

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

INTEGRATED CONTROL SYSTEMS :
INC., & ROBERT A. JACOBSEN, :
Plaintiffs, :
 :
-vs- : Civ. No. 3:00cv1295(PCD)
 :
ELLCON-NATIONAL, INC., :
Defendant. :

RULINGS ON DEFENDANT’S MOTION FOR SANCTIONS AND PLAINTIFF’S
MOTION TO STRIKE SUPPLEMENTAL REPLY

Defendant Ellcon-National, Inc. moves for the imposition of sanctions against plaintiff Integrated Control Systems, Inc. for failure to comply with this Court’s January 21, 2003 discovery order. Plaintiff moves to strike defendant’s supplemental reply to its motion for sanctions. For the reasons set forth herein, defendant’s motion for sanctions is **granted** and plaintiff’s motion to strike is **granted**.

I. BACKGROUND

On January 21, 2003, this Court granted plaintiff’s motion for a protective order that precluded the production of documents related to companies incorporated outside Connecticut bearing the name IMPAC and Integrated Control Systems in the possession of Richard Strada, plaintiffs’ accountant.

The ruling further provided that

In light of the numerous post-judgment filings in the present case, and in an effort to efficiently resolve questions as to plaintiff’s assets, plaintiff will produce the following:

1. To the extent such documents have not already been produced, all financial records from March 1, 1998, to present, including bank records, state and federal tax records, and state and federal corporate filings;

2. Details as to any practice requiring direct payment to third parties for property or services rendered and any records as to those payments, if applicable;
3. For any bank transfer, a detailed explanation as to the recipient of the transfer and the reason for the transfer; and
4. Details as to Mr. Strada's professional affiliation, including his accounting credentials, entity or entities from which he receives his salary, place or places of residence, etc.

Defendant now moves for sanctions based on plaintiffs' non-compliance with the above directive.

II. MOTION FOR SANCTIONS

Defendant moves for sanctions, arguing that plaintiff has disregarded the above order. Plaintiff responds that sanctions are inappropriate because (1) the time for compliance with the discovery order had not yet lapsed at the time defendant moved for sanctions because the deposition of Richard Strada had not yet taken place, (2) defendant failed to certify that it had undertaken good faith efforts to resolve the discovery dispute and failed to engage in efforts to resolve the dispute and (3) the documents required by the discovery order were ultimately produced.

In light of the clear directive set forth in the January 23, 2003 order, plaintiff's arguments accounting for its failure to comply are without merit. As to its first argument, the order is in no way tied to the deposition of Mr. Strada. The fact that the order issued in the context of a ruling on a motion for reconsideration of a ruling denying plaintiff's motion for a protective order is of no consequence. The order is clear, and the directive provided that "plaintiff will produce the following" without a specific reference to deadlines. As no deadline was provided, "compliance with discovery ordered by the Court shall be made within ten (10) days of the filing of the Court's order." D. CONN. L. CIV. R. 37(a)(5). As plaintiff admittedly did not comply with the order by the deadline set by Local Rule, it is subject to sanctions.

The remaining arguments as to defendant's failure to comply with Local Rule 37(a)(2) and subsequent compliance with the order are unavailing. Local Rule 37(a)(2) provides that defendant must "file with the Court . . . an affidavit certifying that he or she has conferred with counsel for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion." (Emphasis added). Such affidavit was filed in this Court along with the motion for sanctions, thereby controverting plaintiff's argument that no attempts were made to resolve the dispute prior to filing the motion for sanctions.¹ The failure to serve the affidavit does not itself violate Rule 37(a)(2) as the rule directs the filing, not service of the affidavit. Plaintiff's argument as to subsequent compliance does not cure earlier non-compliance, although such may be a consideration in meting out sanctions.

Defendant is therefore entitled to an award of attorneys' fees representing hours expended in efforts to enforce plaintiffs' compliance with this Court's January 23, 2003 order. As defendant has not provided documentation in support of a claim of attorneys' fees, it shall file its motion for attorneys' fees compliant with the Supplemental Order, specifically accompanied by plaintiffs' memorandum in opposition to such motion and any reply, not later than September 29, 2003.

III. MOTION TO STRIKE

On July 29, 2003, defendant filed a supplemental reply to its earlier motion for sanctions, to which plaintiff now directs its motion to strike for failure to comply with the Supplemental Order or, in the alternative, for leave to reply to the supplemental reply. The supplemental reply largely details further noncompliance with this Court's January 23, 2003 order. As the above ruling granting sanctions

¹ Plaintiff's argument does raise some question as to how defendant filed the affidavit accompanying the motion without first serving the same on plaintiff as the motion allegedly was served in compliance with the Supplemental Order. If defendant failed to serve the affidavit, such failure represents a technical non-compliance with filing procedures and in no way offsets plaintiff's failure to comply with the direct discovery order of this Court.

includes attorneys' fees for "hours expended in efforts to enforce plaintiffs' compliance with this Court's January 23, 2003," the matter of plaintiffs' continued noncompliance will be resolved through defendant's motion for attorneys' fees, and any further noncompliance may be raised and addressed through such motion in defining what constitutes a reasonable award. The motion to strike the supplemental reply is **granted**.²

IV. CONCLUSION

Defendant's motion for sanctions (Doc. No. 66) is **granted** consistent with the foregoing opinion. Plaintiffs' motion to strike defendant's supplemental reply (Doc. No. 71) is **granted**. SO ORDERED.

Dated at New Haven, Connecticut, August ____, 2003.

Peter C. Dorsey
United States District Judge

² The granting of the motion to strike in no way reflects a review of the merits of the reply. Plaintiff is advised that any narrow reading of the discovery order will be at its peril given the number of motions filed in an attempt to collect a judgment that issued in September 2000. This Court expects the complete cooperation of plaintiff in defendant's collection efforts and will respond harshly to any actions perceived as stonewalling in the face of legitimate discovery requests.