

Ciment v Spantran, Inc.
2018 NY Slip Op 32082(U)
August 21, 2018
Supreme Court, New York County
Docket Number: 655680/2016
Judge: Charles E. Ramos
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

-----X
IVAN CIMENT,

Plaintiff,

-against-

Index No.
655680/2016
Decision and Order

SPANTRAN, INC. and MORNINGSID E EVALUATIONS,
INC.,

Defendants.
-----X

Hon. C. E. Ramos, J.S.C.:

Plaintiff Ivan Ciment moves for a preliminary injunction against Josh Eisen, the principal and majority shareholder of defendants SpanTran Inc. (SpanTran) and Morningside Evaluation (Morningside) restraining Eisen from communicating, other than through Eisen's counsel, with Ted Poretz, Esq., Poretz's immediate family members, or anyone employed by Poretz's firm, sanctioning Eisen individually for frivolous and malicious conduct and awarding Ciment the reasonable expenses and attorneys' fees incurred in making this motion.

Facts

Ciment is a minority shareholder and director of defendants SpanTran and Morningside (together, the companies). In his complaint, Ciment alleges that Joshua Eisen, the CEO of the companies, has sought to deny or eliminate Ciment's role as director of the companies. Ciment commenced this action seeking a declaration that a shareholders agreement applies fully to both

companies, and that he is a member of the board of directors.

Previously, this Court entered a preliminary injunction restraining the companies from taking certain corporate governance actions throughout the litigation, and denied the companies' motion to dismiss this complaint, which was affirmed by the First Department (*Ciment v Spantran*, 155 AD3d 494 [1st Dept 2017]).

In support of the instant application, Ciment's counsel, Ted Poretz, Esq. (Poretz), submits that Eisen has begun a malicious campaign of harassment against himself and his family. Over the last 18 months, Eisen has sent Poretz hundreds of emails in which he calls him disparaging nicknames and even includes crude and vulgar sexual remarks about Poretz's daughter. Eisen has also sent multiple emails to other members of Poretz's law firm, purporting to notify them of Poretz's unethical conduct in this litigation. Eisen's conduct took an even more alarming turn when he emailed Poretz's daughter directly at her place of employment. Poretz has provided a copy of these emails to the Court in camera.

Eisen opposes the instant application on the ground that his conduct is protected by the First Amendment, and sanctions are not authorized against a non-party to a lawsuit under NYCRR § 130-1.1.

Discussion

Ciment has demonstrated a likelihood of success on the merits, irreparable harm in the absence of an injunction, and a balancing of the equities in his favor. This Court rejects Eisen's contention that his unsolicited, vulgar and abusive email communications to plaintiff's counsel, his law firm colleagues and even his daughter are legitimate communications or otherwise constitutionally protected speech. These communications are clearly malicious, calculated to injure Ciment and his relationship with his legal counsel, and could even jeopardize Poretz's employment. Moreover, Poretz's daughter, who lives out of state and has no connection to this lawsuit, certainly has the right to be free from receiving vulgar emails from Eisen.

With respect to the second branch of Ciment's motion, Uniform Rule 130-1.1 vests this Court with discretion to award both attorneys' fees, costs and sanctions as a result of frivolous conduct (22 NYCRR § 130-1.1 [a], [b]). Sanctions may be imposed against "an attorney or a party to the litigation or against both," but there is no statutory authority for imposing sanctions against a non-party or a party's other agents or principles (*State Farm Fire & Cas. v Parking Sys. Valet Serv.*, 85 AD3d 761, 95 Gates Avenue, Brooklyn, NY 764 [2d Dept 2011]).

Nevertheless, fees and costs may be recovered against a nonparty as fines for civil contempt (Judiciary Law §§ 756, 773). The penalties for civil contempt are fines and jail time. It

does not appear from the submission that Eisen has violated this Court's December 4, 2017 order. If notice is given of any violation of any of its orders, this Court will not hesitate to swiftly impose the appropriate penalties upon Eisen. This Court will also entertain an application for contempt, civil or criminal, in the event Eisen engages in acts similar to the frivolous and malicious conduct described above, which conduct he is hereby ordered to cease.

A copy of this order shall be personally served upon Eisen as soon as is practical.

Dated: August 21, 2018

ENTER:



J.S.C.