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MIDDLE ... FLORIDA
FT. MYERS, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DIRECT, INC., a California corporation,

Plaintiff,

-vs- Case No. 2:03-cv-394-FtM-29SPC

MIKE SNOW,

Defendant.

______________________________________/

ORDER

This matter comes before the Court on Plaintiff DIRECTV, Inc.'s Motion for an Order to Show Cause Why the Defendant, Mike Snow, Should not be Sanctioned (Doc. # 36) filed on April 13, 2004. The Plaintiff moves for sanctions under Rule 11 of the Federal Rules of Civil Procedure and pursuant to 28 U.S.C. § 1927.

On May 3, 2004, a hearing was held before the Honorable Sheri Polster Chappell regarding the issue of sanctions. At that hearing, Snow acknowledged that he made a phone call to an employee of DIRECTV offering her $2,500.00 for confidential files pertaining to, among other things, how DIRECTV files its lawsuits. Mr. Snow stated that he was seeking the information to build a potential class action lawsuit against DIRECTV for malicious prosecution. Snow further stated that he was in contact with attorneys who were advising him on how to proceed in the matter.

Rule 11 states that sanctions under the rule do not apply to disclosures and discovery requests. Fed. R. Civ. P. 11(d). The Plaintiff's attempted bribe was an illicit attempt to obtain discovery information and therefore, Plaintiff's motion for sanctions under Rule 11 was improperly brought and is due to be denied.

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The Plaintiff also moved for sanctions under 28 U.S.C. § 1927, which states in pertinent part: "[a]ny attorney or other person admitted to conduct cases in any court of the United States or Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys fees reasonably incurred because of such conduct." Even through Snow is a *pro se* litigant, section 1927 allows the district court to assess attorney's fees against litigants who willfully abuse the judicial process by conduct tantamount to bad faith. Smartt v. First Union Nat'l. Bank, 245 F.Supp 2d 1229, 1233 (M.D. Fla. 2003).

The statute delineates three requirements to justify an imposition of sanctions: (1) unreasonable and vexatious conduct; (2) this unreasonable and vexatious conduct must multiply the proceedings; and (3) the amount of the sanction cannot exceed the costs occasioned by the objectionable conduct. The term vexatious is not defined in the statute. However, the Courts in the Middle District of Florida have defined vexatious to mean "without reasonable or probable cause or excuse; harassing; annoying." Smartt, 245 F.Supp 2d at 1233 (citing *Black's Law Dictionary*, 1559 (7th ed. 1999); *See* Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't. of Health & Human Resources, 532 U.S. 598, 603, 121 S. Ct. 1835, 149 L.Ed. 2d 855 (2001) (holding that when a term is not defined in the statute courts typically rely on the terms ordinary meaning).

In assessing whether or not sanctions are necessary under the bad faith standard the Court's inquiry focuses primarily on the offending parties conduct and motives. Jerelds v. The City of Orlando, 194 F. Supp. 2d 1305, 1315 (M.D. Fla. 2002). In this case, Snow's conduct fits the required bad faith standard of vexatious conduct outlined in Smartt 245 F.Supp 2d at 1233. This is the third time the Court has found it necessary to address Snow's abuse of the judicial system.

Snow was previously warned by this Court, including a previous hearing for sanctions, that even though he is *pro se* his conduct and behavior must comply with the Federal Rules of Civil Procedure. Snow himself told Ms. Jones, the Plaintiff's employee, that there was no need to notify her superiors he had requested the confidential information. His secretive behavior and offer of a $2,500.00 bribe indicates to the Court that Snow understood that his conduct was inappropriate. Snow further stated that he had discussed the proposed phone call with several attorneys involved in similar litigation with DIRECTV. This demonstrates that he had some access to legal counsel that could have instructed him on how to properly request discovery. Thus, Snow's conduct is without reasonable or probable cause or excuse and resulted in unreasonable harassment and annoyance to the Plaintiff. As a result, the first requirement justifying the imposition of sanctions under 28 U.S.C. § 1927 has been met.

Regarding the statutes second requirement, that the unreasonable and vexatious conduct must multiply the proceedings, Snow's conduct required the Plaintiff to file the instant motion and wasted the Court's time and valuable judicial resources conducting a hearing into the facts surrounding the issue. Therefore, the proceedings were multiplied by Snow's conduct and the second requirement of 28 U.S.C. § 1297 was met.

In light of Snow's inappropriate behavior and his continued disregard of this Court's previous warnings concerning improper conduct, the Court finds that it is proper to impose sanctions under 28 U.S.C. § 1927 to hopefully deter Snow from continuing his bad faith conduct. *See* O'Rear v. American Family Life Assurance Co. of Columbus, Inc., 144 F.R.D. 410, 413 (M.D. Fla. 1992) (holding that the purpose of sanctions under 28 U.S.C. § 1927 is to deter abusive practices by litigants and that those who create unnecessary costs bear them).

Pursuant to the Court's directions Attorney for the Plaintiff Michael T. Sheridan, Esq. filed an affidavit itemizing attorneys fees of $3,285.00 and costs of $485.16 expended in preparing the motion. Included, in Atty. Sheridan's affidavit was $1,400.00 in fees and $434.72 in costs for travel to and from the hearing. However, travel expenses are not taxable costs under § 1927 and thus, those fees and costs will be excluded from the sanction. North American Foreign Trading Corp. v. Zale Corp., 83 F.R.D. 293, 299 (S.D.N.Y. 1979).

Further, given that the Defendant is acting *pro se,* the Court finds that the remaining fees and costs are somewhat excessive. When a court imposes sanctions under 28 U.S.C. § 1927, it must make sure that the amount of the sanction is a carefully measured response to the sanctioned conduct. O'Rear, 114 F.R.D. at 415. Under 28 U.S.C. § 1927, sanctions are to be more of a censure to vindicate the Court's authority and to hopefully ensure that the offending conduct is not repeated. *See* Martin v. Automobili Lamborghini Exclusive, Inc., 307 F.3d 1332, 1337 (11th Cir. 2002) (holding that sanctions imposed under the Court's inherent power should "justly punish" the offending party and hopefully deter others from engaging in similar conduct). Therefore, the Court will limit the amount of the sanction for attorney's fees and costs to $600.00. Kostsileris v. Chalmers, 966 F. 2d 1181 (7th Cir. 1992) (reducing excessive attorneys fees incurred in responding to a belated jury request from $5,546.25 to $1,000.00).

Accordingly, it is hereby

ORDERED:

(1) Plaintiff DIRECTV, Inc.'s Motion for an Order to Show Cause Why the Defendant, Mike Snow, Should not be Sanctioned Pursuant to Rule 11(Doc. # 36) is **DENIED.**

(2) Plaintiff DIRECTV, Inc.'s Motion for Sanctions Pursuant to 28 U.S.C. § 1927 is **GRANTED.**

(3) The Plaintiff is awarded **$ 600.00 in Attorney's Fees and Costs**. The Defendant has up to and including **June 30, 2004**, to pay the awarded fees and costs. Failure to pay the sanctions by June 30, 2004, may result in further sanctions including the Defendant being held in contempt of court.

DONE AND ORDER at Fort Myers, Florida, this 19th day of May, 2004.

Sheri Polster Chappell
SHERI POLSTER CHAPPELL
UNITED STATES MAGISTRATE JUDGE

Copies:

sj

Counsel of record
DCCD

F I L E   C O P Y

Date Printed: 05/19/2004

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UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

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05/19/04

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