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April 1, 2016

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Supreme Court of Vermont Affirms Dismissal for eDiscovery Misconduct

by Alan Brooks

The Supreme Court of Vermont has affirmed the dismissal of a complaint based upon the plaintiff's eDiscovery misconduct. In *Synecology Partners, L3C v. Business RunTime, Inc., et. al.*, Case No. 2015-253 (Sup. Ct. Vt., Mar. 4, 2016), Plaintiff sued Defendants for various business torts, including theft of intellectual property and exposure of trade secrets, as well as some uncommon counts for burglary, larceny and industrial sabotage. The case led to protracted eDiscovery disputes.

Defendants submitted discovery requests asking for emails relating to the case; Plaintiff responded but did not provide the emails in native format (/it-never-hurts-to-ask-case-law-update-regarding-requesting-native-file-format) and did not provide everything requested.

Defendant sought the emails in native format and offered to agree to a protective order pursuant to Vermont's rules of civil procedure but expressed skepticism that all the


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documents Plaintiff wanted to withhold should really be protected. The protective order was signed, and Defendants sought the emails in native format, including the complete inboxes of certain employees. Plaintiff responded nearly a year later, promising a disk containing the emails and inboxes in Outlook file format. Four months after that, the disk was produced, but

the emails were not in native format, and not all the email accounts were covered. Plaintiff had redacted eighty-six of the emails due to claimed privilege, but had not produced

a privilege log. After two more years and several more attempts to obtain native format,

Defendants filed another motion to compel, which the court granted. Thereafter, Defendants

struggled more to obtain what they had asked for and finally filed a motion for contempt and

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for sanctions. The court granted the motion and sanctioned Plaintiff by dismissing the case; Plaintiff appealed.

The Supreme Court of Vermont noted that the sanction of dismissal was only warranted in cases of “flagrant bad faith” and willful disregard of court orders. The court affirmed the dismissal, holding that Plaintiff had demonstrated sufficient bad faith in its discovery conduct to warrant such a hefty sanction.

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