

Case Summary

YCA, LLC v. Berry

2004 WL 1093385 (N.D.Ill. May 7, 2004)

Party's Inconsistent Testimony Justifies Delayed Disclosure Of Computer Forensic Expert

In a case involving an alleged breach of a restrictive covenant, the defendant moved to strike the testimony of a computer expert who recovered deleted documents from the defendant's computer. The defendant argued that allowing the expert's testimony would be unfairly prejudicial because the plaintiff failed to disclose the computer expert by the required discovery deadline. The plaintiff asserted the delay was justified as it was a result of the defendant's own deposition testimony.

During a deposition, the defendant stated that an email exchange regarding documents at issue took place on outside email accounts (Yahoo and AOL), thus making a search of his computer unnecessary. However, in a subsequent affidavit, the defendant acknowledged creating a document that theoretically could exist on his computer, and not just on his outside email accounts.

Decision

The court found the inconsistent testimonies of the defendant was a sufficient excuse for the delay. In doing so, the court stated that if the defendant "wanting to avoid 'unfair surprise' concerning his legal strategy, perhaps he should have followed the spirit of the discovery rules and informed [defendant] that [plaintiff's] computer might contain relevant documents." Consequently, the defendant's motion was denied and the computer expert's testimony along with the recovered documents was admissible.

Preservation Orders for Computer Forensic Evidence
Production of Electronic Documents
Recovered Computer Forensic Evidence