

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NO. 05-2013-CA-33457

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court,

Plaintiff,

vs.

BLUEGEM, LLC, a Florida limited liability
company,

Defendant.

BLUEGEM, LLC, a Florida limited liability
company,

Counter-Plaintiff,

vs.

SCOTT ELLIS, in his official capacity as
Brevard County Clerk of the Circuit Court.

Counter-Defendant.

**RESPONSE TO DEFENDANT/COUNTER-PLAINTIFF'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Plaintiff SCOTT ELLIS, in his official capacity as Brevard County Clerk of the Circuit Court, through undersigned counsel and pursuant to Fla. R. Civ. P. 1.351, hereby responds to Defendant/Counter-Plaintiff BLUEGEM, LLC's First Request for Production of Documents, dated May 6, 2013, as follows:

1. All legal opinions or advice, formal or informal, provided to the Brevard County Clerk of the Circuit Court from January 2012 to and including January 7, 2013 relating to the following:

- a. the ITN (Invitation to Negotiate) process (as described in the Complaint);
- b. the Scanning Contract; and,
- c. the Amendment.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office have been produced.

2. Any and all documents identified or referred to in any of your answers to the Interrogatories which were served contemporaneously upon you with these Requests for Production.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office have been provided with Plaintiff's Answers to Defendant/Counter-Plaintiff's First Set of Interrogatories.

3. Any and all documents and communications you received from Nicholas ("Nick") Geaney (or his attorney) in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 12, below.

4. Any and all documents and communications you received from Kelly Geaney in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 8, below.

5. Any and all documents and communications you sent to Nicholas ("Nick") Geaney (or his attorney) in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 12, below.

6. Any and all documents and communications you sent to Kelly Geaney in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 8, below.

7. Any documents and communications exchanged by and between you (or your agents, representatives or attorneys) and Nicholas (“Nick”) Geaney (or his agents, representatives, or attorneys) in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office are provided in response to paragraph 12, below.

8. Any documents and communications exchanged by and between you (or your agents, representatives or attorneys) and Kelly Geaney in relation to BlueGEM, Roseware, LLC, Rose Harr or any company related to the aforementioned three names.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office have been produced.

9. Any payments made by you to any person or entity for information relating to BlueGEM, Rose Harr and/or Roseware, LLC.

RESPONSE: None.

10. All documents which provide the basis for the “information and belief” as to your allegation in Paragraph 17 of the Complaint that “BlueGEM’s staff adapted the Palm Beach ITN...”

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office have been provided. Additional documents are provided in paragraphs 8 and 12, above, and Plaintiff’s Answers to Defendant/Counter-Plaintiff’s First Set of Interrogatories, Number 1.

11. All documents which provide the basis for the “information and belief” as to your allegation at Paragraph 24 of the Complaint that “...Former Finance Director McDaniel, forwarded the inquiries to BlueGEM whereby BlueGEM would then instruct Former Finance Director McDaniel or his designee on how to respond to the competing vendors’ inquiries.”

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office have been produced. Additional documents are provided in paragraphs 8 and 12, above, and Plaintiff’s Answers to Defendant/Counter-Plaintiff’s First Set of Interrogatories, Number 2.

12. All documents and communications between you and any employee (former and/or present) of BlueGEM, Roseware, LLC or Blueware, LLC from January 2012 to the present date.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office have been produced.

13. All documents relating to the opinion of Attorney Dettmer, described in Paragraphs 36 through 40 of the Complaint.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in response to paragraph 1, above. Additional documents are provided in paragraph 12, above.

14. All documents that refer or relate to the "Memorandum and Opinion" alleged in Paragraphs 48 and 49 of the Complaint and attached as Exhibit L thereto.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in response to paragraph 1, above. Additional documents are provided in paragraph 12, above.

15. All documents that refer or relate to communications between Mitch Needelmen and Former Chief Counsel Longacre regarding the "Memorandum and Opinion" alleged in Paragraphs 48 and 49 of the Complaint.

RESPONSE: None.

16. All contracts, and drafts thereof, and other documents exchanged with Hewlett Packard leading up to the execution of any contract or promissory note with Hewlett Packard.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office have been produced. Additional documents are provided in paragraph 12, above.

17. All documents that demonstrate the Brevard County Clerk of the Circuit Court has paid any interest as a result of any of Promissory Note(s) executed with Hewlett Packard, as alleged in Paragraph 68 of the Complaint.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 16, above.

18. All financial records or similar documentation of the Brevard County Clerk of the Circuit Court that show it has paid any interest to Hewlett Packard.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 16, above.

19. The engagement letter and associated terms between the Brevard Court Clerk and the law firm of Gray Robinson, P.A. with respect to this matter, as alleged in Paragraph 99 of the Complaint.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office have been produced.

20. All documents used by the Plaintiff to calculate the damages it alleges in Paragraph 98 of the Complaint.

RESPONSE: Objection. This request is vague and confusing. Plaintiff is unsure what documents Defendant is seeking that Plaintiff "used" to "calculate the damages" set out in the Complaint. For instance, one such document is the contract between the Clerk's Office and BlueGEM setting out a contract price. Since BlueGEM was paid in full, this document is one that can be used by Plaintiff to calculate its damages, and it is attached to the Complaint as an exhibit. In addition, discovery is still ongoing regarding the damages suffered by the Plaintiff in this action.

21. Any and all internal documents of BlueGEM (i.e., non-public documents which were the property of BlueGEM and not otherwise distributed outside of BlueGEM) that you received or obtained, either as Brevard Court Clerk or SCOTT ELLIS individually, from January 1, 2012 to the present date.

RESPONSE: Objection. This request is vague and asks Plaintiff to speculate not only as to which documents were “internal documents of BlueGEM” but also as to which documents were “not otherwise distributed outside of BlueGEM.” As Plaintiff is not aware of what documents in its possession, custody or control are considered BlueGEM’s internal documents or what documents may or may not have been distributed outside of BlueGEM, Plaintiff is unable to respond to this request.

22. Any and all other, earlier ITNs (Invitations to Negotiate), RFPs (Requests for Proposal) or any other similar documents issued pursuant to Chapter 287, *Florida Statutes*, that the Brevard County Clerk of the Circuit Court initiated or submitted prior to the time period during which Mitch Needelman was in office.

RESPONSE: None.

23. Any and all other, earlier ITNs (Invitations to Negotiate), RFPs (Requests for Proposal) or any other similar documents issued pursuant to Chapter 287, *Florida Statutes*, that the Brevard County Clerk of the Circuit Court initiated or submitted during the period of time that SCOTT ELLIS was the elected constitutional officer of the Brevard County Clerk of the Circuit Court.

RESPONSE: None.

24. Any and all contracts executed by the Brevard County Clerk of the Circuit Court with any outside party (for servicer or supplier contracts) during the period of time when SCOTT ELLIS was the elected constitutional officer of the Brevard County Clerk of the Circuit Court (prior to Mitch Needelman's term).

RESPONSE: Objection. This request seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Contracts entered into by Plaintiff during the term before former Clerk Mitch Needleman took office are wholly irrelevant and completely unrelated to any of the issues in the instant action raised by either party.

25. Any and all contracts executed by the Brevard County Clerk of the Circuit Court with any outside party (for servicer or supplier contracts) from January 8, 2013 to the present date.

RESPONSE: Objection. This request seeks documents that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Contracts entered into by Plaintiff during his current term (after former Clerk Mitch Needleman left office) are wholly irrelevant and completely unrelated to any of the issues in the instant action raised by either party.

26. All correspondence or other communications between you and BlueGEM regarding the Scanning Contract whereby you inquired about the status of, and/or demanded an explanation for, those matters which you contend BlueGEM failed to do, as alleged in Paragraph 96(a) – (h) of the Complaint.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court's Office are provided in paragraph 12, above.

27. All correspondence or other communications whereby you indicated to BlueGEM that BlueGEM was not allocating “necessary personnel and resources to fully and properly perform under the Scanning Contract...” as alleged in Paragraph 97 of the Complaint.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office are provided in paragraph 12, above.

28. All documents which form the basis of the “information and belief” for your allegation at Paragraph 62 of the Complaint that Mitch Needelman borrowed money to ensure BlueGEM was paid.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office have been produced. Additional documents are provided in paragraph 12, above.

29. All documents and correspondence exchanged with BlueGEM which indicates that you notified BlueGEM it was in default of, in breach of, or otherwise not performing as agreed with respect to:

- a. the Scanning Contract; and,
- b. the Amendment.

RESPONSE: Documents responsive to this request and in the possession, custody or control of the Brevard County Clerk of the Circuit Court’s Office are provided in paragraph 12, above.

30. In reference to the January 19, 2013 article from the "Brevard Times" entitled "Former Clerk's Digitizing Contract Under More Scrutiny," which is attached hereto as EXHIBIT A (and which is attached to your website under the "Current News and Events"), please produce all documents which:


- a. provide the factual basis for the contention that the "HP" contract is a "scheme orchestrated by Blueware" (see comment posted on January 20, 2013 at 10:53 AM);
- b. provide the factual basis for the contention that "HP" provided the language to the Clerk's "hired attorney...needed for 'his' opinion to bless the deal." (see comment posted on January 20, 2013 at 10:53 AM);
- c. provide the factual basis for the contention that there is "...plenty of evidence of fraud and misconduct." (see comment posted on January 20, 2013 at 12:24 PM); and,
- d. provide the factual basis for the contention that "...there is evidence aplenty if the State Attorney chooses to act on it." (see comment posted on January 20, 2013 at 12:24 PM).

RESPONSE: Based upon Defendant's definition of Plaintiff as set forth in paragraph 10 of the "Definitions and Instructions" section, none.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-Service on this 28th day of May, 2014 to: David S. Cohen, Esq. at david@dscohenlaw.com, admin@dscohenlaw.com and cadams@dscohenlaw.com.

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