

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

STATE OF FLORIDA, :

Plaintiff, :

Vs. :

CASE NO. 2006 CT 009733 NC

JOHN C. FABIAN, ET. AL. :

Defendant. :

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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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KAREN E. RUMBERG
CLERK OF CIRCUIT COURT
SARASOTA COUNTY, FL

Case: 2006 CT 009733 NC
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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.

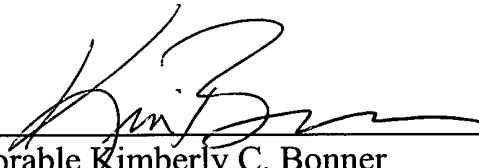
ORDERED AND ADJUDGED that CMI, Inc. of Kentucky is in willful civil contempt of this Court for failing to comply with the Subpoena Duces Tecum lawfully served to produce the Intoxilyzer 8000 Source Code, EPROM Versions 8100.24, 8100.25, 8100.26 and 8100.27. CMI shall have 80 days within which to comply 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.
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