

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CALAVERAS

DATE November 4, 1983 COURT MET AT _____ DEPARTMENT NO. _____
PRESENT FOR: Joseph S. Huberty JUDGE Karen Varni DEPUTY CLERK _____
_____, REPORTER _____ BAILIFF _____

TITLE:

JO ANN THOMSEN, et al.

vs.

DOUGLAS T. MESSER, et al.

COUNSEL:

NATURE OF PROCEEDINGS:

Decision on Motion for Sanctions and/or
Contempt on Failure to Comply with Order Filed
September 28, 1983

ACTION NO. 10718

Motion is granted. Remington is found in contempt for failing to comply with the court's order directing the production of certain Remington officers and/or employees for deposition in that Remington failed to produce Barrett and Hooten upon the date and at the time that each was ordered to appear. These were produced for deposition a week later than the first scheduled date. However, the circumstances which then prevailed (See the "Further Declaration ..." of Ames dated October 12 and the transcripts of the depositions of Barrett and Hooten of October 11) are a further exhibition of the arrogance and disrespect of Remington which finally exceeds the limits of tolerance of this court.

These events, coupled with the several motions to compel which have been occasioned by Remington's inexcusable non-compliance with legitimate discovery requests constitute a flagrant disregard of the law which have caused a waste of judicial and legal time, has been obstructive and offensive to the administration of justice and unfair to the other litigants herein. The court will consider the imposition of severe sanctions.

In order to assist the court in this regard counsel for the State and Thomsen are requested, within 7 days, to present a factual summary of those instances which support such imposition and argument and authority for the nature of those sanctions which are justified. Remington will have 5 days thereafter to reply.

cc: John Hannegan/Jack Lovell
Thomas C. Richards
Orlie Curtis
Christopher Ames

JCR _____

R/A _____

MINUTES

Ex. D

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

4127
4251
4233

No. 91597

BARBARA SEYFERTH, et al.,)
)
Plaintiffs,)
)
v.)
)
JOSEF OFFENWANGER and)
REMINGTON ARMS COMPANY, INC.,)
)
Defendants.)

No. 83 L 17606

6-11-83

ORDER

THIS CAUSE COMING ON TO BE HEARD for trial, and for hearing on "Plaintiffs' Motion For Sanctions Against Defendant Remington," and "Defendant Josef Offenwanger's Motion To Join In Plaintiffs' Motion For Sanctions," due notice having been given and the Court having considered the written response filed by Remington, the extensive oral arguments of counsel, and the various exhibits submitted to the Court during oral argument:

THE COURT FINDS THAT Remington has unjustifiably and purposefully failed to comply with its obligations to produce relevant documents in response to document requests and that the plaintiffs and defendant/counterplaintiff Offenwanger have been substantially prejudiced by Remington's failure to comply with its obligations relating to discovery; the Court further incorporates by reference the additional findings of the Court as set forth in the transcript of the hearing on the motions, which transcript is attached hereto and incorporated herein by reference.

CC-1481088
ACCORDINGLY, IT IS HEREBY ORDERED AS FOLLOWS:

1. That Plaintiff's Motion For Sanctions and Defendant Offenkanger's Motion For Sanctions are granted. 4215

2. That the six Operations Committee minutes and their respective exhibits ("Documents") referred to in the Motions For Sanctions are admitted into evidence as business records of defendant Remington. 4215

3. That defendant Remington may not attempt to explain or impeach any of the Documents or the statements set forth in the Documents. 4220

4. That the Court will advise the jury with respect to the Documents as follows: 4251

(a) that in 1984, plaintiffs and defendant Offenkanger requested Remington to produce documents pertaining to the design and redesign of the safety of the Model 700 rifle at issue in this lawsuit;

(b) that pursuant to the rules of court, defendant Remington was obligated to produce promptly the documents in question to the plaintiff Seyferth and defendant Offenkanger, said Documents being described in these proceedings as Plaintiffs' Exhibits Nos. 35, 37, 38, 39, 42 and 43;

(c) that Remington unjustifiably failed to produce for and withheld the Documents from plaintiff and defendant Offenkanger;

(d) that Remington only produced the Documents to plaintiff and defendant Offenkanger after plaintiff and defendant Offenkanger had, through their independent

investigation, determined that the Documents existed; "

(e) that Remington produced these Documents for plaintiff and defendant Offenwanger approximately one week prior to the date on which this case was scheduled for trial; and

(f) that the Court has admitted the Documents into evidence as business records of the Remington Arms Company and has prohibited Remington from attempting to explain or impeach these Documents or the statements set forth in these Documents.

5. The Court will consider petitions from the plaintiff and defendant Offenwanger for the imposition of economic sanctions against Remington in order to compensate plaintiffs and defendant Offenwanger for the attorneys' time and expenses devoted to obtaining the Remington Documents at issue and presenting the Motions For Sanctions. Remington will be afforded a reasonable opportunity to submit a written response to any petitions which may be submitted by plaintiff or defendant Offenwanger. 42.

DATED: _____

ENTERED: _____


Judge

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JUDGE FARRIN O'NEILL

DEC 14 1989

AUGUST FUCHS
CLERK OF CIRCUIT COURT