

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

**PORTFOLIO RECOVERY
ASSOCIATES LLC**

Plaintiff,

v.

**Case No. 1216-CV34184
Division 9**

GUADALUPE MEJIA

Defendant.

ORDER AND JUDGMENT

Pending before the Court is Defendant's Third Motion For Sanctions. For the following reasons, the Motion is granted, Plaintiff's pleadings will be struck, and Judgment is entered for Defendant on her counterclaims. The parties will proceed to trial on damages only.

Background

On December 21, 2012, Plaintiff filed a Petition against Defendant seeking to collect credit card debt Plaintiff purchased from HSBC Bank Nevada NA/Orchard Bank. On March 12, 2013, Defendant filed an Answer denying the Petition allegations, asserting various Affirmative Defenses, and alleging Counterclaims for violation of the Fair Debt Collections Practices Act and Malicious Prosecution.

On February 4, 2014, Defendant filed a Motion to Enforce Discovery complaining that discovery requests issued on October 21, 2013, were incomplete and riddled with copious and conclusory objections. On March 5, 2014, the Court had a telephone conference and took argument from the parties on the pending discovery issues. On March 12, 2014, the Court granted Defendant's Motion to Enforce and ordered the parties to "produce all the requested information within fourteen (14) days from the date this Court issues a joint protective order."

The Protective Order was issued on March 21, 2014; thus, Plaintiff's discovery responses were due by April 4, 2014. On April 9, 2014, after Plaintiff's discovery responses were not forthcoming, Defendant filed a Motion for Sanctions requesting Plaintiff's pleadings be stricken for failure to comply with this Court's March 12, 2014 Order and for failure to appear at its deposition noticed for February 25, 2014. Plaintiff then filed Objections To The Deposition Notice, a Motion For Continuance, Three Motions For Protective Orders, and a Motion To File Discovery Out Of Time. On April 10, 2014, Plaintiff dismissed its case against the Defendant.

On May 6, 2014, the Court had a hearing on all pending Motions. On May 12, 2014, the Court issued an Order finding Plaintiff failed to answer discovery requests, provided incomplete and evasive responses, and violated this Court's March 12, 2014 discovery Order. The Court also found Defendant suffered some prejudice, but because it was limited at that time, the Court declined to strike Plaintiff's pleadings as requested by Defendant. The Court did order "Plaintiff must fully respond to all outstanding discovery within seven (7) days from the date of this order," and "appear for deposition . . . and be prepared to provide information on all topics." The Court warned at that time, "[f]ailure to do so will result in sanctions including the striking of pleadings"

Rather than producing the discovery as ordered, Plaintiff filed a second round of Motions for Protective Orders, which were denied.¹ Plaintiff was ordered to produce the outstanding discovery by June 9, 2014, and was again warned that failure to comply would result in the

¹ On May 23, 2014, Defendant filed a Second Motion For Sanctions, which the Court denied giving Plaintiff every opportunity to comply with this Court's Orders and produce the discovery as directed.

striking of its pleadings. On June 11, 2014, Defendants filed a Third Motion For Sanctions. On October 24, 2014, a hearing was held on the Motion.²

The focus of the Third Motion For Sanctions was Defendant's Interrogatory Number 14 which read as follows:

Identify all cases filed by Portfolio in the state of Missouri during the last five years where the defendant alleged, either before a judgment was secured or afterward, that the account being collected upon did not belong to him or her. Please identify each such case by the case number, court where filed, and the names of the parties.³

After being ordered by this Court to respond, Plaintiff's "Supplemental Answer" was "[t]his information is unknown." In its "Second Supplemental Answer," Plaintiff stated, "[u]pon a diligent search of its records," they were not able to find responsive information. At the October 24, 2014 hearing, it was disclosed that two banker's boxes of potentially responsive cases had been recently produced to Defendant.

Also at issue is Plaintiff's "redaction" of various policy and procedure manuals produced by Plaintiff. Defendant complains that while excerpts of policies were produced, vital "exhibits" to the policies were withheld making it impossible to comprehend the full meaning of the documents (i.e., the key defining the codes used throughout the policies). Additionally, Defendant was concerned Plaintiff too liberally excluded document sections from production.⁴

Finally, in support of Defendant's contention Plaintiff has continued its pattern of abusive litigation tactics, Defendant produced documentation that Plaintiff was aware of Defendant's

² On October 17, 2014, new counsel entered an appearance on behalf of Plaintiff. The Court acknowledges that new counsel had no hand in previous actions or representations made on behalf of Plaintiff.

³ There was some argument concerning Plaintiff's obligation to produce information concerning consumer Attorney General complaints. The Court finds these complaints are beyond the scope of the discovery request and Plaintiff does not have to produce such information at this time.

⁴ This issue was addressed during the October 24, 2014 hearing. Plaintiff will produce the code exhibit and prepare a log so that Defendant may better assess the policy and procedure production.

social security situation from the start of its interaction with Defendant. In Plaintiff's own records, it was documented that on February 7, 2013, Defendant's situation was specifically revealed to Plaintiff by a legal aid attorney. This is particularly troubling as Plaintiff has repeatedly represented to Defendant and the Court that delays in discovery were due to its inability to have Defendant's social security information. For example, Plaintiff refused to appear at deposition until the Court ruled the pending social security issues. At the May 6, 2014 hearing, Plaintiff's counsel argued he could not prepare a defense to Defendant's Counterclaim and could not prepare for deposition until he knew the outcome of the social security number issues. Even more concerning, the social security issue repeatedly has been used by Plaintiff to bully the Defendant in violation of this Court's Order.⁵

Analysis

Rule 61.01 permits the imposition of sanctions for discovery abuses including the striking of pleadings. *See, e.g.*, Rule 61.01(d)(1)-(4). "Under Rule 61.01, a trial court has broad discretion to sanction a party for failure to answer discovery requests or for providing incomplete or evasive responses to discovery requests." *Fairbanks v. Weitzman*, 13 S.W.3d 313, 326-27 (Mo. Ct. App. 2000) (internal quotations and citation omitted). Further, "[a] trial court has the inherent power to enforce compliance with its reasonable orders and may, at its discretion, impose sanctions when they are justified, considering the conduct of the parties and counsel." *Mitalovich v. Toomey*, 217 S.W.3d 338, 340 (Mo. Ct. App. 2007) (citation omitted). *McLean v. First Horizon Home Loan, Corp.*, 369 S.W.3d 794, 801 (Mo. Ct. App. 2012) (court has inherent power to sanction bad faith conduct).

⁵ Defense counsel represented to the Court that Plaintiff repeatedly raised this issue with the Defendant during deposition.

The Court finds Plaintiff acted in bad faith, abused the discovery process, and repeatedly violated this Court's discovery orders.⁶ Despite clear direction from the Court and numerous opportunities to comply, Plaintiff chose to withhold discovery and continuously advance unmeritorious arguments. The Plaintiff failed to appear at depositions, and then, when it finally did appear, it was unprepared to testify about the deposition topics. The testimony that was proffered further demonstrated Plaintiff's failure to adequately search and timely respond to Interrogatory Number 14. And, Plaintiff's position with respect to discovery issues and delays was premised on a material misrepresentation to the Court.⁷

Generally, before "imposing sanctions on an errant party, the trial court must first determine whether, in a particular situation, the opposing party was prejudiced." *Norber v. Marcotte*, 134 S.W.3d 651, 659 (Mo. Ct. App. 2004) (citation omitted). The Court finds Defendant has suffered prejudice. Exorbitant attorney time has been spent by Defendant in attempting to obtain complete discovery responses and to litigate the social security issue. The Court also calls upon its inherent powers to enforce its orders in this instance. The striking of pleadings is an extreme sanction; however, a trial court must exercise its discretion to protect the discovery process and the integrity of the Court. Failure to act in this instance would result in unfairness and degradation of our system of justice.

Therefore, for the aforementioned reasons,

⁶ New Plaintiff's counsel hinted that Plaintiff's actions were heavily guided by advice from previous counsel. However, Plaintiff is a sophisticated corporate entity whose business is largely conducted within a litigation context. Further, "[t]here is no question . . . a party is bound by the acts of his attorney" and "if an attorney's conduct falls substantially below what is reasonable under the circumstances, the client's remedy is against the attorney in a suit for malpractice." *Woodson v. Surgitek*, 57 F.3d 1406, 1418 (5th Cir. Tex. 1995). "[K]eeping this suit alive merely because plaintiff should not be penalized for the omissions of his own attorney would be visiting the sins of plaintiff's lawyer upon the defendant[]." *Id.*

⁷ This discussion contains only a few examples of Plaintiff's abusive conduct. Additional and more detailed examples may be found in this Court's previous discovery orders.

IT IS HEREBY ORDERED

Defendant's Third Motion For Sanctions is granted, Plaintiff's pleadings will be struck, and Judgment is entered for Defendant on her counterclaims. The parties will proceed to trial on damages only.

October 31, 2014

Date



HONORABLE JOEL P. FAHNESTOCK

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly delivered to eFiling on 10.31.14 to:
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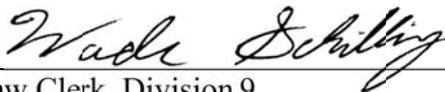
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