

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DATATECH ENTERPRISES LLC,

No. C 12-04500 CRB

Plaintiff,

**ORDER DENYING MOTION FOR
SANCTIONS**

v.

FF MAGNAT LIMITED ET AL.,

Defendants.

INTRODUCTION

Plaintiff Datatech moves under Federal Rule of Civil Procedure 11, this Court’s inherent powers, and 28 U.S.C. § 1927 for sanctions in the form of attorneys’ fees against Defendant FF Magnat Limited (“Magnat”), arguing that Magnat’s Motion for Leave to File Motion for Reconsideration (dkt. 38) was frivolous, that it was filed in bad faith and for an improper purpose, and that it violated Local Rule 7-9.

I. BACKGROUND

This Court granted Datatech’s request for an asset-freeze preliminary injunction. Dkt. 34, 35. In relevant part, the Court found that (1) a pretrial asset-freeze injunction was available upon a proper showing because Datatech’s claim for disgorgement of profits under section 504(b) of the Copyright Act involved an equitable remedy, dkt. 34 at 6-7; (2) Datatech established a “reasonable probability of success” on the issue of personal

1 jurisdiction, id. at 3-5; and (3) Datatech established a likelihood of dissipation of assets and
2 irreparable harm, id. at 7.

3 Magnat moved for leave to file a motion for reconsideration, dkt. 38, arguing that the
4 Court made a “fundamental error of law” by overlooking a Supreme Court case that neither
5 party had previously brought to the Court’s attention, and further contending that the Court
6 had reached the wrong conclusions on the issues of personal jurisdiction and likelihood of
7 dissipation. The Court denied the motion, finding that the newly cited Supreme Court case
8 did not affect the Court’s analysis and that the remaining arguments had, in substance,
9 already been presented and rejected. Order Denying Mot. for Leave (dkt. 43).

10 Datatech now moves for sanctions. The Court finds this matter suitable for resolution
11 without oral argument under Local Rule 7-1(b).

12 **II. LEGAL STANDARDS**

13 **A. Rule 11**

14 Federal Rule of Civil Procedure 11 provides that by presenting a pleading to the court,
15 an attorney represents that:

16 to the best of the person’s knowledge . . . :

- 17 (1) it is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation;
- 18 (2) the claims, defenses, and other legal contentions are warranted by existing
law or by a nonfrivolous argument for extending, modifying, or reversing
existing law or for establishing new law;
- 19 (3) the factual contentions have evidentiary support . . .

20 Fed. R. Civ. P. 11(b). Thus, a district court may impose Rule 11 sanctions if a party files a
21 paper with the court for an improper purpose, or if the filing is frivolous. G.C. & K.B.
22 Investments, Inc. v. Wilson, 326 F.3d 1096, 1109 (9th Cir. 2003). The standard governing
23 both the "improper purpose" and "frivolous" inquiries is objective. Id. at 1109. If Rule
24 11(b) has been violated, the court may impose an appropriate sanction on the attorney, law
25 firm or party responsible for the violation. Fed. R. Civ. P. 11(c).

26 **B. Local Civil Rule 7-9**

27 Local Rule 7-9 provides that any party moving for reconsideration must show
28 demonstrate one of the following:

- 1 (1) That at the time of the motion for leave, a material difference in fact or law exists
2 from that which was presented to the court before entry of the interlocutory order for
3 which reconsideration is sought. The party shall also show that in the exercise of
4 reasonable diligence the party applying for reconsideration did not know such fact or
5 law at the time of the interlocutory order; or
6 (2) The emergence of new material facts or a change of law occurring after the time of
7 such order; or
8 (3) A manifest failure by the court to consider material facts which were presented to
9 the court before such interlocutory order.

6 Civil L.R. 7-9(b). It also provides that

7 [n]o motion for leave to file a motion for reconsideration may repeat any oral
8 or written argument made by the applying party in support of or in opposition
9 to the interlocutory order which the party now seeks to have reconsidered. Any
10 party who violates this restriction shall be subject to appropriate sanctions.

9 Id. 7-9(c).

10 **C. 28 U.S.C. § 1927**

11 Under 28 U.S.C. § 1927, “[a]ny attorney . . . who so multiplies the proceedings in any
12 case unreasonably and vexatiously may be required by the court to satisfy personally the
13 excess costs, expenses, and attorney’s fees reasonably incurred because of such a conduct.”
14 28 U.S.C. § 1927. The imposition of sanctions under § 1927 requires a finding of
15 recklessness or bad faith. Lahiri v. Universal Music & Video Distribution Corp., 606 F.3d
16 1216, 1219 (9th Cir. 2010).

17 **D. Inherent Powers**

18 District courts are “vested, by their very creation, with power to impose silence,
19 respect, and decorum, in their presence, and submission to their lawful mandates.”
20 Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1992). The Ninth Circuit requires “conduct that
21 is tantamount to bad faith” to justify sanctions under the district court’s inherent powers.
22 B.K.B. v. Maui Police Dep’t, 276 F.3d 1091, 1108 (9th Cir. 2002). Bad faith may be found
23 even where a party’s actions have some minimal basis in law or fact; where “a litigant is
24 substantially motivated by vindictiveness, obduracy, or mala fides, the assertion of a
25 colorable claim will not bar the assessment of attorneys fees” under the court’s inherent
26 powers. Id.

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1 **III. DISCUSSION**

2 Though Datatech nominally addresses each of the various bases for sanctioning
3 Magnat separately, its argument for each boils down to two contentions: First, Datatech says
4 that the motion only rehashed arguments already rejected by the Court. Second, Datatech
5 says that Magnat made clear its motive for the motion was improper when, following the
6 hearing on the preliminary injunction, Datatech’s counsel approached counsel for Magnat
7 and asked about the possibility of settling the matter, and Magnat’s counsel responded that
8 they would rather give the money to lawyers than to the plaintiff. See Sperlein Decl. (dkt.
9 41-1) ¶¶ 2-3.

10 The Court does not find that Magnat’s motion was frivolous. The motion was brought
11 on three grounds, and for each ground Magnat identified new authority or provided new facts
12 helpful to its position that were not considered by the Court at the time of its previous ruling.
13 Mot for Leave at 3 (citing Feltner v. Columbia Pictures Television, Inc., 523 U.S. 340, 346
14 (1998)); id. at 5 (citing Stanislav Decl., dkt. 39 (containing new facts about asset
15 movements)); id. at 7 (citing Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.,
16 204 F.3d 1114, 1127 (9th Cir. 2002)).

17 Magnat offered no real explanation as to why those authorities and facts could not
18 have been cited and included in the original briefing on the preliminary injunction, but the
19 Court’s review of the record reveals that all three involved issues where the Court’s Order
20 relied in part on reasoning or particular authorities not briefed by the parties, and the Court
21 declines to fault Magnat for conducting follow-up research and fact gathering related to those
22 points. For the same reasons, the Court declines to find that Magnat filed the motion in bad
23 faith. Assuming without deciding that Magnat’s counsel made the statement alleged by
24 Datatech, it does not follow that all future filings in the case were necessarily undertaken in
25 bad faith.

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IV. CONCLUSION

Magnat’s Motion for Leave to File Motion for Reconsideration was not frivolous and the Court does not find that it was filed for an improper purpose, recklessly, or in bad faith. Accordingly, the Court DENIES Datatech’s motion for sanctions.

IT IS SO ORDERED.

Dated: November 19, 2012



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE