

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

In Re
SLEP-TONE ENTERTAINMENT
CORPORATION, CONSOLIDATED CASES Case No: 5:11cv32/RS/CJK

ORDER

Before me is a Second Motion for Sanctions (Doc. 177) filed by defendants Donovan's Reef Lounge & Package Store, Inc. and Green Glass Mall, Inc. (Donovan's Reef). Plaintiff has responded to the motion (Doc. 179). The motion is due to be granted.

I have previously entered an order requiring payment by plaintiff to Donovan's Reef, and its attorney, a fee in the amount of \$2,026.50 as a sanction for plaintiff's representative's failure to provide deposition answers at the express direction of plaintiff's counsel. Upon issuance of the attorney's fee order, plaintiff filed objections and took an appeal to the District Court, which is well within its rights. At the same time, however, rather than making payment to Donovan's Reef or seeking an appropriate stay, plaintiff attempted to deposit its check in the amount of the fee order with the clerk of this court. The clerk promptly returned the check to Mr. Harrington (Doc. 165). Upon filing of Donovan's Reef's First Motion for Sanctions (Doc. 168), it appears that plaintiff then mailed a check to Mr. Dever, but imposed a condition, "to be held in trust" upon that check (Doc. 177-1). It is apparent that Mr. Harrington, acting on behalf of the plaintiff, decided that he did not need to undergo the formalities of a court order or a stay, and could simply delay payment by placing a condition on this check.

Then, in its response to the Plaintiff's Second Motion for Sanctions, plaintiff's counsel took the position that the typed notation "to be held in trust," was just a "suggestion." (Doc. 179, p. 2). Moreover, plaintiff's attorney used the occasion of its response to engage in a screed against Donovan's Reef's lawyer, accusing that lawyer of being "discourteous, unprofessional, and outside the usual rules of decorum to which most courts expect reasonable adherence." (Doc. 179, p. 2). The screed did not stop there, however. Plaintiff's attorney went on to explain that the court was mistaken to conclude that the "extraordinary rancor" in this case had anything to do with the behavior of plaintiff's counsel. Instead, plaintiff's counsel explained that he had consistently treated Mr. Dever with courtesy, but Mr. Dever had responded only with a "sour, aggressive, accusatory tone." (Doc. 179, p. 2). Finally, counsel for plaintiff offers his appraisal that his opponent's attitude "can only be fairly described as one of seething anger and barely concealed contempt." (Doc. 179, p. 3). These matters laid out in paragraph 5 of plaintiff's response (Doc. 179), do not appear to this court to be fairly responsive to the motion, but, instead, demonstrate an attempt by plaintiff's attorney to demean his opponent in a way that could not possibly be calculated to advance this case to a fair resolution.

I note further that, upon the filing of Donovan's Reef's Second Motion for Sanctions, I entered an order (Doc. 178), which allowed plaintiff a safe harbor from the motion. I provided that plaintiff could either respond to the motion or "file a sufficient motion for stay of the sanction order on or before June 15, 2012." (Doc. 178). Plaintiff's counsel, rather than taking my suggestion, continued with his line of argument that he had fully complied with my order, despite the clear conditional language on the face of the check and opined, "no stay of the order is necessary." (Doc. 179, p. 4).

I find that the actions taken by plaintiff's counsel, following the issuance of the fee order, are unreasonable, and contemptuous of the court's authority. Far from apologizing or attempting to justify these actions, plaintiff's counsel has taken one last opportunity to insult his opponent. I wish to make it clear that I am not passing any judgment on whether these insults have any basis in fact. That question is simply not before the court. The problem with plaintiff's counsel's behavior, which is now becoming more and more consistent, is that he seems to be directing his efforts more at opposing counsel in a personal manner, than upon advancing this case to fair resolution. For these reasons, the Second Motion for Sanctions will be granted, and plaintiff's attorney will be required to pay to the defendant reasonable attorney's fees associated with filing of the two motions for sanctions.

It is therefore ORDERED:

1. The Second Motion for Sanctions (Doc. 177) is GRANTED and plaintiff Slep-Tone Entertainment Corp. shall, within forty-eight hours of entry of this order, provide unconditional payment of the amount I have previously awarded to counsel for defendants, Donovan's Reef Lounge & Package Store, Inc. and Green Glass Mall, Inc. This payment will include interest that has accrued since my order of May 2, 2012.

2. Defendants' First Motion for Sanctions (Doc. 168), is now moot and will be terminated by the clerk.

3. Donovan's Reef's request for fees and expenses is GRANTED. The parties are directed to immediately confer concerning resolution of the issue of fees and expenses without further judicial intervention. In the event such is not successful, however, upon the filing within twenty days of an affidavit of reasonable time and expenses devoted by defendants' attorney to enforcing my order, and allowing

plaintiff ten days to respond, I will enter an order granting or denying non-dispositive attorney's fees in favor of Donovan's Reef and against counsel for plaintiff as a further sanction in this matter

DONE AND ORDERED at Pensacola, Florida this 22nd day of June, 2012.

Charles J. Kahn, Jr.

CHARLES J. KAHN, JR.

UNITED STATES MAGISTRATE JUDGE