

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Nan R. Nolan
CASE NUMBER	02 C 5893	DATE	6/23/2006
CASE TITLE	Jaffe vs. Household Intl Inc, et al		

DOCKET ENTRY TEXT

For the reasons stated below, Defendants' motion for costs, expenses, and fees [Doc. 314] is denied.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

Defendants seek sanctions against Plaintiffs under FED. R. CIV. P. 30(g)(1) and 28 U.S.C. § 1927 for scheduling and then cancelling two depositions. On August 29, 2005, Plaintiffs issued subpoenas for the deposition of Walter Rybak, to take place on October 4, 2005, and the deposition of Curt Cunningham, to take place on October 6, 2005. On October 3, 2005, Defendants' counsel traveled to Chicago to prepare Mr. Cunningham and Mr. Rybak for their depositions. That same day, Plaintiffs' counsel notified defense counsel and this court that the depositions would be postponed due to a dispute about some native format emails Defendants had produced on September 2, 2005. Specifically, Plaintiffs objected to the fact that they had received only emails from Defendants' new Lotus Notes system and not any emails from Defendants' old Housemail system.

The Housemail system proved a source of significant controversy and confusion among the parties. On November 30, 2005, the court ordered that Plaintiffs be allowed to take a 30(b)(6) deposition regarding "the retention of Housemail [and] the Housemail email system, the preservation of Housemails as a result of this pending litigation and the related SEC investigation, and Household's general policy regarding preservation of Housemails in the face of litigation and formal governmental investigations." (Minute Order of 11/30/05, Doc. 341.)

In the meantime, on October 13, 2005, Defendants filed a motion for costs, expenses, and attorneys' fees incurred in preparing for and attending the 30(b)(6) depositions, which Plaintiffs cancelled at the "last minute." (Def. Mem., at 10.) Rule 30(g)(1) provides that "[i]f the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to that notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorneys' fees." In determining whether sanctions are appropriate, the court "should consider all of the circumstances, such as whether the failure was inadvertent or in bad faith." *Barrett v. Brian Bemis Auto World*, 230 F.R.D. 535, 537 (N.D. Ill. 2005).

STATEMENT

The court declines to award sanctions in this case. As noted, there was tremendous confusion regarding the Housemail system and the completeness of Defendants' production. It appears to the court that Plaintiffs cancelled the Rybak and Cunningham depositions in light of that confusion, and not for any ill motive. It bears noting that this case has been pending since August of 2002 and that the parties are still in the discovery phase. In the court's view, neither party has pursued this case in the most efficient or professional manner, but there is no basis for sanctions here.

Defendants also seek fees and costs under 28 U.S.C. § 1927, which provides that "[a]ny attorney . . . 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." The purpose of § 1927 is to "deter frivolous litigation and abusive practices by attorneys . . . and to ensure that those who create unnecessary costs also bear them." *Kapco Mfg. Co. v. C & O Enterprises, Inc.*, 886 F.2d 1485, 1491 (7th Cir. 1989) (internal citations omitted). For the reasons stated above, the court does not find that Plaintiffs' action in cancelling the two depositions constitutes sanctionable conduct under § 1927.