

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

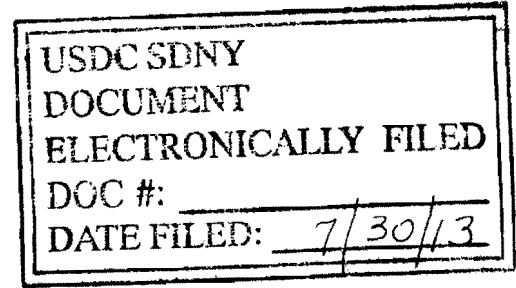
-----X
JONATHAN BARBIERI &
JULIAN MEDINA,

Plaintiffs,

- against -

RON COOPER,

Defendant.
-----X



13 CV 0416 (RPP)

OPINION & ORDER

ROBERT P. PATTERSON, JR., U.S.D.J.

On January 17, 2013, Defendants filed a notice of removal of this case on the grounds of complete diversity between the parties. (See Notice of Removal, ECF No. 1.) Attached to the notice of removal were exhibits demonstrating that (1) the action had been commenced on October 8, 2012 by service of a Summons with Notice in Supreme Court, New York County, (see Notice of Removal Ex. A at 1); (2) Plaintiffs served the Summons with Notice on a female over 18 years of age at Defendant’s abode in Taos, New Mexico on October 26, 2012, (see Notice of Removal Ex. B); (3) also on October 26, 2012, Defendant served Plaintiffs with a Demand for a Verified Complaint, (see Notice of Removal Ex. C at 1-2); (4) on December 6, 2012, Defendant filed a motion to dismiss Plaintiffs’ case for failure to serve a complaint, (see Notice of Removal Ex. D at 4); (5) on December 7, 2012, Plaintiffs’ counsel served a cross-motion for an extension of time to file and serve a complaint in order to get information from his clients, (see Notice of Removal Ex. E at 1); (6) on December 20, 2012, Plaintiff filed a complaint alleging that defamatory statements were posted on Defendant’s Facebook account, (see Notice of Removal Ex. F); (7) on January 4, 2013, the parties stipulated to adjourn Defendant’s pre-

answer motion to dismiss and Plaintiffs' cross-motion to January 25, 2013, (see Notice of Removal Ex. G); (8) on January 15, 2013, Defendant filed a cross-motion in New York County Supreme Court in opposition to Plaintiffs' cross-motion for an extension of time to file and serve a verified complaint, based on Plaintiffs' failure to show a reasonable excuse for not filing a verified complaint and for serving a summons with notice not stating the nature of the case, and seeking sanctions of Plaintiffs or Plaintiffs' counsel, pursuant to CPLR § 8303-a and 22 NYCRR § 130.1-1(a), for costs and attorney's fees, (see Notice of Removal Ex. H); and documents filed first pertaining to the case in New York County Supreme Court as of January 16, 2013, (see Notice of Removal Ex. I).

Defendant's motion to dismiss the Complaint and cross-motion to dismiss are denied. Plaintiffs filed their Complaint on December 20, 2012,¹ and Defendant's assertions that Plaintiffs' reasons for seeking an extension of time on December 7, 2012 were unreasonable are rejected since one plaintiff resides in Mexico and Defendant was demanding a verified complaint.

Defendant's cross-motion seeking sanctions against Plaintiffs and their counsel is governed by Rule 11 of the Federal Rules of Civil Procedure due to Defendant's removal of this case. See InterChem Asia 2000 Pte. Ltd. v. Oceana Petrochemicals AG, 373 F. Supp. 2d 340, 357, n.15 (S.D.N.Y. 2005). None of Defendant's representations to the Court concerning the actions of Plaintiffs or Plaintiffs' counsel are sufficiently harmful to Defendant to warrant the imposition of sanctions under Rule 11.

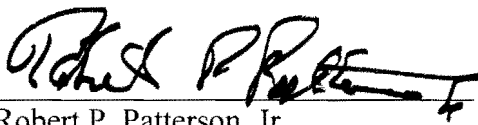
¹ Defendant's counsel admits he received and rejected the Complaint but fails to state the grounds on which his rejection was based.

Accordingly, Defendant is ordered to move or answer the Complaint within ten days of the date of this opinion.

A Rule 26 compliance and scheduling conference will be held on **August 29, 2013 at 3:00 p.m.**

IT IS SO ORDERED.

Dated: New York, New York
July 29, 2013


Robert P. Patterson, Jr.
U.S.D.J

Copies of this Order were sent to:

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