

FILED

August 08, 2024 04:25 PM

ST-2024-CV-00317

TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE GOVERNMENT OF THE VIRGIN ISLANDS,)
)
)
 Plaintiff,)
)
 v.)
)
 MON ETHOS PRO SUPPORT, LLC d/b/a)
 MEPSVI aka MON ETHOS, DAVID)
 WHITAKER,)
)
 Defendants.)

Civil No. ST-2024-CV-00317

ACTION FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY AND
PERMANENT INJUNCTION
BREACH OF CONTRACT,
CONVERSION, DECLARATORY
RELIEF AND ACCOUNTING

ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER

THIS MATTER is before the Court upon Plaintiff Government of the Virgin Islands’ (“Government”) Motion for Temporary Restraining Order and Preliminary Injunction.

I. Procedural and Factual Background

Defendant Mon Ethos Pro Support, LLC d/b/a MEPSVI a/k/a Mon Ethos (“Mon Ethos”) and the Government entered into a contract for Mon Ethos to provide investigative support services to VIPD from October 1, 2023, through September 30, 2024 (“contract”).¹ Under the contract, Mon Ethos agreed to provide certain technology-related services such as data discovery and forensic analysis in connection with criminal investigations conducted by the Virgin Islands Police Department (“VIPD”).² The Government provided Mon Ethos with cell phones, iPads, laptops, and other electronic devices that it had confiscated during its criminal investigations, as well as

¹ October 10, 2023, Contract to provide “investigative support through data discovery and forensic analysis services” between the Government and Mon Ethos.

² October 10, 2023, Contract to provide “investigative support through data discovery and forensic analysis services” between the Government and Mon Ethos. See also, GVI’s Mem. In Supp. of TRO and Prelim. Inj. at pg. 1.

tools and software to perform its obligations under the contract. On July 24, 2023, the VIPD loaned to Mon Ethos its GrayKey, a device that is used to unlock electronic devices to extract data, including deleted and encrypted data, in ongoing criminal investigations.³

VIPD claims that in addition to conducting forensic examinations of the various electronic devices provided by VIPD, Mon Ethos's responsibilities under the contract also include safeguarding records, preserving data, and maintaining confidentiality. VIPD further asserts that Mon Ethos had an express contractual duty to ensure that no data or evidence contained or extracted from the electronic devices was altered, deleted, or otherwise compromised. VIPD provided to Ethos at least 30 electronic devices for data retrieval and analysis that VIPD represents pertain to investigations of serious felony offenses, including murder.⁴ VIPD claims that one of the items in Mon Ethos' possession is a cellular phone seized in a criminal matter, which this Court, after the closure of that matter in April of this year, ordered to be returned to the defendant through his counsel. The Government claims that Mon Ethos has refused to return the cellular phone.⁵

By letter dated July 10, 2024 ("July 10, 2024, letter"), VIPD's counsel sent correspondence to Mon Ethos's counsel demanding that Mon Ethos turn over to VIPD all items submitted by VIPD detectives for processing, data retrieved from the hardware VIPD delivered to Mon Ethos,

³ GVI's Ex. B

⁴ GVI's Ex. C

⁵ On April 17, 2024, the defendant's counsel in *People of the Virgin Islands v. Rasokemo Archibald*, Case No. ST-2020-CR-00215, filed a motion for return of personal property. One of the items that the defendant requested to be returned is a black Apple iPhone. The People filed no opposition or objection to the motion and on May 10, 2024, the Court ordered that the iPhone along with other items be returned to defendant through his counsel within fifteen (15) days of the entry of the Court's Order. On July 9, 2024, Defendant through his counsel filed a motion for order to show cause why VIPD should not be held in contempt of court for failing to return the defendant's cellular phone. The People filed no opposition to the motion to show cause and on July 31, 2024, the Court scheduled a show cause hearing for Wednesday, August 7, 2024. The Court has issued an order in that matter directing Mon Ethos or Whitaker to turn over the cellular phone to VIPD forthwith.

data retrieved or downloaded from any surveillance equipment covered by the contract, evidence in criminal cases that Mon Ethos received from VIPD and VIPD equipment in Mon Ethos possession no later than one (1) week following the receipt of payment of all outstanding invoices. VIPD also included in its correspondence a list of items that were submitted to Mon Ethos for processing. In addition, VIPD, through its counsel, demanded that the GrayKey be returned to VIPD forthwith and instructed Mon Ethos not to perform any additional work under the contract.⁶

On July 22, 2024, in a document titled “Urgent Notification: Action Needed Today” and addressed to Acting Police Commissioner Brooks, Mon Ethos demanded payment of invoices totaling \$479,795.00 for March, April, May, and June 2024. The document also abstrusely states, “Immediate Consequences without Direction: Data deletion.”⁷ The next day, July 23, 2024, Mon Ethos’s counsel emailed VIPD’s counsel inquiring about the payment of Mon Ethos invoices. Defendant David Whitaker (“Whitaker”) sent a follow-up letter to Acting Commissioner Mario Brooks on July 25, 2024 (“July 25, 2024, letter”). In that letter, Whitaker explained that Mon Ethos currently has several phones with the GrayKey installed, which are in various stages of the unlocking process. Whitaker expressed concerns that moving the GrayKey would disrupt the extraction process, lead to data integrity issues, or cause the GrayKey to fail. He requested permission to contact GrayKey’s support team directly to understand the best practices for transferring the device back to VIPD without compromising the ongoing extraction process. VIPD subsequently informed Whitaker that VIPD would reach out to GrayKey directly to address the concerns raised by Mon Ethos regarding moving the GrayKey.⁸

⁶ GVI’s Ex. K

⁷ GVI’s Ex. I

⁸ GVI’s Ex. H

On July 31, 2024, Acting Commissioner Brooks responded to Whitaker’s correspondence (“July 31, 2024, letter”). He demanded that Mon Ethos turn over to VIPD no later than 5 p.m. on Thursday, August 1, 2024, the items referred to in the July 10, 2024, correspondence, including the GrayKey that “was entrusted to Mon Ethos for temporary use” and “all devices connected to criminal matters that were entrusted to Mon Ethos pursuant to its data analysis contract with VIPD.” He also specifically demanded Mon Ethos turn over to VIPD “all work product and deliverables prepared pursuant to its contract with VIPD, including but not limited to any infrastructure, databases or websites created; all property entrusted to Mon Ethos by VIPD to carry out the purposes of the parties’ agreement pursuant to the contract with VIPD, and all government property entrusted to Mon Ethos to facilitate its work for VIPD, including but not limited to the GrayKey device and accessories.” Acting Commissioner Brooks identified VIPD’s Information Technology Director and a VIPD detective as the persons Whitaker should contact to coordinate and facilitate the transfer. The Acting Commissioner demanded the turnover of the items notwithstanding the outstanding invoices for April, May, and June 2024, which he stated are under review by VIPD to determine if any amounts are due.⁹ Under Addendum II, Compensation, of the Contract, VIPD agreed to compensate Defendant an amount not to exceed \$1,489,683.00 for services rendered. The Government claims it has already paid Mon Ethos at least \$1,610,730.76, an amount in excess of the contracted price.¹⁰

Mon Ethos responded to the July 31, 2024, letter through correspondence signed by Curtis Jones (“the Jones letter”). The Jones letter demanded payment of \$479,79.00 for contractual services rendered by Mon Ethos and expressed frustration with VIPD's conflicting directives to

⁹ GVI’s Ex. G.

¹⁰ Compl. at ¶¶ 8-9.

Mon Ethos and nonpayment of the invoices that he claims were already approved by VIPD Executives and for which purchase orders had already been issued. Jones complained that a 24-hour turnaround time to comply with Acting Commissioner Brook's demand was unreasonable and warned that “disruptions could lead to data integrity issues, loss of crucial information, and potentially jeopardize criminal prosecutions.” Jones, however, wrote that “within 48 hours of payment in full to MEPSVI,” Mon Ethos will establish a team to ensure the proper transfer of the data and evidence. Jones also warned that Mon Ethos will “only act responsibly” if it is provided with a complete hold harmless agreement.¹¹

On the evening of August 2, 2024, the Government filed its complaint for breach of contract, conversion, violations of the Computer Crime and Technology Act, spoliation of evidence, declaratory relief, and accounting. The Government also filed its motion for temporary restraining order and preliminary injunction. Pursuant to this Court's Order, the Government filed a copy of the contract that is the subject of the complaint on August 6, 2024. On August 7, 2024, Mon Ethos filed its objection to the Government's motion for temporary restraining order.

II. Standard for Temporary Restraining Order

A temporary restraining order can serve as a provisional procedural remedy to maintain the status quo until a preliminary or permanent injunction hearing can be held. *Hart v. Potter*, 2018 V.I. LEXIS 52, at *4 (Sup. Ct. 2018). When considering a motion for a temporary restraining order, the Court usually applies the same test it would utilize if considering a request for a preliminary injunction. *Canegata v. Schoenbaum*, 64 V.I. 252, 259, 2016 V.I. LEXIS 63, at *11 (Super. Ct. 2016). In deciding whether to issue a temporary restraining order, the trial court

¹¹ GVI's Ex. H. Exhibit H is dated July 25, 2024. That appears to be an error since Exhibit H references Acting Commissioner Brooks July 31, 2024, Letter.

considers the following factors on a sliding-scale basis: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest.

Petrus v. Queen Charlotte Hotel Corp., 56 V.I. 548, 554, 2012 V.I. Supreme LEXIS 34, at *10 (V.I. 2012); *3RC & Co. v. Boynes Trucking Sys.*, 63 V.I. 544, 553, 2015 V.I. Supreme LEXIS 22, at *9 (V.I. 2015).

III. Discussion and Analysis

(1) *The Government has demonstrated a reasonable chance or probability of success on the merits of its claim for Conversion that is the subject of its Motion for Temporary Restraining Order and Preliminary Injunction.*

The Government alleges that Mon Ethos's conduct constitutes conversion.¹² "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Ross v. Hodge*, 58 V.I. 292, 308 (2013). A party is liable for conversion if it intentionally and wrongfully bars a party with the right of possession access to a chattel. *Rondon v. Caribbean Leasing & ECO Transportation, Inc.*, 74 V.I. 397, 409, (V.I. Super. Ct. 2021). To succeed on a claim for conversion, the plaintiff must show that it made a demand for the return of

¹² In its Motion to Dismiss, Mon Ethos claims that the "gist of the action doctrine applies to conversion claims under USVI law" and the Government's claim for conversion is "barred under the gist of the action doctrine." Defendant is incorrect. The Virgin Islands does not recognize the "gist of the action" doctrine. This conclusion is explicitly stated in *Robertson v. Banco Popular de Puerto Rico*, 77 V.I. 574, 597-600, 2023 VI 3, ¶ 35-38 (V.I. 2023) (rejecting the gist of the action doctrine and holding that the gist of the action doctrine is not the soundest rule for the Virgin Islands, would serve no practical purpose in the Virgin Islands, and is inconsistent with Virgin Islands common law and public policy). The Supreme Court of the Virgin Islands holding that the Virgin Islands does not follow the gist of the action doctrine is controlling. *See also, Erbey Holding Corporation v. BlackRock Financial Management, Inc.*, 2023 VI SUPER 75, ¶ 35 (V.I. Super. Ct. Dec. 4, 2023).

the property and that the defendant refused to return it. *Addie v. Kjaer*, 2009 U.S. Dist. LEXIS 15206, *1, 51 V.I. 463, 467, (D.V.I. Feb. 23, 2009). The plaintiff must also establish a right to immediate possession of the property at the time of the alleged conversion. *Ross v. Hodge*, 58 V.I. at 308.

In this instance, the Government demanded on July 10, 2024, that Mon Ethos turn over to VIPD “forthwith” the GrayKey, which the Government temporarily loaned to Mon Ethos. It also demanded that Mon Ethos return to VIPD all electronic items VIPD detectives submitted to Mon Ethos for forensic analysis and data recovery, extraction, and preservation “one (1) week following receipt of payment of all outstanding invoices.” On July 31, 2024, VIPD, through Acting Commissioner Brooks, made another demand for the aforementioned items along with “all technological infrastructure, websites, and all other technology deliverables developed for or on behalf of the VIPD” by no later than 5 p.m. on Thursday, August 1, 2024. The July 31, 2024, letter is an unqualified demand. It specifically states that the demand “is effective, notwithstanding any outstanding invoices” alleged to be due. Mon Ethos has refused to return the items unless it is paid for outstanding invoices that exceed the compensation authorized under the contract. The contract is devoid of any provision that gives Mon Ethos the right to withhold, upon VIPD’s demand, the GrayKey and electronic evidence in criminal investigations, which VIPD gave to Mon Ethos for forensic analysis. No provision in the contract grants Mon Ethos ownership of the evidence collected by VIPD in criminal cases. In sum, the Government is likely to succeed on the merits of its claim for conversion.¹³ Therefore, the Court finds that this factor weighs in favor of the Government.

¹³ See, e.g., *Sunyoung Jung v. Reiner & Kaiser Assoc.*, 220 A.D.3d 643, 644, 198 N.Y.S.3d 106 (2d Dept. 2023) (where possession is originally lawful, conversion occurs when the owner makes a demand for the return of the property and

(2) *The Government will suffer irreparable harm if the temporary restraining order is denied.*

Generally, irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate. *Gourmet Gallery Crown Bay, Inc. v. Crown Bay Marina, L.P.*, 68 V.I. 584, 597 (VI 2018)(“Irreparable harm is certain and imminent harm for which a monetary award does not adequately compensate.”). Irreparable harm must be certain, actual, and imminent. *Id.* at 598. The Government will be irreparably harmed if the injunction is not granted. Investigation and prosecution of criminal cases may be delayed for an extended period of time if Mon Ethos is permitted to indefinitely hold evidence in criminal cases as leverage for payment of fees that are disputed. Money cannot adequately compensate the Government or the People of the Virgin Islands for the loss it will suffer if data on the devices in Mon Ethos possession is deleted, corrupted, comprised, or not properly safeguarded. Mon Ethos has informed the Government that “Immediate Consequences without Direction: Data deletion.” The prosecution of major criminal cases could be compromised to the detriment of the community, victims, and their families, absent immediate relief from this Court. Preservation of evidence in criminal investigations is paramount in ensuring the speedy and just prosecution of cases. The threatened deletion of evidence in major criminal cases warrants immediate relief.

Mon Ethos claims there is no likelihood of irreparable harm because it has offered the Government the relief it seeks. Mon Ethos shifting and conditional demands do not provide the Court with any comfort that Mon Ethos will turn over anything to VIPD absent an order from the

the person in possession of the property refuses to return it); *Herrington v. Verrilli*, 151 F. Supp. 2d 449, 460, 2001 U.S. Dist. LEXIS 10168, *28 (S.D.N.Y. 2001) (claim for conversion arises upon demand by the bailor for return of the bailed property and a refusal to do so by the bailee); *Batista v. Rodriguez*, 2024 Fla. App. LEXIS 3966, *4 (Fla. 3d DCA 2024)(“Where a person having a right to possession of property makes demand for its return and the property is not relinquished, a conversion has occurred.”); *Bo Ren v. Serv. King Collision Austin*, 2024 Tex. App. LEXIS 2814, *7 (Tex. App. Apr. 24, 2024)(claim for conversion accrues when the plaintiff has demanded the return of the property and the defendant refused).

Court. A review of the exhibits attached to the Government's motion shows that Mon Ethos has consistently tied the return of items connected to criminal investigations to payment of the disputed fees. For example, Whitaker wrote in a text message to Acting Commissioner Brooks on July 12, 2024, "Once MEPS is paid, perhaps a transaction plan would be appropriate." The Jones letter, written sometime after Acting Commissioner Brooks's July 31, 2024, letter explicitly states that "within 48 hours of full payment to MEPSVI, we will prepare a translation team, led by myself, and will ensure that your data and evidence are properly transferred and handed over to VIPD." In its motion to dismiss, Mon Ethos argues that "there is no contractual obligation for MEPSVI to transfer any property to the Plaintiff until the termination of the contract" and that "the information and forensics performed by MEPSVI continues to the property of MEPSVI and not the Plaintiff." Mon Ethos has now conditioned the handover of evidence in criminal investigations on the Government agreeing to hold the Defendant harmless for any damage that occurs with the return of the electronic devices. Mon Ethos has also conditioned the turn over of evidence on VIPD providing a list of each physical item that VIPD requests to be returned. However, VIPD asked for the return of all evidence in its July 31, 2024, letter and has attached to its Motion (Exhibit C) a list of items that VIPD claims it sent to Mon Ethos. The July 10, 2024, letter also references a list of items that were submitted to Mon Ethos. The Court finds that the Government has satisfied the irreparable harm prong for obtaining a temporary restraining order.

(3) Mon Ethos will not suffer irreparable harm if the Temporary Restraining Order is not granted.

Mon Ethos's primary concern, as reflected in their communications to VIPD, is money.¹⁴ Under Addendum II, Compensation, of the Contract, VIPD agreed to compensate Mon Ethos with

¹⁴ Exhibit G.

an amount not to exceed \$1,489,683.00. The Government claims it has already paid Mon Ethos at least \$1,610,730.76, an amount in excess of the contracted price. Mon Ethos claims it is still owed an additional \$479,79.00 for services performed under the contract. It is well established that monetary damages alone do not rise to irreparable harm. Any injury that Mon Ethos may suffer is a “matter of simple mathematic calculation” and does not rise to irreparable harm. *Gourmet Gallery Crown Bay*, 68 V.I. at 597. Since any loss to Mon Ethos can be compensated through a monetary award, the Court finds that this factor also balances in favor of the Government.

(4) It is in the Public Interest to Grant the Temporary Restraining Order.

The public has an overriding interest in preserving evidence in criminal cases and the speedy and just prosecution of serious crimes. VIPD has demanded the return of evidence and electronic devices used to analyze such evidence. The public should not have to wait for the dispute between the Government and Mon Ethos over the payment for services to be resolved in order for major serious crimes to be investigated and prosecuted. The risk that critical evidence in serious criminal investigations would be irretrievably lost without immediate action is significant. The Court finds that the public interest factor weighs heavily in favor of the Government.

IV. The Government is not required to post a bond

Rule 65(c) specifically states that the “Government of the Virgin Islands, its officers and its agencies are not required to give security.” Mon Ethos nevertheless invites the Court to order the Government to pay a bond. This Court declines to do so.

V. Conclusion

When the factors are considered together and weighed against each other, the Government has justified the need for a temporary restraining order. However, in light of Mon Ethos’ claim that an unplanned and abrupt transfer of the electronic devices and the GrayKey could cause

unintentional destruction of evidence that could potentially jeopardize criminal prosecutions, the Court will defer its decision, in part, until the Court has been fully apprised by the parties of the best method to transfer to VIPD the electronic devices, evidence obtained in criminal investigations, data downloaded, and forensic analysis and reports so as to avoid or limit data loss during the transfer. In the meantime, it is hereby,

ORDERED that Mon Ethos is enjoined from deleting, destroying, or compromising in any way the content of any electronic device related to criminal investigations; and it is further

ORDERED that Mon Ethos is enjoined from deleting, destroying, or compromising in any way information it has downloaded from any electronic device related to criminal investigations; and it is further

ORDERED that Mon Ethos is enjoined from deleting, destroying, or compromising any analysis and reports of forensic examination it has performed on any electronic device related to criminal investigations; and it is further

ORDERED that Mon Ethos is enjoined from deleting, destroying, or compromising in any way work product and deliverables including, but not limited to, infrastructure, databases, or websites created under its contract with VIPD; and it is further

ORDERED that Mon Ethos shall safeguard and preserve all evidence related to criminal investigations, Government property loaned to it, and the Grey Key and its accessories entrusted to Mon Ethos by VIPD to carry out the purposes of the parties' agreement and to facilitate its work with VIPD; and it is further

ORDERED that Mon Ethos shall safeguard and preserve all work product and deliverables created under the contract; and it is further

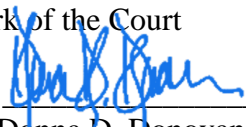
ORDERED that a status conference in this matter is scheduled for **Friday, August 9, 2024, at 11:30 a.m., via Zoom**, at which time the Court will schedule a hearing on the Government's motion for preliminary injunction; and it is further

ORDERED that a copy of this Temporary Restraining Order shall be directed to Assistant Attorneys General Venetia Valasquez and Jalicha Persad, and Alex Golubitsky, Esquire.

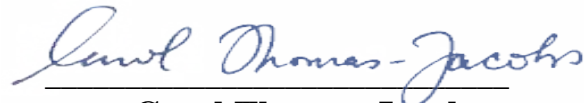
Dated: August 8, 2024

Time: 4:15 p.m.

ATTEST:
Tamara Charles
Clerk of the Court

By: 

Donna D. Donovan
Court Clerk Supervisor 08 / 08 / 2024



Carol Thomas-Jacobs
Judge of the Superior Court
of the Virgin Islands

FILED

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TAMARA CHARLES
CLERK OF THE COURT

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
District of St. Thomas/St. John

**Government of the Virgin Islands,
Plaintiff**

Case Number: **ST-2024-CV-00317**
Action: **Breach of Contract**

v.

**Mon Ethos Pro Support LLC dba
MEPSVI aka Mon Ethos et al,
Defendant.**

**NOTICE of ENTRY
of
ORDER GRANTING MOTION FOR TEMPORARY
RESTRAINING ORDER**

To Venetia H. Velazquez, Esq (via Email)

Alex Golubitsky, Esq (via Email)

:

Jalicha B. Persad, Esq (via Email)

Please take notice that on August 08, 2024
a(n) **ORDER GRANTING MOTION FOR TEMPORARY
RESTRAINING ORDER**

dated August 08, 2024 was/were entered
by the Clerk in the above-titled matter.

Dated August 08, 2024

:

Tamara Charles

Clerk of the Court

By:



**Nicole Smith
Court Clerk II**