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## Judge Sanctions Attorneys for 'Absurd' Argument About Jurisdiction

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A federal judge has sanctioned two attorneys for "absurd" arguments demonstrating "frivolity and illogic" that she lacked jurisdiction to hear allegations that a 2004 settlement had been violated in a copyright infringement case.

Eastern District Judge Joanna Seybert, sitting in Central Islip, sanctioned Scott D. Frenzel of New City and J. Curtis Edmondson of Beaverton, Ore., \$4,900 in her Jan. 18 decision.

"Considering Defendants' conduct in its entirety, the Court finds that it reflects a manifest and calculated disrespect for the Court and its authority (i.e., not appearing for conferences, incredulously feigning ignorance about what happens at a Show Cause hearing), going beyond even Defendants' nonsensical argument that the Settlement Agreement's jurisdictional clauses lack any continuing force," Judge Seybert wrote in *Cameron International Trading Company v. Hawk Importers*, 03-cv-02496.

Both attorneys said they would appeal the sanctions ruling.

"If the courts are going to sanction people to argue motions to dismiss, that's going to put a damper on counsel representing their clients," said Mr. Edmondson, adding that a 1994 U.S. Supreme Court case they used to support their position, *Kokkonen v. Guardian Life Insurance Company of America*, 511 U.S. 375, had been cited many times in other cases.

Nevertheless, Mr. Edmondson emphasized that he had "the greatest respect for the judge and her reasoning." Mr. Edmondson submitted papers confirming payment of the sanction on Jan. 19.

"Our arguments were put forth before the Court after extensive research and were by no means frivolous," Mr. Frenzel said. "Once the Court of Appeals reviews the record and our supporting case law, I am confident this unfortunate decision will be overturned."

The two attorneys represent Hawk Importers, a Long Beach Calif.-based seller and distributor of optical devices like magnifiers. The company was previously sued in a copyright infringement action by Cameron International Trading Company, a Huntington Station-based seller and distributor of optical devices doing business as Carson Optical.

The companies entered a September 2004 settlement agreement. Messrs. Frendel and Edmondson did not represent Hawk Importers in the original settlement.

The court approved the deal in 2005, but in March 2009 Carson sent a letter to Hawk saying it was violating the settlement. When it received no response, Carson filed an enforcement action, which was referred to Eastern District Magistrate Judge William D. Wall.

Messr. Frendel and Edmondson moved to dismiss, arguing that the court had not adequately retained jurisdiction. They noted that the court had dismissed the case with prejudice in 2005, and the settlement's "logical construct" suggested the court had jurisdiction until dismissal, at which time, its jurisdiction would end.

Judge Seybert denied the dismissal motion as frivolous in a November 2010 decision, ordered the payment of attorney's fees to the plaintiff and demanded counsel to show cause on why they should not be sanctioned.

The court concluded that a stipulation of dismissal did not need to explicitly retain jurisdiction or incorporate a settlement's terms to ensure continuing jurisdiction. Besides, Judge Seybert added, the court's 2005 stipulation of dismissal did incorporate the settlement's terms.

Judge Seybert acknowledged that the dismissal stipulation did not "regurgitate" every single settlement term. "But Defendants point to no authority that requires such mindless repetition, nor do they explain why the law should create a new rule demanding such ceremonial parroting," she wrote, adding, "And the Court itself sees no reason why, to enforce its orders, it must go through the silly and idiotic task of repeating for the parties again what they should already know: the Settlement Agreement's express terms."

In a footnote, Judge Seybert said the *Kokkonen* language referenced by the defendant's attorneys established "only two non-exclusive methods for retaining jurisdiction. Elsewhere, *Kokkonen* suggests that a judicially ordered settlement, by itself, permits continued jurisdiction under the Court's 'inherent power.'" *Kokkonen*, she noted, allowed courts to keep jurisdiction over a settlement if both parties agreed. "And that's exactly what happened here," she wrote.

To explain how she calculated the sanction, Judge Seybert said the court spent 28 hours handling the dismissal motion and "its Rule 11 fallout" and multiplied that by a \$175-per-hour rate, which is the going rate for a first-year associate's time.

"My time, Judge Wall's time, and the time of our experienced law clerks, is at least as valuable as a first year associate's," she explained.

John J. Lynch and Robert J. deBrauwere of Pryor Cashman in Manhattan represented the plaintiffs.

Mr. deBrauwere in an e-mailed statement said he was "pleased with the order of sanctions to the extent it furthers our clients' interests, and we believe that the award is warranted in the circumstances—defendants' counsel's frivolous motion practice. It is unfortunate that defendants' counsel have behaved as described by Judge Seybert and we are hopeful that such conduct will now cease. More important is the award of counsel fees that will serve to help make our client whole in this matter."

Hawk Importers has appealed the denial of its dismissal motion to the U.S. Court of Appeals for the Second Circuit.

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