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Discovery Order on Lane Pendleton Hard Drive Disk (AMANA I SA)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

AMANA I SA and **SHEIK MOHAMMED AL-AMOUDI** Plaintiffs, v. **CAIRNWOOD GROUP, LLC, CAIRNWOOD CAPITAL MANAGEMENT, LLC, LANE P. PENDLETON, LAIRD P. PENDLETON, KIRK P. PENDLETON,** and **THAYER B. PENDLETON.** Defendants.	*	Civil Action File No. **2006-CV-114931** (Business One—ADB)

FILED IN OFFICE
JUN 30 2008
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

DISCOVERY ORDER ON LANE PENDLETON HARD DRIVE DISK

Counsel appeared before the Court on March 3, 2008 to present oral argument on several discovery issues, including a missing hard drive disk in a laptop that formerly belonged to Defendant Lane Pendleton. In an Order dated April 29, 2008, the Court ordered Lane Pendleton to appear and provide testimony regarding the missing hard disk drive on June 13, 2008. After having received Lane Pendleton's testimony and the arguments of counsel, the Court finds as follows:

From 2001 to 2005, Lane Pendleton had possession of a laptop purchased by Orient Network Telecommunications Ple. Ltd. ("Orient Networks"), an entity involved in the complicated investment structure underlying this case. He used this laptop to conduct business and to send emails on behalf of Orient Network and Cairnwood Global Technology Fund ("CGTF"). Plaintiffs seek the original hard drive disk to verify the authenticity, history, and completeness of emails and documents generated from or received by Lane Pendleton during the time period.

In 2005, Orient Networks entered into the Singapore equivalent of bankruptcy (i.e., liquidation) and Lane Pendleton turned over the laptop to the judicial manager. Later, Lane Pendleton requested to make a copy of the laptop's original hard drive disk (the "Orient hard drive disk"). In October 2005, with permission from the judicial manager, Lane Pendleton had Ms. Joseph, his former secretary who was then working for the judicial manager, obtain the laptop and take it to an unknown computer store[1] to have a copy made. Within a few days, but in no event later than October 31, 2005, the laptop was returned to the judicial manager and a copy of the hard drive was delivered to Lane Pendleton's house (the "LP copy"). The hard disk returned with the laptop to the Judicial Manager, however, was not the Orient hard drive disk. The hard disk in the returned laptop was a substituted faulty hard drive disk that was a different model, made by a different manufacturer, and which had belonged to a piano teacher. In addition, Mr. Ng Chee Wan, the piano teacher, had his computer repaired at a different location from where Ms. Joseph testified that she delivered the Orient laptop for copying.

In a tape recorded interview in June 2006 regarding the Orient Network liquidation, Lane Pendleton stated that he <u>had</u> the Orient hard drive disk at home.[2] In a separate Singapore action, involving similar parties and/or their related business ventures, Lane Pendleton submitted an affidavit and provided the Singapore Court with Ms. Joseph's affidavit to explain that he did <u>not</u> <u>have</u> the Orient hard drive disk. After the Singapore Court's finding that the affidavits were contradictory to his prior

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1. Ms. Joseph provided affidavit testimony that she delivered the computer to an unknown computer store within a certain shopping district where there were several similar stores.
2. During the interview there was no court reporter and Lane Pendleton was not given an oath, but the interview was taped and an official transcript created thereafter.

statements and that providing an opportunity for cross examination was warranted, the parties entered into a consent agreement. Pursuant to the consent agreement, the parties agreed that the affidavits would be withdrawn for errors/mistakes[3] and thus cross examination of Lane Pendleton about this matter was avoided. Thereafter, the Singapore Court found, and was affirmed, that the facts of that case led to the conclusion that Lane Pendleton had possession of the Orient hard drive disk.

In this case, Lane Pendleton asserts that all he has, or ever had, in his possession is the LP copy of the Orient hard drive disk. Lane Pendleton explained that his earlier Orient Networks liquidation interview statements were misunderstood and that he was referring only to his LP copy, not the actual Orient hard drive disk.

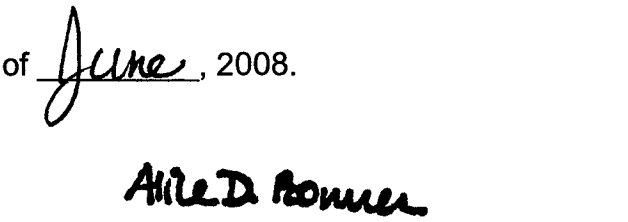
The uncontroverted and unexplained evidence, however, is that the LP copy is on a hard drive disk that was manufactured in November, 2005 and packaged and sold in December, 2005 after the LP copy was made in October, 2005. Lane Pendleton states that his only opportunity to have the LP copy made from the Orient hard drive disk was in fact in October 2005, but cannot explain how the LP copy is a disk that was manufactured and sold after that time period.

Having failed to present this Court with evidence or an explanation of how the LP copy, which he contends was made from the Orient hard drive disk in October, 2005, but is on a disk that was manufactured and sold in November/December, 2005, Lane Pendleton has not successfully defended himself from Plaintiffs' allegations. The inference that this Court must draw is that Lane Pendleton had access to the Orient

3. During cross examination, Lane Pendleton was unable to identify any mistakes contained in the affidavits that were withdrawn from the Singapore Action and which are substantially similar to the affidavits provided to this Court which state that Lane Pendleton did not have possession of the Orient hard drive disk.

hard drive disk after October, 2005, despite his testimony that he does not have possession of it and cannot produce it. Therefore, Lane Pendleton shall either produce the Orient hard drive disk within fifteen (15) days of the date of this Order, or face sanctions under O.C.G.A. § 9-11-37(b)(2). Those sanctions, if any, shall be determined at the pre-trial conference[4] in this case and shall be limited to evidentiary limitations and/or jury instructions.

SO ORDERED, this 30th day of June, 2008.



ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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4. Having received full briefs from the parties on the Motion to Compel, held oral argument on March 3, 2008, and June 13, 2008, and received direct testimony from Lane Pendleton on June 13, 2008, the Court has a sufficient record before it to award sanctions under O.C.G.A. § 9-11-37(b)(2) without further motion, briefing, or argument from counsel. Instead, the Court will discuss the proper treatment of this issue again at the pre-trial conference and shall make a determination of sanctions, if any, at that time.

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