

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

In re SLEP-TONE ENTERTAINMENT
CORP., consolidated cases.

**Civil Action No.
5:11-cv-00032-RS/CJK**

**PLAINTIFF'S RESPONSE TO DEFENDANTS'
MOTION FOR ATTORNEY FES**

The Plaintiff, Slep-Tone Entertainment Corporation, by its counsel, hereby responds in opposition to the motion (Doc. 196) of Defendants Donovan's Reef and Green Glass Mall for attorney fees in connection with their motions (Docs. 168, 177) for sanctions arising from the order (Doc. 149) requiring payment of attorney fees in the amount of \$2,026.50.

The Defendants' motion should be denied in its entirety for several reasons.

First, this is a matter that could have been resolved promptly, with one or two telephone calls between counsel. Counsel for the Plaintiff repeatedly attempted to engage counsel for the Defendants in a discussion regarding the attorney fee award in order to reach an understanding regarding the handling of the attorney fee award, but was rebuffed at every turn.¹

¹ It should be noted that irrespective of the Plaintiff's position regarding whether the fee award would be reversed, the Plaintiff reasonably believed it would be entitled to attorney fees and expenses based upon the Defendants' wholly improper refusal to permit inspection of its computer systems and disc holdings. When coupled with several indications from Mr. Dever that his clients were thinly capitalized with no

It was disrespectful for counsel for the Plaintiff to bring his concerns about Mr. Dever's conduct to the Court's attention in the manner he did, and for that, he has apologized. However, the Order indicates that the motion for sanctions was granted, at least in part, because counsel for the Plaintiff "insult[ed] his opponent" and "direct[ed] his efforts more at opposing counsel in a personal manner"

Counsel for the Plaintiff objects to such a sanction on the basis that it is an infringement of his First Amendment right to free speech.

Moreover, counsel for the Plaintiff has, however, never denied these Defendants any reasonable accommodation with respect to this case and has generally attempted to prosecute this case in a collegial manner. In any event, to the extent that the Defendants were deprived for some period of time of the fees from the previous order, they have been fully compensated through the payment of legal interest on that amount from the date of the order to the date of receipt of the interest.²

Second, counsel for the Defendants has directly disregarded the specific instruction in the Order (Doc. 181) that the parties "immediately confer concerning resolution of the issue of fees and expenses without further judicial intervention."

substantial assets, the Plaintiff and its counsel were concerned that the Defendants would be unable to respond for those fees.

² Counsel for the Plaintiff immediately and without argument or appeal complied with the Court's order (Doc. 181).

Mr. Dever telephoned the Plaintiff's counsel on June 25, 2012. Rather than engaging in earnest discussion of fees and expenses in a good-faith effort to resolve the matter, Mr. Dever refused to provide any substantive information about his claim for attorney fees upon which to base a discussion. When Plaintiff's counsel asked Mr. Dever for a breakdown of his attorney fees so that their reasonableness and applicability to the order could be ascertained, Mr. Dever angrily refused, raising his voice.³

Third, Mr. Dever's time entries are so unreasonably vague that the Plaintiff cannot determine with any specificity what work was being done on any given day. This is important because the Order is specific as to what the attorney fees are to be awarded for. Mr. Dever's time entries reflect work performed in connection with the Plaintiff's objections to an unrelated order. The Court has already acknowledged that the Plaintiff has the right to appeal an attorney fee award, and as such, attorney fees should not be awarded for that activity.

The essential quality of justice is fairness, and fairness in this matter means even-handedness. To sanction the Plaintiff and its counsel for being "contemptuous of the court's authority" while excusing the direct and repeated disregard of the Court's rules and rulings by these Defendants and their counsel is

³ The purpose of recounting this conversation is not to impugn Mr. Dever's character, but to point out, respectfully, that Mr. Dever has failed to abide by the Court's order to discuss the issue prior to bringing a motion.

not even-handed. The Plaintiff respectfully urges the Court to deny the Defendants' motion in its entirety.

Respectfully submitted this the 26th day of July, 2012.

HARRINGTON LAW, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing paper is being filed on the date indicated below using the Clerk's CM/ECF system, which will send a Notice of Electronic Filing to counsel of record as follows:

STEVEN MITCHELL DEVER mitchdever@comcast.net

Date: July 26, 2012

s/James M. Harrington