SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

PRESENT:
HON. IRA B. WARSHAWSKY,
Justice.

TRIAL/IAS PART 14

DELTA FINANCIAL CORPORATION, in its individual capacity and as Initial Member of DELTA FUNDING RESIDUAL EXCHANGE COMPANY, LLC,

Plaintiff,

INDEX NO.: 011118/2003
INDEX NO.: 003084/2004
INDEX NO.: 018599/2005

-against-

CONSOLIDATED ACTIONS

JAMES E. MORRISON, DELTA FUNDING RESIDUAL MANAGEMENT, INC. and DELTA FUNDING RESIDUAL EXCHANGE COMPANY, LLC,

Defendants.

DELTA FUNDING RESIDUAL EXCHANGE COMPANY, LLC and DELTA FUNDING RESIDUAL MANAGEMENT, INC.,

Plaintiffs,

-against-

DELTA FINANCIAL CORPORATION, SIDNEY A. MILLER, HUGH MILLER, MARC E. MILLER, RICHARD BLASS and ARNOLD B. POLLARD,

Defendants.

DELTA FUNDING RESIDUAL EXCHANGE COMPANY, LLC,

Plaintiff,

-against-

KPMG LLP,

Defendant.

The Court has been informed by court appointed referee, Michael Cardello, III, Esq., that certain problems have arisen with the production of documents in electronic format without being Bates stamped.

The Court has reviewed the letter briefs submitted to Mr. Cardello, with regard to the LLC's request that DFC produce Bates-stamped, single and multi page TIFF versions of all electronic documents that have been previously produced without Bates numbers.

The Court firmly believes that in matters of this complexity and magnitude, documents produced during the discovery process need to be identifiable by some type of numbering system, e.g., Bates stamp numbering system. The best way to have done this would have been to produce Bates stamped PDF versions of all documents in native format with meta data from the out set of the proceedings. This would have allowed the documents to be searched through electronic means, a procedure which I do not believe is available with TIFF. However, it is my understanding that the searchability of the documents already exists based upon the style of their production on the CD ROM.

The Court has been further informed that DFC has, in fact, produced paper documents with Bates numbers identifying them. However, I have been also informed that DFC has produced electronic documents that have not been identified by Bates numbers.

The Court finds that the need to be able to readily identify electronic documents at deposition and at trial is essential for the management of depositions and trial, and therefore, directs that all parties produce all electronic documents previously produced and all electronic documents to be produced in this matter, in TIF Format with Bates stamped numbers identifying all documents. No party shall produce documents, either in paper form or electronic form, without a Bates number identifying the document.

In addition, the Court strongly suggests that counsel for the parties consider a litigation database service to manage all documents during trial in these matters, sharing the cost, to preclude any issues arising with regard to the management of documents.

While the Court believes that the production by DFC of Bates stamped electronic documents, should have occurred from the commencement of the discovery process in these matters, LLC also failed to raise this issue until well into the discovery process. Accordingly, DFC is given leave of Court to make an application for cost-sharing for the cost of re-producing all electronic documents previously produced, which shall now have to be produced in TIF format with Bates stamp numbers identifying each document. If the ability to search these documents will be important to either side then it should first be determined whether production in TIF Format will serve that purpose. If not, then PDF should be considered as an alternative.

The court is greatly disappointed that in a case of this magnitude with over a hundred million dollars allegedly at stake that this wasn't done correctly in the first place. The failure by the DFC to originally bates stamp the electronically produced documents will be taken into consideration in any application they might make for cost-sharing.

Dated: April 18, 2006

I. B. Warshawsky
J.S.C.

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APR 21 2006
NASSAU COUNTY
COUNTY CLERK'S OFFICE