

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THEODORE V. OLSON, SR.,
Plaintiff,

vs.

**OLSON INDUSTRIES, INC., a Nebraska
corporation,**
Defendant.

Case No. CI99-72

ORDER ON MOTIONS

DATE OF HEARING: November 4, 1999.

DATE OF DECISION: December 2, 1999.

APPEARANCES:

For plaintiff:

David E. Copple with plaintiff.

For defendant:

Terry R. Wittler with Ted Olson, Jr., corporate representative.

SUBJECT OF ORDER:

(1) plaintiff's motion to compel and for sanctions, and, (2) plaintiff's motion for continuance of hearing on summary judgment motion.

FINDINGS:

The court finds and concludes that:

1. Some requests were overly broad and unduly burdensome regarding the scope of materials requested. Other requests were overly broad or unduly burdensome because they were not time-limited or because the specified time period was unreasonable. To the extent that the court sustains certain of the defendant's objections to the breadth and burden of the plaintiff's requests, the court declines to "carve up" the requests to enforce such portions as might not be overly broad and unduly burdensome. To engage in that exercise would only induce requesting parties to ask for "everything including the kitchen sink." The risk that an objection may be sustained to an overly broad or unduly burdensome request should be borne by the party making the request.

2. Conversely, the risk that an objection asserting a request is overly broad or unduly burdensome may be overruled should be borne by the party making the objection. Where the matter is clear, i.e. where the opposition to the motion is not substantially justified, sanctions are appropriate.

3. Some of the pending requests relating to the motion to compel were resolved by stipulation and agreement. To the extent that the parties have agreed to production on such matters, such requests shall be complied with at the same time as otherwise ordered herein.

4. The order sets forth the requests for production to which the defendant's objections have been sustained. To such extent, the motion to compel must be denied.

5. The order also sets forth the requests for production to which the defendant's objections have been overruled, but upon which the court finds that the opposition was substantially justified. As to such matters, the court has declined to award expenses of the motion.

6. Because the court concludes that there were no requests as to which the opposition was not substantially justified, the request for sanctions must be denied.

7. The plaintiff's motion for continuance of summary judgment hearing should be further continued until a hearing date which is at least 20 days after the defendant's compliance with this court's order to produce.

8. It is clear that the matter will not be ready for pretrial conference as previously scheduled on December 21, 1999. On the court's own motion, the pretrial conference should be continued until further order and will be rescheduled by the court upon disposition of the motion for summary judgment.

ORDER: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. As to the following requests for productions, the defendant's objections are sustained, and the motion to compel relating thereto is denied: Requests Nos. 5, 6, 11, 12, 13, 14, 15 (duplicate of 12), 16 (duplicate of 13), 17, 18, 23, 24, 26, 31, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 55, 56, 57, 58, 59, 61, 62, 66, 72, and 73.

2. As to the requests for which partial production has been stipulated in the Amended Stipulation and Agreement, the motion to compel is granted to the extent specified in paragraph 1 of the said Amended Stipulation and Agreement, but is denied to the extent that such requests exceed the scope specified in said paragraph 1.

3. As to the following requests for productions, although opposition to the motion was substantially justified, the defendant's objections are overruled, and the motion to compel relating thereto is granted: Requests Nos. 2, 3, 7, 10, 32, 33, 34, 35, 52, 63, 64, 68, 69, and 70.

4. The production of such materials shall be accomplished as follows:

a. The defendant shall make such materials available for inspection and copying at either (a) the defendant's principal office at Atkinson, Nebraska, or, (b) the office of the plaintiff's attorney, at Norfolk, Nebraska.

(1) The designation of such location shall be made in writing by defendant's counsel filed with the court clerk and served upon plaintiff's counsel within 7 days from the date of this order.

(2) Upon failure to timely designate, the place of production shall be deemed to be the office of the plaintiff's attorney.

b. The date and time of the production shall be within 30 days from the date of this order.

(1) The designation of such date and time shall be made in writing by defendant's counsel filed with the court clerk and served upon plaintiff's counsel within 7 days from the date of this order.

(2) Upon failure to timely designate, the date and time of production shall be on Thursday, December 30, 1999, at 10:00 a.m.

c. The defendant shall designate a corporate officer who shall be personally responsible to assure compliance with the order for production. The designation of such corporate officer in writing shall be filed with the court clerk and served on opposing counsel within 7 days of the date of this order.

d. The defendant shall organize and label the documents produced for inspection to correspond with the categories in the respective requests.

e. Upon completion of the production ordered, the defendant's counsel shall file a notice in writing with the court clerk that the ordered production has been accomplished and serve a copy upon opposing counsel.

5. The motion for sanctions is denied.

6. The motion for continuance is granted. Upon filing of the notice by the defendant's counsel that the ordered production has been accomplished, the defendant shall obtain a further hearing date and

time from the court clerk for the summary judgment motion in compliance with Rule 8-3, which hearing date shall be at least 20 days after the filing of the notice of defendant's counsel that the production has been accomplished. Notice of hearing shall be served on opposing counsel. The court clerk shall not assign any hearing date or time until such notice of production has been filed in writing. If no further hearing is noticed within 60 days from the date of this order, counsel are advised that the court will deny the motion without further hearing.

7. On the court's own motion, the pretrial conference in this case is continued until further order. The court will reschedule the same upon disposition of the pending motion for summary judgment.

Entered: December 2, 1999.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19 ____ by ____.
- 9 Enter judgment on the judgment record.
Done on _____, 19 ____ by ____.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 19 ____ by ____.
- : Note the decision on the trial docket as: [date of order] Signed "Order on Motions" entered regarding plaintiff's motion to compel and for sanctions and plaintiff's motion for continuance of summary judgment hearing, and regarding continuance of pretrial conference on the court's own motion.
Done on _____, 19 ____ by ____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge