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Court Orders Significant Sanctions Against Plaintiff for Wiping Company Laptop but Stops Short of Dismissing Complaint

Minding Your Business on **September 7, 2023**

A recent order from a federal magistrate judge provides helpful insight to parties concerning the destruction of evidence and the proof required to obtain the ultimate sanction of dismissal of a case as a result of such destruction.

In *McLaughlin v. Lenovo Global Tech. (United States) Inc.*, Magistrate Judge Gail Dein of the District of Massachusetts issued numerous sanctions against plaintiff but decided that dismissal of plaintiff's case was too harsh a punishment after he wiped his company-issued laptop prior to returning it to defendant.

McLaughlin was employed by Lenovo from 2016 until he was terminated in April 2020. McLaughlin had worked on a company-issued laptop (the "Laptop") and had signed an agreement requiring him to return all Lenovo property, including documents of any kind, upon leaving Lenovo's employ. On May 11, 2020, McLaughlin submitted reimbursement and commission requests to Lenovo dating back to 2017, which Lenovo denied the same day as untimely per company policy. The following month, McLaughlin filed suit against Lenovo, claiming that Lenovo violated the Massachusetts Wage Act by failing to pay him certain commissions and a bonus, and to reimburse him for certain business expenses. He also separately filed a claim alleging that his firing was the result of age discrimination.

During discovery, McLaughlin testified that email communications and calendar entries on the Laptop supported his claims. However, McLaughlin held onto the Laptop over a year after the case began, notwithstanding the fact that Lenovo had demanded the return of the Laptop both before and after the litigation was filed.

On June 2, 2021, McLaughlin returned the Laptop along with an SD card, which he testified was a complete backup of the Laptop. Lenovo then hired a third party to conduct a forensic examination of the Laptop and learned for the first time that the Laptop had been wiped clean. The forensic examiner determined that information was downloaded to the SD card the same day that McLaughlin returned the Laptop. McLaughlin later produced a second SD card containing his calendar, which Lenovo's third-party forensic examiner concluded was not identical to the calendar Lenovo was able to recover from its own servers.

Judge Dein began her analysis by determining whether spoliation had occurred based on four factors: "1) an act of destruction; 2) discoverability of the evidence; 3) intent to destroy the evidence; and 4) occurrence of the act after commencement of litigation or, if before, at a time when the party was on notice that the evidence might be relevant to potential litigation." As to the first two factors, the court found that McLaughlin destroyed discoverable evidence – including the Laptop's C drive, which Lenovo asserted would have contained full copies of McLaughlin's email and calendar, as well as critical metadata – by wiping the laptop and that it was impossible to determine whether all such evidence would ever be recoverable through other means.

As to the third factor, the court held that "[t]here is no question that McLaughlin's action in wiping the Laptop clean was an intentional act." Lastly, as to the fourth factor, the court rejected McLaughlin's claim that he wiped the Laptop prior to Lenovo's denial of his reimbursement requests on May 11, 2020. Instead, the court found that "the only persuasive evidence" was that McLaughlin wiped the computer on June 2, 2021, a year after he filed suit and the same day he returned the Laptop to Lenovo.

Accordingly, Judge Dein held that heightened sanctions were warranted under Fed. R. Civ. P. 37(e)(2) because McLaughlin "acted with intent to deprive Lenovo of the Laptop which belonged to Lenovo, and to deprive Lenovo of the original hard drive of its own computer." Given the untimeliness of his requests for reimbursement and compensation, McLaughlin should have known upon termination that he was likely to be involved in litigation with Lenovo. The court issued two significant sanctions that could have affected the outcome of a trial. First, it limited McLaughlin's use of any calendar entries to support his claims to those that also appeared on Lenovo's server. Second, it ordered that the jury would be instructed that McLaughlin wiped the Laptop before returning it to Lenovo, thereby preventing Lenovo from identifying any materials not produced on the SD cards. The jury would also be instructed that they could, but need not, conclude that the deleted information was unfavorable to McLaughlin.

The court decided that the ultimate sanction, dismissal of McLaughlin's case, was too severe because Lenovo had not established that it was unable to recover substantially all, if not all, of the Laptop's deleted materials from its own servers or the SD cards. The court also ordered McLaughlin to pay for Lenovo's forensic examinations of the Laptop but not its attorneys' fees in connection with its sanctions motion because Lenovo's originally incorrect assertions as to the extent of the destruction and production of the Laptop's data had led to substantial briefing.

Shortly after the court issued its decision, the parties settled both McLaughlin's failure to pay and age discrimination cases. It is likely this decision played a big role in that result. The decision provides a clear reminder of the severe consequences to parties for spoliation of evidence, as well as the difficulty for the party seeking sanctions to demonstrate the level of prejudice necessary to warrant the dismissal of a party's claims or defenses.

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