

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

)
)
)
) PRANAY BAJJURI, NIRMAL GORLA,) Case No. CI 22-1240
) SATHWICK MADISHETTI, TERRALAND)
) HOLDINGS, LLC, and SSRRW, LLC,)
)
) Plaintiffs,) ORDER ON DEFENDANTS ANAND
) AND SUDHA KARNEY’S MOTION TO
) ALTER OR AMEND JUDGMENT
)
)
) v.)
)
) AMOGH KARNEY, ANAND KARNEY,)
) SUDHA KARNEY, SHIBA PROP, LLC,)
) NARKE HOLDINGS, LLC, SARKIT, INC.,)
) and ARK CAPITAL BROOKSIDE, LLC,)
)
) Defendants.)

This matter comes before the Court on Defendants Anand and Sudha Karney’s Motion to Alter or Amend Judgment pursuant to Neb. Rev. Stat. § 25-1329. Defendants Anand and Sudha filed their Motion on January 20, 2024. Defendants Anand and Sudha Karney [Anand and Sudha] request the Court Alter or Amend its Order granting Plaintiffs’ Motion for Sanctions filed on January 12, 2024. A hearing on Defendants Anand and Sudha’s Motion was held on February 22, 2024. Plaintiffs were represented by their attorney Josiah J. Shanks. Defendants Anand and Sudha appeared in person with their attorneys Austin Printz and Sean Minahan. Defendant Sarkit appeared through its attorneys Brian Koenig and Dillon Ellis. Defendant Sarkit also filed a Motion to Alter or Amend, which will be addressed in a separate order. It should be noted that Defendant Amogh Karney did not appear and no motions have been filed by Amogh Karney. Defendants Shiba Prop, LLC, Narke Holdings, LLC and Ark Capital Brookside, LLC have been represented

during the pendency of this case by Matthew McKeever, however, no motions were filed on behalf of these defendants.

At the hearing, the parties offered various exhibits in support of their respective arguments. Defendants Anand and Sudha offered the following exhibits: 11, 16, 26, 27, and 28. Plaintiffs offered exhibits 10 and 24. There were no objections to exhibits 10, 11 and 16. Therefore, exhibits 10, 11 and 16 are received. The Court will also receive Plaintiffs' exhibit 24. As to Defendants Anand and Sudha's offered exhibits 26, 27, and 28, Plaintiffs objected to the admissibility of the exhibits for lack of foundation, relevance, and timeliness grounds. The Court sustains Plaintiffs' objections and will not receive exhibits 26, 27, and 28.

After evidence was adduced, arguments were heard, and the matter was taken under advisement. Being now fully advised in the premises the Court finds and orders as follows:

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Court filed an order granting Plaintiffs' Motion for Sanctions on January 12, 2024. In that Order, the Court found that based on Defendants' repeated discovery violations, inexcusable recalcitrance, and having been previously warned of sanctions, that Plaintiffs' Motion ought to be granted. The Court granted attorney's fees, and entered default judgment against all Defendants as sanctions pursuant to Neb. Ct. R. Disc. § 6-337, otherwise known as rule 37. The Court also found all Defendants jointly and severally liable in default.

Defendants Anand and Sudha filed their present Motion on January 20, 2024. For all relevant times of this litigation, Defendants Anand and Sudha were represented by attorney, Matthew S. McKeever, who entered an appearance on behalf of Defendants Anand and Sudha at every stage of litigation. Although Defendants Anand and Sudha indicate in their Motion that they filed their Motion pro se, the Motion states after the notice of hearing that the Motion was prepared

by Matthew S. McKeever. Matthew S. McKeever withdrew as counsel at the February 22, 2024, hearing, and the above mentioned new counsel now represents Defendants Anand and Sudha.

Defendants Anand and Sudha were the previous owners of Defendant Sarkit. Defendants Anand and Sudha sold Defendant Sarkit to Pavan Kotta on or around February 7, 2022. Matthew S. McKeever represented Defendants Anand and Sudha, and Defendant Sarkit in its sale. An indemnification clause was part of the sale agreement. Plaintiffs filed the original complaint on February 18, 2022. Notwithstanding the sale of Defendant Sarkit, Defendant Anand Karney signed on behalf of Defendant Sarkit as its owner when Defendant Sarkit was served with process for the present action.

In April 2022, merely two months after the filing of the present action and sale of Defendant Sarkit, Plaintiff Bajjuri contacted the current owner of Defendant Sarkit, Pavan Kotta, and informed him of the current lawsuit, and that Sarkit was a named Defendant. Once Defendant Sarkit was notified of the present lawsuit in April 2022, Pavan Kotta contacted Defendant Anand Karney who confirmed the existence of the lawsuit.

During discovery, the Court issued a protective order for evidence to be for attorneys' eyes only at the request of Defendants. Eventually, the Court removed the protective order, because discovery was not progressing. After removing the protective order, Defendants Anand and Sudha continued to oppose discovery and failed to turn over any meaningful documents. In addition, answers to discovery that were submitted were not notarized and were signed by Defendant Amogh Karney. Eventually, Plaintiffs obtained some documents, but not through Defendants Anand and Sudha. Plaintiffs' filed third party subpoenas to obtain these documents, but Defendants opposed the third party subpoenas. The Court scheduled an evidentiary hearing for November 2023, and clearly informed Defendants, and their representative, Matthew S. McKeever, that

evidence would need to be produced to the Court at the evidentiary hearing and that sanctions were likely. At the evidentiary hearing, no evidence was produced by Defendants Anand and Sudha. Additional facts relevant to the present Motion will be discussed further below.

STANDARD OF REVIEW

“The decision to vacate an order any time during the term in which the judgment is rendered is within the discretion of the court; such a decision will be reversed only if it is shown that the district court abused its discretion. A judicial abuse of discretion exists when the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.” *Schaaf v. Schaaf*, 312 Neb. 1, 5, 978 N.W.2d 1, 6 (2022).

ANALYSIS

The Court denies Defendants Anand and Sudha’s Motion to Alter or Amend. The Court incorporates its findings from its Order filed January 12, 2024, granting Plaintiffs’ Motion for Sanctions as if set forth fully herein. The Court reiterates that, inter alia, Defendants Anand and Sudha repeatedly frustrated the discovery process, violated the Court’s orders, violated local meet and confer rules, and were on notice of possible sanctions as late as March 16, 2023.

Under Nebraska law, “[t]he main purpose of the discovery process is to narrow the factual issues in controversy so that the trial is efficient and economical.” *Hill v. Tevogt*, 293 Neb. 429, 434, 879 N.W.2d 369, 373 (2016). Discovery is an essential part of any lawsuit, helpful, and necessary to litigants. See *Id.* Because of the essential nature of discovery, “[i]f the parties fall short of their discovery obligations, Neb. Ct. R. Disc. § 6-337 (rule 37) allows the court to sanction them.” *Id.* A determination of sanctions for discovery violations “rests within the discretion of the

trial court, and an appellate court will not disturb it absent an abuse of discretion.” *Id.* at 372-73, 879 N.W.2d at 433.

Sanctions under rule 37 serve several purposes including punishing a litigant or counsel, deter litigants from breaking the rules, and preventing a party from profiting from their misconduct. See *id.* at 436, 879 N.W.2d at 374. Rule 37 permits a court to grant a default judgment as a sanction, and “[e]ven if the court imposes a discovery sanction that amounts to a ‘death sentence,’ we review the court’s decision for an abuse of discretion.” *Id.* In considering appropriate sanctions under rule 37, a court first and foremost considers the facts of the specific case. See *id.* Next, courts may consider several factors such as:

[T]he prejudice or unfair surprise suffered by the party seeking sanctions, the importance of the evidence which is the root of the misconduct, whether the court warned the sanctioned party about the consequences of its misconduct, whether the court considered less drastic sanctions, the sanctioned party’s history of discovery abuse, and whether the sanctioned party acted willfully or in bad faith.

Id.

While *Tevogt* sets out relevant factors for a court to consider under rule 37 sanctions, the applicability to this case ends there. The sanction at issue in *Tevogt* was the exclusion of evidence because *Tevogt* failed to attend two depositions. This failure to attend two depositions were the only issues before the court as to sanctionable conduct. The evidence that was excluded was also the only evidence that *Tevogt* had submitted, thus, making the exclusion more severe. The trial court in *Tevogt* did not consider less drastic sanctions, or warned *Tevogt* that his only evidence would be excluded.

Unlike in *Tevogt*, Defendants Anand and Sudha have frustrated the discovery process at every stage of litigation. Moreover, the Court did consider less drastic sanctions, and Defendants Anand and Sudha were warned of possible sanctions. Defendants Anand and Sudha hide behind

and abused a protective order, failed to turnover requested financial documents, then opposed a third party subpoena for those financial documents. Defendants Anand and Sudha also refused to schedule a deposition or continually mislead Plaintiffs in their efforts to schedule a deposition and violated local meet and confer rules. Defendants Anand and Sudha additionally willfully violated the Court's orders for discovery by not only failing to produce any meaningful documents, but by knowingly attending an evidentiary hearing in November 2023, in which they were required to produce evidence, yet attended the hearing and produced nothing.

Defendants Anand and Sudha additionally argued at the hearing that this Court lacked the evidence to find things such as an underlying tort to show civil conspiracy, joint and several liability, and that Defendants Anand and Sudha could be individually liable in default. However, therein lies the issue; Defendants Anand and Sudha failed to provide evidence through discovery. Hence, the justification for sanctions. Of course the Court will lack evidence when Defendants Anand and Sudha, along with all other Defendants, fail to produce any evidence through discovery. The complaint alleges all defendants conspired with one another, individually and through their various companies.

Moreover, the Court finds the vast majority of the factors under *Tevogt* are satisfied. Plaintiffs would have been extremely prejudiced in denying their Motion for Sanctions. Plaintiffs dutifully and diligently attempted to progress their claims through discovery for nearly two years with no reciprocity from Defendants Anand and Sudha, and with no sign they intended to comply with discovery. To subject Plaintiffs to Defendants Anand and Sudha's continued discovery violations and recalcitrance would be extremely prejudicial to Plaintiffs. Moreover, the evidence sought through discovery was not only of utmost importance, but essential to Plaintiffs' claims, and the noncompliance with discovery is the root of the misconduct.

Defendants Anand and Sudha were on notice and previously warned that sanctions may be granted. The Court explicitly warned Defendants Anand and Sudha in response to their own Motion for attorney fees that further discovery violations on the part of Defendants Anand and Sudha may lead to sanctions in the form of attorney fees. While the Court did not specifically warn Defendants Anand and Sudha that default judgment may be the sanction, it was clearly warned about potential consequences of its misconduct. This clear warning that attorney fees may be granted, also shows that the Court considered less drastic sanctions before imposing default judgment.

The history of the Defendants Anand and Sudha's discovery abuses are also significant. The Court provided significant detail as to Defendants Anand and Sudha, as well as all other Defendants, discovery abuses in its Order for Sanctions. Thus, the Court adopts its analysis from its Order for Sanctions as if set forth fully here. However, the Court would highlight the facts that Defendants Anand and Sudha failed to comply with discovery at every stage of litigation as described in the preceding paragraphs. Lastly, Defendants Anand and Sudha were required to attend an evidentiary hearing in November 2023, wherein the Court instructed Defendants Anand and Sudha to produce evidence for the Court to review. Despite this clear instruction and order by the Court, Defendants Anand and Sudha attended the evidentiary hearing, but did not produce any evidence. Whether this amounts to bad faith the Court is unwilling to say. However, it clearly amounts to willful and inexcusable recalcitrance.

This complete indifference and inexcusable recalcitrance to the discovery process is further evidenced, albeit ironically, by Defendants Anand and Sudha's current *cri de cœur*. Defendants Anand and Sudha asks that this Court should “[p]ermit the Karneys to engage in discovery with the Plaintiffs as it relates to them individually, pursuant to deadlines to be set by this Court in a

manner it deems appropriate.” (Defendants Anand and Sudha’s brief at 6). Based on the preceding analysis, the Court is unwilling to Alter or Amend its Order for Sanctions, simply because Defendants Anand and Sudha are now willing to comply with discovery when they have had every chance to comply with discovery, but have repeatedly failed to do so.

Lastly, as referenced above, “[r]ule 37 sanctions serve several purposes. First, they punish a litigant *or counsel* who might be inclined to frustrate the discovery process.” *Tevogt*, 293 Neb. at 436, 879 N.W.2d at 374; (emphasis added). Defendants Anand and Sudha argued at the hearing that they should not be subject to sanctions for factors beyond their control. This includes the actions or inactions of their formerly appointed counsel Matthew S. McKeever. However, for approximately two years and at all relevant times in this action, Matthew S. McKeever entered his appearance before this Court as Defendants Anand and Sudha’s counsel. Sanctions under rule 37 are equally appropriate for the actions of a litigant’s counsel, as it is for the actions of the litigant. Thus, Defendants Anand and Sudha’s argument that their former counsel is to blame only further supports this Court’s previous findings for sanctions under rule 37.

CONCLUSION


Based on the preceding analysis, the Court denies Defendants Anand and Sudha’s Motion to Alter or Amend. Defendants Anand and Sudha repeatedly frustrated the discovery process, violated the Court’s orders, violated local meet and confer rules, and were on notice of possible sanctions.

[Intentionally left blank]

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants Anand and Sudha's Motion to Alter or Amend is denied.

DATED this 29th day of April, 2024.

BY THE COURT:



HON. SHELLY R. STRATMAN
DISTRICT COURT JUDGE

Cc: Josiah J. Shanks, Esq.
Scott D. Jochim, Esq.
jshanks@crokerlaw.com
sjochim@crokerlaw.com

Sean A. Minahan, Esq.
Austin C. Printz, Esq.
sminahan@ldmlaw.com
aprintz@ldmlaw.com

Matthew S. McKeever, Esq.
mckeever@burnettwilsonlaw.com

Brian J. Koenig, Esq.
Dillon Ellis, Esq.
brian.koenig@koleyjessen.com
Dillon.ellis@koleyjessen.com