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INTRODUCTION

Defendants' motion to strike showed how Ceglia's counsel Dean Boland willfully misled the videographer Robert Gianadda and pressured him into signing a Boland-drafted declaration. Boland procured the declaration to support the outrageous claim that Defendants are responsible for Ceglia's most recently discovered act of litigation fraud: the artificial "baking" of the purported Work for Hire agreement to give the document an aged appearance. Boland's response — replete with willful and obvious falsehoods — only entrenches himself deeper in his client's fraud.

Boland's scheme is now exposed. In an attempt to blame Defendants for Ceglia's "baking" of the Work for Hire document, Boland manipulated and took advantage of a neutral third party, the videographer Robert Gianadda, through deceit and pressure tactics. When Gianadda submitted a superseding declaration (Doc. No. 218) that revealed what Boland had done, Boland chose to attack Gianadda's integrity. We now attach a supplemental declaration that Gianadda executed on December 6, 2011 to respond directly to the baseless allegations Boland levies against him in Boland's declaration — that the videographer, who has neither bias nor motive to shade the truth, lied under oath about his conversations with Boland. *See* Boland Decl. (Doc. No. 236). Gianadda's new supplemental declaration, which is filed herewith, makes clear that Boland's declaration is untrue.

Ceglia and Boland's *modus operandi* is to deceive and, when caught, to accuse Defendants of the exact wrongful conduct in which Ceglia and Boland just engaged in. For example, when caught red-handed destroying the USB drives and other critical electronic evidence, they accuse Defendants of spoliation. When caught "baking" the purported contract, they accuse Defendants of discoloring the document. And when caught pressuring the videographer into signing a misleading declaration, they accuse Defendants of pressure tactics.

Consistent with this approach, when Gianadda exposed Boland's efforts to deceive him, Boland whirls around and accuses the videographer of lying to the Court.

The overwhelming evidence of Ceglia's litigation fraud — and the complete and total absence of evidence supporting his accusations against Defendants — is what accounts for the bizarre, Alice-in-Wonderland nature of Ceglia's briefs. Ceglia's approach is akin to the bank robber, caught fleeing the bank with a gun in one hand and a bag of money in another, accusing the arresting officer of having committed the crime.

ARGUMENT

1. Boland's own declaration confirms that he tricked Gianadda. Boland admits that Gianadda "repeated several times" during their phone conversation that he did not want to sign the Boland-drafted declaration until he had spoken with Defendants' counsel Alexander Southwell. Boland Decl. (Doc. No. 236) at ¶ 24. According to Boland, Gianadda said that he was "concerned about sending [him]" an executed declaration before speaking with Southwell, because Gianadda "didn't want to be perceived as taking sides" in the dispute. *Id.* at ¶ 22. Boland further admits that Gianadda specifically asked him to call Southwell before "go[ing] any further." *Id.* at ¶¶ 23-24.

Boland had a problem: He knew that if Gianadda spoke with Southwell, Gianadda would immediately realize that Boland had drafted the declaration in a highly misleading way and would refuse to sign it. So Boland needed to trick Gianadda into signing before Gianadda spoke with Southwell. Boland himself explains how he did it: "I told [Gianadda] that I do not speak to Mr. Southwell on the phone that much and that we regularly email each other, therefore, I suggested he email us simultaneously to deliver the declaration to both of us, which he did." *Id.* at ¶ 26. Boland told Gianadda that simultaneously emailing a signed declaration would simply be a "convenient way to start a dialogue" between two lawyers who preferred communicating by

email, and this way Gianadda would no longer be “in the middle.” Gianadda Nov. 11, 2011 Superseding Decl. (Doc. No. 218) at ¶ 7; Gianadda Dec. 6, 2011 Supplemental Decl. at ¶ 4.

This was a deceptive tactic. Boland misled the nonlawyer Gianadda into thinking that emailing the signed declaration simultaneously to both sides would be nothing more than a preliminary step — a way to speed things along given Boland’s representation that he generally did not speak with opposing counsel by phone — rather than the end of the process. Boland admits that he never told Gianadda that he intended to file the signed declaration with the Court. Boland Decl. (Doc. No. 236) at ¶ 38 (conceding he never mentioned “what might become” of the declaration). Although Boland claims that he had “no intention of filing Mr. Gianadda’s declaration with the court unless necessary in reply to what was then scheduled responses due by Defendants,” *id.* at ¶ 39, this is an obvious untruth. Boland obtained the signed declaration at 8:46 p.m. the night of November 10 — and filed it with this Court the next morning.

Boland’s suggestion that it was Defendants — rather than Boland himself — who improperly pressured Gianadda does not even rise to the level of gross speculation: it is affirmatively contradicted under oath by the witness himself. *See* Gianadda Superseding Decl. (Doc. No. 218) at ¶ 7 (“Mr. Boland pressured me to execute the declaration during our call but did not explain why there was an immediate need that I execute it [that] night.”); Gianadda Supplemental Decl. at ¶ 6 (“I did not feel any pressure from Mr. Southwell, Mr. Flynn or anyone else to sign my Superseding Declaration.”).

Where Boland cannot evade the damning evidence of his own misconduct, he simply accuses Gianadda of lying. *See* Boland Decl. (Doc. No. 236) at ¶¶ 30, 34. It was bad enough that Boland procured the declaration by deceiving Gianadda; he has now gone even further by attacking the veracity and integrity of Gianadda through a declaration that contains new falsehoods. *Compare, e.g.,* Boland Decl. (Doc. No. 236) at ¶ 24 (claiming Gianadda said he

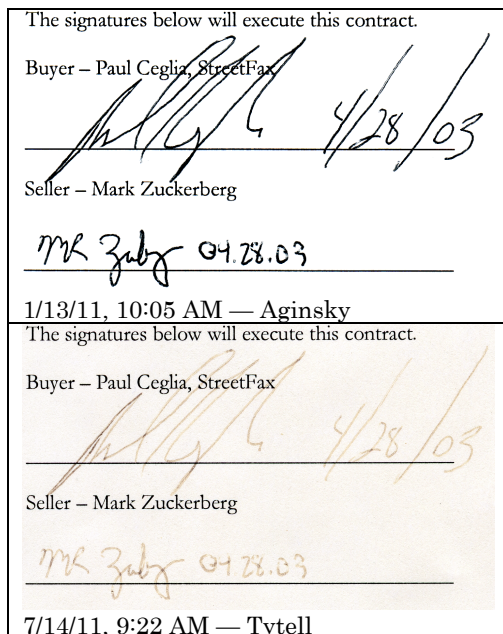
needed Southwell’s “permission” to provide the declaration) *with* Gianadda Supplemental Decl. at ¶ 3 (“I never told Mr. Boland that I had to obtain Mr. Southwell’s permission or anyone’s permission to provide a declaration.”); Boland Decl. (Doc. No. 236) at ¶ 34 (denying he told Boland the declaration was a “convenient way to start a dialogue”) *with* Gianadda Supplemental Decl. at ¶ 4 (attesting to Boland’s statement); Boland Decl. (Doc. No. 236) at ¶ 30 (claiming he did not omit from the declaration any statements by Gianadda about the document’s coloration) *with* Gianadda Supplemental Decl. at ¶ 5 (“I told Mr. Boland that the documents did not change color” during the course of the examination by Defendants’ experts).

Finally, Boland’s insistence that his corruptly-procured declaration is “consistent” with Gianadda’s superseding declaration, Doc. No. 235 at 8, is inexplicable and clearly wrong. The corruptly-procured declaration was intended to create the false impression that Defendants’ experts discolored the contract. The superseding declaration explicitly states that the color of the pages did not change over the course of Defendants’ experts’ examination. Gianadda Superseding Decl. (Doc. No. 218) at ¶ 4; *see also* Gianadda Supplemental Decl. at ¶ 5. Similarly, Boland’s suggestion that Gianadda’s superseding declaration merely “expands on his first declaration,” *id.* at 4, is an obvious falsehood. The superseding declaration includes Gianadda’s critical statement that Boland willfully omitted — a statement that establishes the precise opposite of what Boland drafted the declaration to suggest.

2. Boland’s attempt to defend the merits of his corruptly-procured declaration fails. Boland obtained the declaration to support his absurd claim that it was not Ceglia and those working in concert with him who baked the Work for Hire agreement, but Defendants’ experts. To this end, Boland took Gianadda’s observation that the pages appeared “white” rather than red or blue — and carefully omitted Gianadda’s statement that the color of the pages did not change over the course of Defendants’ experts’ examination — to create the false impression that it was

Defendants who were responsible for the document's current appearance. That strategy has now self-destructed. Gianadda's supplemental declaration reiterates that, contrary to Boland's assertions, he told Boland that the document did not change color over the course of Defendants' experts' examination.

Gianadda's testimony is confirmed by the clear and incontrovertible physical evidence. Defendants' experts took images of the purported contract before they began their examination, so as to memorialize how the document appeared at the moment Ceglia first made it available for inspection. Those images indisputably show that the ink was already faded and the document already had an off-white or ivory tinge when Mr. Argentieri removed it from his envelope. Presented below is a comparison of how the document looked on two critical dates: on January 2011, when Ceglia presented it to some of his experts, and on July 14, 2011, seven minutes after Argentieri removed it from the envelope, before Defendants' experts began their examination:



each day the project is delayed beyond that point.
 agreed upon project due date if for the StreetFAX software is
 Pending web design is finished by May 27, 2003 MZ
 on completion for the expanded project with working title P

1/13/11, 9:53 AM — Aginsky

each day the project is delayed beyond that point.
 agreed upon project due date if for the StreetFAX software is
 Pending web design is finished by May 27, 2003 MZ
 on completion for the expanded project with working title P

7/14/11, 9:18 AM — Tytell

Defendants have also submitted declarations from their experts Peter Tytell, Gus Lesnevich, and Gerald LaPorte attesting that the Work for Hire agreement was already

discolored and the ink was already faded when it was first presented to them by Mr. Argentieri at the offices of Harris Beach PLLC, prior to any testing. *See* Tytell Decl. at ¶ 19-23 (Doc. No. 238); Lesnevich Decl. at ¶ 10 (Doc. No. 239); LaPorte Decl. at ¶ 8-9 (Doc. No. 240). Ceglia’s suggestion that the video of the inspection supports his claim can be swiftly rejected. The low-resolution video simply cannot capture the faded ink. Indeed, at certain points on the video as the light in the room hits the document in a certain way, the document becomes so “white” that the text actually disappears. Nor is the video capable of capturing precise shades of color, such as the difference between a “white” document and a “white” document with a yellowish or off-white tinge. Colors on this type of low-resolution video can vary significantly depending on whether the room is illuminated with natural or artificial light, the white/dark balance on the camera, changes in camera focus and aperture, and a host of other factors. *See* Tytell Decl. (Doc. No. 238) at ¶ 34. In contrast, the images taken of the alleged contract minutes after Mr. Argentieri removed it from his envelope are clear — and leave no doubt that it was Ceglia and those working in concert with him, and not Defendants, who tampered with this evidence.

CONCLUSION

This Court should impose sanctions on Dean Boland and strike the Boland-drafted declaration (Doc. No. 212) from the record.

Dated: New York, New York
December 8, 2011

Respectfully submitted,

/s/ Orin Snyder

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