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d/b/a Delia's Gun Shop

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
Plaintiff	:	CIVIL DIVISION
v.	:	
WRT Management, Inc., *et. al.*	:	
Defendants	:	

GOLDSTEIN LAW PARTNERS, LLC'S REPLY IN OPPOSITION TO PLAINTIFF'S MOTION TO IMPOSE SANCTIONS AS TO DEFENDANT FRANK'S GUN SHOP & SHOOTING RANGE, LLC FOR SPOLIATION OF EVIDENCE AND FOR AN ORDER TO SHOW CAUSE AS TO ZIMOLONG, LLC AND GOLDSTEIN LAW PARTNERS, LLC

AND NOW COMES, Goldstein Law Partners, LLC,[1] to file the following Reply in Opposition to Plaintiff's Motion to Impose Sanctions for Spoliation and for an Order to Show Cause and avers as follows:

I. Matter Before the Court

Presently before the Court is Plaintiff's Motion for Sanctions for Spoliation of Evidence as to Defendant Frank's Gun Shop & Shooting Range, LLC ("Frank's") and for an Order to Show Cause as to Zimolong, LLC ("Zimolong") and Goldstein Law Partners, LLC ("GLP").

[1] Goldstein Law Partners, LLC, serves as counsel for Mad Minute Enterprises, LLC, d/b/a Delia's Gun Shop (hereinafter "Delia's") a separate defendant in this action.

II. Facts

As noted above, GLP does not represent Frank's in this matter. After the commencement of the instant matter, GLP was engaged by Frank's to represent Frank's solely with respect to a notice of revocation issued by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and, ultimately, the surrender of Frank's Federal Firearms License ("FFL"), as detailed below.[2]

In May 2023, the ATF initiated a compliance inspection at Frank's, which led to a determination by ATF that Frank's had violated numerous federal gun regulations. On May 31, 2024, ATF served a Notice to Revoke or Suspend License and/or Impose a Civil Fine (the "Notice to Revoke") upon Frank's, which informed Frank's that ATF intended to revoke Frank's FFL, impose substantial monetary fines on Frank's and potentially prosecute Frank's criminally for violations of various federal firearms laws. On June 12, 2024, Frank's submitted a formal written request for a hearing to the ATF.

On June 18, 2024, ATF issued a Notice of Hearing, scheduling the hearing in the Frank's revocation matter for August 1, 2024. On or about July 12, 2024, GLP notified ATF that GLP had been retained by Frank's to represent Frank's in relation to the Notice to Revoke and the related hearing. GLP negotiated with ATF as part of the firm's representation of Frank's, successfully brokering a deal where Frank's consented to formally surrendering its FFL on October 20, 2024.

Frank's thereafter coordinated with ATF to turn over its firearm transaction records[3] as required under federal law and as ATF demanded. *See* 27 C.F.R. § 478.127. Upon information

[2] Because GLP does not represent Frank's with respect to the present litigation, GLP defers to Plaintiff and Frank's recitation of facts as specifically related to their discovery dispute.

[3] Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business for such period, and in such form, as the Attorney General may by regulations prescribe. 18 U.S.C. § 923(g)(1)(A)

and belief, on November 1, 2024, the ATF traveled to Frank's and took possession of Frank's firearm transaction records, including all of its 4473 Forms. Frank's did not, as the Plaintiff wrongly alleges, send its records to ATF. Rather ATF came to Frank's and removed all the documents they deemed necessary to take. As a former dealer no longer in possession of a valid FFL, Frank's was required under federal regulations to turn these records over to ATF as part of closing its business. *Id*. A failure to do so would constitute a violation of ATF regulations and may have subjected Frank's to sanctions, penalties and criminal liability.

III. Relevant Case Law

"Spoliation of evidence" is the non-preservation or significant alteration of evidence for pending or future litigation. *Pyeritz v. Com.*, 32 A.3d 687, 692 (Pa. 2011). The Pennsylvania Supreme Court adopted a three-part test to determine if spoliation occurred: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party, and (3) the availability of a lesser sanction that will protect the opposing party's rights and deter future similar conduct. *In Schroeder v. Com., Dep't of Transp., 710 A.2d 23, 27 (Pa. 1998).*

For a finding of spoliation, the trial court must first find that the accused party is at fault. *Mount Olivet Tabernacle Church v. Edwin L. Wiegand Div.*, 781 A.2d 1263, 1270 (Pa. Super. Ct. 2001). "Fault has two components: responsibility, and the presence or absence of bad faith." *Id*. (citations omitted). The alleged-spoliating party's power "to exercise authority over the preservation or destruction of evidence is a relevant factor in determining responsibility." *Harkins v. Three Monkeys Croyden, Inc.*, 326 A.3d 408 (Pa. Super. Ct. 2024) *(citing Pia v. Perrotti*, 718 A.2d 321, 324 (Pa. Super. Ct. 1998).

IV. Argument

1. No spoilation exists and therefore no fault exists.

A motion for spoilation cannot succeed when the allegedly "destroyed" documents have been produced; nor can a party be held "at fault" for destroying documents which were not destroyed. In the instant case, Frank's produced 430+ pages of responsive documents. These are the same documents that the Plaintiff erroneously claims that Frank's, through the help of its Counsel, destroyed. Accordingly, the actual production of the documents should end this inquiry. Plaintiff cannot prove that Frank's, GLP, or Zimolong conspired to destroy any documentary evidence. Rather, the facts demonstrate that ATF sought to revoke Frank's FFL, and that GLP successfully negotiated the surrender of Frank's FFL instead. This event led ATF to enter Frank's property and remove the documents cited in the Plaintiff's Motion for Sanctions.

In addition, GLP represented Frank's **only** in negotiating with ATF over the revocation and/or surrender of the FFL, **not** with any aspect of this litigation – including, but not limited to Frank's discovery obligations. GLP did not represent or advise Frank's concerning its discovery obligations in the instant matter. Rather, Zimolong represented Frank's in this matter, and appears to have taken reasonable measures to preserve copies of the documents at issue before ATF entered Frank's premises and removed records.

2. No prejudice.

As a threshold point, Frank's has produced the documents that the City cites in its Sanctions Motion. The Plaintiff has suffered no harm since the documents were not destroyed, and Frank's has since produced those documents. Having received the documents requested, Plaintiff cannot assert that it has been prejudiced.

Assuming *arguendo*, even if Frank's had not produced the allegedly "destroyed" documents, the City could still not prevail in its Sanctions Motion. In order to prevail, Plaintiff's would still need to demonstrate how they were prejudiced by the spoilation. *In Schroeder v. Com., Dep't of Transp., 710 A.2d 23, 27.* While Plaintiff claims, the "destroyed" documents contain "precisely the information that the [Plaintiff] needed to prove its allegations"[4], that is simply not true. First, they already possess documents which contain the very same information which is contained in the transaction documents removed by ATF, and second, none of the information therein proves the allegations in Plaintiff's Amended Complaint.

Plaintiff's claim, in particular, the sought after Form 4473s are critically important "as they include identifying information about the buyer and require the buyer to answer certain questions that help determine whether or not he or she is eligible to buy the gun, including whether or not the buyer is acquiring the guns for himself" and "includes the number and type of guns the customer is purchasing, the results of the background check and certification by the seller about the legality of the sale." Pltf's Mot. pp. 13, 14. However, Plaintiff already knows and has access to all this information, and this information was established by documents already in Plaintiff's possession. *See* Pltf's Am. Cmpl. ¶¶ 66-80. Further, if any of the alleged straw purchasers were not in fact eligible to purchase a firearm, failed the background check or indicated on a Form 4473 that they were not the intended buyer, the sale could not have been and would not have been approved by the government as part of the background check at the point of sale in the first place. Putting it plainly, the sought after 4473 documents do not "prove" Plaintiff's allegations, even with the best inference possible derived therefrom, as they merely provide the same information already known to Plaintiff, that is, who bought what and when. Plaintiff is no more able to contact

[4] Pltf's Mot. p. 13.

and interrogate those alleged straw purchasers with the 4473 Forms it sought through discovery than it is without those 4473 Forms.

Moreover, Plaintiff's assertion that the documents it sought in discovery contain "precisely the information" they need to "prove their allegations" is contradicted by their seeming ability to continue the instant matter against co-defendant WRT Management, LLC ("WRT"). WRT ceased operations prior to Plaintiff's initiation of the instant action. In surrendering their FFL to the ATF – as they were also required to do when WRT closed up shop – WRT turned over to the ATF the very same documents which Frank's turned over to the ATF. Upon information and belief, WRT has not produced any of the purported critical transaction documents to Plaintiff, presumably because, having turned those documents over to ATF, it has none. Yet, Plaintiff believes it can pursue its claims against WRT without such documents. If Plaintiff can do so with regard to WRT, it can certainly do so with regard to Frank's. Plaintiff therefore suffers no prejudice without the documents Frank's lawfully turned over to ATF as part of its license surrender. .

3. GLP violated no Orders of Court or Rules of Professional Conduct

GLP does not represent Frank's in the instant matter. GLP was engaged by Frank's to serve as its counsel in an administrative proceeding before a federal agency. Plaintiff nevertheless is trying to foist responsibility onto GLP for Frank's actions in the instant matter with vague references to the Pennsylvania Rules of Professional Conduct, alleging that GLP somehow violated Rules 3.3 (candor to the Court) and 3.4 (fairness to the opposing party).[5] Plaintiff's argument, however, lacks candor. In the administrative proceeding in which GLP represented Frank's, there were essentially two possible outcomes: (1) ATF would revoke Frank's FFL and pursue other penalties and fines; or (2) ATF would accept a negotiated settlement where Frank's

[5] It should be noted the Plaintiff in this case was not the opposing party in the administrative proceeding.

would surrender its FFL. In either instance, Frank's would be required under the applicable regulations to surrender its records. GLP simply negotiated with ATF for the best possible manner for this to occur.

What Plaintiff is outrageously trying to do, without any legal support, is hold GLP liable for the obligations of a party it does not represent in this case, by claiming GLP deceived this Court (and Plaintiff) for not disclosing facts of a separate proceeding, despite GLP having no obligation to do so under the Rules of Professional Conduct. See Rule 4.1 cmt. 1 (A lawyer is required to be truthful when dealing with others on a client's behalf, but **generally has no affirmative duty to inform an opposing party of relevant facts**.) (emphasis added). This of course also overlooks the fact that GLP simply had no authority to make any representations to this Court or Plaintiff on Frank's behalf because, again, it does not represent Frank's in this matter and, in any event, GLP was bound to keep the details of negotiations with the ATF confidential under the attorney-client privilege in the matter in which GLP did represent Frank's.

4. No sanctions warranted.

The imposition of any sanctions against any of the parties for a now resolved discovery dispute would be wholly unjust. Plaintiff, rather than withdrawing (or at least amending) this Motion upon receipt of the documents it sought, seems determined to seek only the most disproportionate, severe and extreme sanctions possible: summary judgment in its favor on all counts against Frank's, an award of all legal costs and attorney's fees for the past 11 months and the striping of Frank's attorney-client privilege, all laid at the feet of GLP, a law firm that does not even represent Frank's in this matter.

Plaintiff's demand for these abusive and unwarranted sanctions is built around a story that is simply not true. Plaintiff claims that certain documents were destroyed. Those documents were

not destroyed. GLP never had those documents. Plaintiff now has those documents. Plaintiff claims Frank's surrendering of the physical copies of its transactional documents to the ATF, as required by federal law, was somehow nevertheless unlawful or unethical.

In its Motion for Sanctions Plaintiff also repeatedly claims that Frank's bankruptcy filing was frivolous or in bad faith, yet it never made that baseless assertion to the bankruptcy Trustee or sought an inquiry by the Bankruptcy Court into that narrative while Plaintiff was an active participant during the entirety of the bankruptcy proceeding. Plaintiff appeared in the bankruptcy matter. Plaintiff's lawyers were present at the hearing where the debtor was examined under oath. Plaintiff had ample opportunity to be heard in that forum and could have raised bad faith there. It did not. Plaintiff had ample opportunity to demand documents and records in that forum. It did not. At the time of filing for bankruptcy, as undisputed by Plaintiff and ultimately determined by the Bankruptcy Court, Frank's was out of business, had no income and had no assets. The bankruptcy filing was clearly a rational and prudent action to wind up what was a dead entity facing overwhelming legal and administrative costs. Frank's chapter 7 bankruptcy filing was a classic case of a proper and purposeful bankruptcy for a lawful purpose. That is why it was approved without issue by the Bankruptcy Court. The filing was designed to bring to an orderly conclusion to an incalculably large liability – the instant matter – and the legal fees that would have been attendant in fighting those liabilities to no purpose. With no assets and facing such enormous legal fees to defend a now closed business, Frank's decision to file bankruptcy was entirely proper and entirely rational. It was not part of some vaguely malicious scheme to hurt Plaintiff, as now baselessly alleged by Plaintiff.

Finally, in truth, one would think that Plaintiff would be pleased that Frank's is bankrupt and out of business, an outcome far exceeding the prayer for relief Plaintiff sought in its complaint.

The Plaintiff won. Frank's is gone. What more do they want? What does prevailing against Frank's in the instant matter look like if litigation continues? Plaintiff has yet to articulate what victory looks like beyond the current state of affairs. What is Plaintiff's proper purpose for maintaining this litigation against Frank's at all at this point? It can obtain no greater relief than that which has already transpired. To that point, one would think the case against Frank's would be dismissed as the relief sought by Plaintiff is now impossible for this Court to award. Look at the Prayer for Relief in Plaintiff's Amended Complaint. Frank's cannot be ordered to reform its non-existent business practices. It is out of business. Frank's cannot pay restitution. A federal bankruptcy court has held that it has no assets. Yet, Plaintiff, for no apparent proper purpose, wants the corpse of Frank's business to stand trial to answer for why Plaintiff did not get to kill it first.

V. **Relief**

For the foregoing reasons, Goldstein Law Partners, LLC respectfully requests the Court deny Plaintiff's motion.

Respectfully submitted,

Goldstein Law Partners, LLC

Date: 04/09/2025

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