

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

QUAN-EN YANG

Plaintiff

vs.

G&C GULF, INC., D/B/A G&G TOWING

Defendant

CIVIL ACTION NO.: 403885V
TRACK VI- Judge Rubin

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER
COMPELLING DISCOVERY**

Your Defendant, G&C Gulf, Inc., d/b/a G&G Towing, by and through counsel opposes Plaintiff's motion for order compelling discovery and as grounds states as follows:¹

I. INTRODUCTION

G&G lodged an objection to Plaintiff's overbroad request to produce information concerning persons whose vehicles were towed from April 16, 2003 to the present. *See*, Answers to Interrogatories 6 and 7 and responses thereto (Exhibit 2 to Plaintiff's motion). While standing on this objection, G&G nonetheless produced a 513 page "Call Listing" of 19,458 tows. G&G also produced the 513 page document in a searchable Excel format. *See*, Affidavit of Bryan Sherman and Exhibit 1 hereto (relevant portions of e-mail of August 14, 2015 transmitting the Excel report to Plaintiff's counsel).² G&G produced, in pdf format, copies of the 19,458 towing invoices.

¹ Plaintiff's motion, served late in the afternoon of August 18, 2015, is combined with a motion for reconsideration. G&G intends to respond to the motion to reconsider within 15 days, as allowed by the Maryland Rules of Procedure.

² Plaintiff's certificate of good faith (§7) dated August 18, 2015 fails to disclose that the Excel report was e-mailed on the same date it was requested.

II. G&G IS NOT REQUIRED TO CREAT ELECTRONIC RECORDS THAT ITS COMPUTER SOFTWARE PROGRAM CANNOT PRODUCE

Plaintiff's motion asks G&G to create a searchable Excel report as to all the data that appears on its 19,458 invoices. In doing so, Plaintiff misinterprets the deposition testimony of Bryan Sherman. Mr. Sherman, G&G's General Manager, explained that G&G can produce an Excel report of the last 3 years tows, which in fact was done by the production of the Excel report of the "Call Listing". Although Mr. Sherman testified that the Excel report would include "various fields of information", his response was to a question about the last 3 years of tows and not about all the data captured on an invoice. As Mr. Sherman explains in his affidavit, an Excel download of invoices can be done but it is not in a searchable database. Accordingly, G&G has produced the 19,458 invoices "in the form in which it is ordinarily maintained". Maryland Rule 2-422 (d).

Plaintiff's motion should therefore be denied because G&G is not required to create documents to satisfy discovery obligations. Numerous Federal rulings adhere to the principle that a party need not create documents in response to a discovery request.³ *See, e.g Barnes v. District of Columbia*, 281 F.R.D. 53, 54 (D.D.C.,2012) ("Parties served with discovery are not generally required to create documents in order to respond to such discovery, since Rule 34 of the Federal Rules of Civil Procedure only requires production of documents already in existence"); *Insituform Tech., Inc. v. Cat Contracting, Inc.*, 168 F.R.D. 630, 633 (N.D.Ill.1996) (As a general rule, non-parties are not required to create documents that do not exist, simply for the purposes of discovery); *Washington v. Garrett*, 10 F.3d 1421, 1437 (9th Cir. 1993) ("In upholding the

³ Maryland will look to corresponding federal rules and cases decisions for guidance in construing similar Maryland rules. *See E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 408-09 (1998), *citing Shenk v. Berger*, 86 Md.App. 498, 502, 587 A.2d 551, 553 (1991) and *Snowwhite v. State, Use of Tennant* 243 Md. 291, 303 (1966).

magistrate's ruling, the district judge noted that the defendant was not required to create documents to satisfy Washington's discovery requests"). *See also, Schulte v. Potter*, 218 Fed.Appx. 703, 706-07 (10th Cir. 2007) ("A magistrate judge ... issued a written order denying the motion because there were 'no responsive documents in existence,' and stating that he would not require the USPS to create reports based on 'statistics concerning the age of Defendant's work force'")

The sole case cited by Plaintiff, an unreported Federal District court decision, *Hagenbuch v. 3B6 Sistemi Elettronici Industriali S.R.L.* 2006 WL 665005 (N.D. Ill. March 8, 2006) involved the alteration of electronic media between the time Plaintiff viewed the electronic files and the time of production. The Court explained that "Plaintiff went to (Defendant offices), viewed (the) documents and electronic media as they are kept in the usual course of business and, based on that viewing, designated certain items for copying and production... Ultimately, however, (Defendant) did not produce the electronic media viewed and designated by Plaintiff. Rather, (Defendant) altered the format and characteristics of the electronic media." *Id* at 2. This ruling is inapposite to the issue presented in this discovery dispute.

III. CONCLUSION

For the reasons set out herein, G&G asks that the motion to compel discovery be denied.

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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing was served upon the individual(s) listed below by e-mail and First Class Mail, postage prepaid on this 19th day of August, 2015 to:

Richard S. Gordon, Esquire
Gordon, Wolf & Carney, Chtd.
102 West Pennsylvania Avenue, Suite 402
Towson, Maryland 21204
rgordon@gwcfirm.com
Attorney for Plaintiff



Ronald S. Canter, Esquire
Attorney for Defendant

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ORDER

Upon consideration of Defendant's Motion for Order Compelling Discovery and opposition thereto, it is this _____ day of _____, 2015;

ORDERED, that the motion be and hereby is denied.

JUDGE

EXHIBIT 1 TO OPPOSITION

Ronald Canter

From: Ronald Canter
Sent: Friday, August 14, 2015 4:08 PM
To: 'Richard S. Gordon'
Cc: Ben Carney (bcarney@gwcfirm.com); fjeinhorn@verizon.net; BSher8@aol.com
Subject: Yang v. G&G Towing
Attachments: Copy of calllist.xls

Richard

I am writing to confirm our call at 11AM on August 14 regarding your letters of August 13, 2015 and August 14, 2015. I address each letter in turn.

1. Letter of August 13, 2015:

a. Authorization For Each Tow.

You explained that you were seeking copies of the owners' records of trespass tows. You have indicated that your Subpoenas to the owners was for the purpose of obtaining records which the property owner or the owner's agent must retain in accordance with § 30C-5(c), Montgomery County Code. To the extent that this statute speaks to an obligation of an "owner" G&G does not have possession of records held by the owner. However, to the extent that the regulation refers to a "owner's agent", G&G, as a contractor for the property owner, retains tow slips and records of information furnished to the police. Further, the documents, if any, that may be in the hands of the owners are not in the possession of G&G.

b. The "Call Listing" and Invoice Production.

Attached to this e-mail is an Excel spreadsheet of the 513 page call listing data.

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AFFIDAVIT OF BRYAN SHERMAN

The undersigned hereby declares and affirms under the penalties of perjury and upon personal knowledge that the contents of this Affidavit are true:

1. I have personal knowledge of the matters set forth herein and I am competent to testify thereto.

2. I am employed by G&C Gulf, Inc., d/b/a G&G Towing (“G&G”) as General Manager and appeared for a deposition in this matter in connection with my duties for G&G.

3. Upon request of the Plaintiff, I downloaded an Excel report of the 513 page “Call Listing”, the first page of which is attached to Plaintiff’s motion to compel discovery at Exhibit 5.

4. I was able to prepare the Excel report referenced in Paragraph 3 with searchable data fields from the data stored on G&G’s “In Tow Management” software by searching for all towing calls using the term “MC (Montgomery County) impound tow”.

5. When my deposition was taken on June 24, 2015, I was aware that an Excel report could be created for the towing records from the In Tow Management software program..

6. At the request of the Plaintiff, I attempted to create an Excel report for the 19,458 invoices produced in an pdf format to the Plaintiff.

7. The Plaintiff's invoice copied in a pdf format is appended to Plaintiff's motion as Exhibit 6.

8. I attempted to download the Plaintiff's invoice from the In Tow Management program into an Excel format and when I did so, the Excel program merely created a mirror image of the invoice without columns or rows for searchable data. A copy of this report is attached hereto as Exhibit 1.

9. I also attempted to create an Excel report for a number of invoices and the same result as with the Plaintiff's invoice occurred, i.e. a mirror image copy of the invoices was produced in Excel format.

10. In a further effort to determine whether the computer program that G&G uses has the capacity to create an Excel report with searchable data that appear in each invoice, one week ago I contacted On Scene Solutions, the provider of the In Tow Management software program.

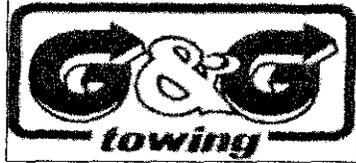
11. I received a return call from On Scene Solutions on August 18 and spoke with Pete Desciscio, a technical support representative and asked whether the In Tow Management software used by G&G has the capacity to create an Excel report with searchable data from the information contained in G&G's invoices.

11. Mr. Desciscio explained that an Excel report with searchable fields cannot be generated from G&G's software without the writing of new codes and computer programs by the software developer.

DATED: 8/19/2015


Bryan Sherman

EXHIBIT 1 TO SHERMAN AFFIDAVIT



421 Dover Road, Rockville, MD 20850 (301) 762-6023

Customer

WALGREENS
 STORE #15117
 430 HUNGERFORD DRIVE
 ROCKVILLE, Maryland 20850

Invoice # 550424 **Date** 12-Dec-2014 **Agent** david

Summary

Location: 430 HUNGERFORD DRIVE
Destination: LOT 1
Reason: Walk Off

Zone:
Vehicle: 2009 Honda Civic Dx Vp Sedan (Blue)

Owner:
VIN: 2HGFA16369H513178
Plate/Tag: 3FGW45 MD **Truck:** 4
Mileage: **Driver:** 290

Released To: Quan En Yang

Police Notified: 12-Dec-2014 4:18 PM
In Storage: 12-Dec-2014 4:38 PM

Released: 12-Dec-2014 6:13 PM

Terms: Net 30

Date	Incident #	Club/PO #	Service	Quantity	Rate	Amount
12-Dec-2014	15622		Credit Card Surcharge	1.00	4.42	4.42
			MC Private Impound	1.00	100.00	100.00
			Starting Odometer:	198,484		
			Ending Odometer:	198,487		
			MC Private Impound Mileage	3.00	4.00	12.00
			Storage (1 Day)			20.00
			Sub Total			136.42
			TOTAL			136.42
			Payments			136.42

Paid By: Visa

Balance Owing 0.00

Questions About Impounds
 Call Consumer Protection
 (240) 777-3636