is from a confidential communication, and it is the concept and not the actual number that I wanted to convey. [Aff. ¶ 16]

III. The Court Reporter wrote "agreed" instead of "disagreed", changing my position on an issue to its opposite.

The Court Reporter wrote that I said I "agreed" with the PRA response [28] to my motion to compel substantial compliance with Rule 26(a) [24]. [260 page 24, line 11] That word should have been "disagreed". The context with the rest of the sentence is inconsistent with "agreed". The true sentence will be used in my

appellate brief, I preserved my argument for appeal and PRA might use the Court Reporter's error to argue that I agreed with PRA, when I did not. [Aff. ¶ 17]

IV. The Court Reporter wrote “a hundred documents” instead of “hundreds of documents”, changing the severity of a lie told by PRA.

The Court Reporter quoted me as saying “when he said that they gave me a hundred documents, [.]” [260, page 30, lines 14, 15] My actual sentence referred to Mr. Mitchell saying PRA produced “hundreds of documents”, plural. I made the same notation in my mind when reading the transcript page 27 line 19. I ask the Court to order Mr. Franklin to correct “a hundred documents” to “hundreds of documents”. I was preserving my right to appeal based on the violations of FRCP 11 by PRA's counsel. Saying PRA produced “a hundred documents” is not as outrageous a lie as saying PRA produced “several hundred documents”. [260 page 27, lines 18 to 20] [Aff. ¶ 18]

AUTHORITIES:

FRAP Rule 10(e) Correction or Modification of the Record.

“If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.” FRAP Rule 10(e)(1).

“If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded by the district court before or after the record has been forwarded[.]” FRAP Rule 10(e)(2)(B).

Respectfully submitted,

Dated September 5, 2023

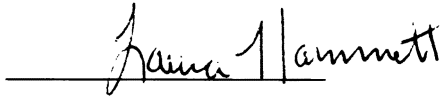
A handwritten signature in black ink, reading "Laura Lynn Hammett", written over a horizontal line.

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CERTIFICATE OF SERVICE

Brief in Support of Plaintiff's Motion to Settle the Record to Correct Errors and Omissions in the Transcript of December 1, 2021 Hearing 4:21-CV-00189-LPR

I hereby certify that on September 5, 2023, a true and exact copy of the foregoing was filed with the Clerk of the Court for entry on the electronic filing system which will cause service upon all counsel of record via email.

A handwritten signature in black ink, reading "Laura Hammett", is written over a horizontal line.

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