

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.

Case No. 2006 CT 9733 NC

JOHN C. FABIAN, ET AL.,

Defendant.

FILED FOR RECORD
2007 SEP 10 PM 4:04
KAREN E. RUSSELL
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

LIMITED NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that CMI, Inc., d/b/a CMI, Inc. of Kentucky ("CMI"), appeals to the Circuit Court of the Twelfth Judicial Circuit in and for Sarasota County, Florida, the Order of Civil Contempt rendered on August 13, 2007, and the Corrected Judgment of Contempt rendered on August 16, 2007. The nature of the Order is a final order and corrected judgment holding CMI in contempt, and ordering certain actions. True and correct copies of the Order of Civil Contempt and Corrected Judgment of Contempt are attached hereto as Exhibits "A" and "B," respectively. The appearance in this matter by CMI is for the limited purpose of commencing an appellate proceeding with respect to the above-referenced Order, and CMI expressly reserves any and all defenses available to it, including but not limited to, the right to contest *in personam* jurisdiction of this court over CMI.

Case: 2006 CT 009733 NC
00086592000
Dkt: APPNOT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by ordinary U.S. Mail to the individuals on the attached service list this 10th day of September, 2007.

Respectfully submitted,

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IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

Vs.

JOHN C. FABIAN, ET. AL.

Defendant.

CASE NO. 2006 CT 009733 NC

ORDER OF CIVIL CONTEMPT

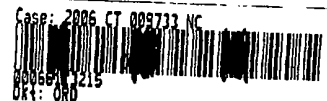
THIS CAUSE having come before the Court on the Order to Show Cause directed to CMI, Inc of Kentucky (hereinafter CMI), and the Court being fully advised herein, finds as follows:

1. On March 12, 2007 this Court entered an Order Directing Clerk to Issue Subpoena Duces Tecum directed to CMI to:
 - a. Appear at the State Attorney's Office on May 16, 2007 at 9:00 A.M. with the Intoxilyzer 8000 Source Code, EPROM Versions 8100.24, 8100.25, 8100.26 and 8100.27,
 - b. Furnish the records instead of appearing, or
 - c. Object to the subpoena.

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CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

EXHIBIT

A



2. CMI, Inc., a Kentucky corporation, is registered with the Florida Secretary of State to transact business in the State to Florida using the name "CMI Inc of Kentucky".

3. On April 2, 2007 CMI was lawfully served with the subpoena approved by this Court.

4. CMI did not produce the requested material.

5. CMI did not file an Objection or a Motion challenging this subpoena with this Court.

6. The Defendants filed a Verified Motion for Order to Show Cause asking for CMI to be found in contempt for failing to comply with this Court's Subpoena.

7. The Defendants made this Court aware of an Order dated May 3, 2007 by the Daviess District Court in Kentucky, 07-C-00691, purporting to quash the subject subpoena.

8. This Court granted the Defendants' Motion for Order to Show, providing in the Order that the issue of what legal effect, if any, this Court must give to the Kentucky Order Quashing Subpoenas could be addressed at the Show Cause Hearing, scheduled for July 18, 2007.

9. CMI was served the Order to Show Cause on June 18, 2007.

10. CMI did not file a response to the Order to Show Cause with the Court, instead CMI's attorney, Allen Holbrook, mailed a letter to the Defendants' attorney with attachments, requesting that this information be provided to the Court.

11. The Defendants' filed with the Court the correspondence from attorney Holbrook, which provided CMI would not appear at the July 18, 2007 Hearing.

12. At the Hearing on July 18, 2007, neither CMI nor a representative appeared before this Court.

13. CMI willfully failed to comply with this Court's Subpoena.

14. CMI was given the opportunity to present to this Court any legal reason why it should not be held in contempt, including any legal authority for a Kentucky Trial Court to quash a Subpoena issued by this Court, but CMI intentionally elected not to appear before this Court at the Show Cause Hearing.

15. A Judgment rendered by a court without jurisdiction is a nullity. *Markham v. Nisbet*, 60 So.2d 393 (Fla. 1952). A judgment of a sister state may be attacked on the ground of lack of jurisdiction by the court rendering the judgment. *Id.* A Kentucky trial court lacks jurisdiction to quash a

subpoena issued by this Court. The Order of the Kentucky Court is void and has no effect on these proceedings.

16. As a result of CMI failing to comply with this Court's Subpoena, the Defendants' spent the sum of \$2,310.00, as set forth in the Defendants' affidavit of costs. Only one-third (\$770.00) of these costs are attributable to this cause due to these costs also being used in two companion cases.

17. In determining the amount of a coercive sanction, the Court must consider the character and magnitude of the harm threatened by continued contumacy, and the probable effectiveness of any suggested sanction in bringing about the result desired. *Parsi v. Broward County*, 769 So.2d 359 (Fla. 2000).

18. The failure of CMI to comply with this Court's subpoena has created a tremendous backlog of cases, which includes more cases than are in this consolidated action. The magnitude of the impact of CMI's non-compliance on both the Court and each of these Defendants' right to material evidence is significant.

19. The fact that CMI appeared for neither the subpoena nor the Order to Show Cause leads this Court to the conclusion that nothing short of a large, coercive sanction will result in compliance.

20. In fixing the amount of a fine to be imposed as a means of securing future compliance, the Court must consider the amount of contemnor's financial resources and the consequent seriousness of the burden to that particular contemnor. *Parsi*.

21. CMI failed to appear at the Show Cause hearing, thus depriving the Court of an opportunity to further inquire of CMI's financial resources. However, this Court was previously provided a purchase Order for sale of Intoxilyzers to the Florida Department of Law Enforcement for \$1,500,000.00. This Court further takes judicial notice that CMI also provides Intoxilyzers to the majority of the States in this country.

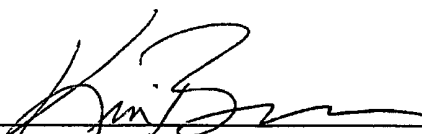
ORDERED AND ADJUDGED that CMI, Inc. of Kentucky is in willful civil contempt of this Court for failing to comply with the Subpoena Duces Tecum lawfully served to produce the Intoxilyzer 8000 Source Code, EPROM Versions 8100.24, 8100.25, 8100.26 and 8100.27. CMI shall have 20 days within which to comply with the subpoena.

IT IS FURTHER ORDERED AND ADJUDGED that CMI, Inc. of Kentucky will pay a compensatory fine in the amount \$770.00, which may be satisfied by paying said sum to the Trust Account of Robert N. Harrison.

IT IS FURTHER ORDERED AND ADJUDGED that if CMI, Inc. of Kentucky fails to comply with the subpoena within this time, CMI, Inc. of

Kentucky will be fined the sum of \$ 100⁰⁰ per day of each of the 32 consolidated cases, for a total of \$ 3200⁰⁰ per day until CMI, Inc. of Kentucky purges its self of said contempt by producing the Intoxilyzer 8000 Source Code, EPROM Versions 8100.24, 8100.25, 8100.26 and 8100.27, or until further order of this Court.

DONE AND ORDERED in chambers in Sarasota County, Florida,
this 10 day of July , 2007.



Honorable Kimberly C. Bonner
County Court Judge

cc: Robert N. Harrison, Esquire
Jarrod Malone, Assistant State Attorney
CMI Inc. Of Kentucky, c/o it's registered agent, NRAI Services, Inc.
2731 Executive Park Drive, Suite 4, Weston, FL 33331
Allen Holbrook, Esquire 100 St. Ann Building PO Box 727
Owensboro, KY 42302-072

IN THE COUNTY COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND
FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

VS.

CASE NO. 2006 CT 9733 NC

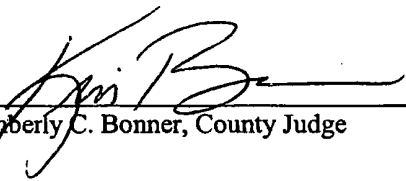
JOHN C. FABIAN, ET. AL,

Defendant.

CORRECTED JUDGMENT OF CONTEMPT

The Court notes that the prior Judgment of Contempt was entered on August 10, 2007. The judgment was incorrectly dated July 10th, 2007. The Court therefore enters this corrected order only as to the date and reincorporates its prior factual findings and order of contempt.

DONE and ORDERED in chambers in Sarasota, Sarasota County, Florida on
this 15th day of August, 2007.



Kimberly C. Bonner, County Judge

Copies furnished by Judge's Office to:

Jarrod Malone, Assistant State Attorney.

Robert N. Harrison, Attorney for Defendants.

FILED FOR RECORD
2007 AUG 16 AM 10:38
KIMBERLY RUSSELL
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

Case: 2006 CT 9733 NC
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Dkt: ORD

EXHIBIT

B

Consolidated cases for John C. Fabian 06 CT 9733 NC

John Fabian, ET. Al.	06 CT 9733 NC ✓
Kimberlyn Geary	06 CT 10394 NC
Kyle Steven Kozel	06 CT 16092 NC
Joseph Frizalone	06 CT 18574 NC
Tammy Lynch	06 CT 7860 NC
Joseph Henry	06 CT 14247 NC
Henry Gibson	06 CT 13373 NC
Jay D. Koerner	06 CT 7791 NC
Denise Kircher	06 CT 13753 NC
Leslie Wayne Fisher	06 CT 13062 NC
Robert E. Laubach	06 CT 20434 NC
Lynn Kirsten	06 CT 19382 NC
David Davenport	06 CT 17987 NC
Jeremy Allen Horn	06 CT 20427 NC
Ernesto Gonzalez Barrueco	06 CT 20565 NC
David Fracek	06 CT 20644 NC
Michael Garnigna	05 CT 9609 NC
William Loftus Hall Jr.	05 CT 7783 NC
Jonathan Lewis	06 CT 15850 NC
Jennifer Cook	07 CT 3228 NC
Robert Knego	07 CT 3383 NC
Nicholas Graham	07 CT 5356 NC
James Armour	07 CT 21821 NC
Daniel Pierre Lyonnais	07 CT 5358 NC
Carolyn Eagen	07 CT 3535 NC
Lisa Klopfer	07 CT 799 NC
Thomas Hoyt	07 CT 5339 NC
James Lowicz	07 CT 9715 NC

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The Honorable David L. Denkin

The Honorable Phyllis R. Galen