

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UMG RECORDINGS INC., a Delaware
corporation; WARNER BROS.
RECORDS, INC., a Delaware
corporation; ARISTA RECORDS LLC,
INC., a Delaware limited
liability company; INTERSCOPE
RECORDS, a California general
partnership; MOTOWN RECORD
COMPANY, L.P., a California
limited partnership; and SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership,

MEMORANDUM AND ORDER

Civil Action No.
CV-05-1095 (DGT)

Plaintiffs,

-against-

MARIE C. LINDOR,

Defendant.

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Trager, J.:

On October 9, 2009, Magistrate Judge Robert M. Levy issued a Report and Recommendation in the above-captioned matter, denying plaintiffs' motion for sanctions¹ and recommending that the

¹ In the Report and Recommendation, Magistrate Judge Levy specifically stated that he had jurisdiction to rule on plaintiffs' motion for sanctions because it was a non-dispositive motion. See 28 U.S.C. § 636(b). However, as noted recently by the Second Circuit, it is unclear whether a magistrate judge has the authority to impose Rule 11 sanctions. See Kiobel v. Millson, No. 07-3903-cv, 2010 WL 46785, at *1 (2d Cir. Jan. 8, 2010) ("The panel is evenly divided...with one member...concluding that magistrate judges have authority to impose Rule 11 sanctions, another judge concluding that they do not, and the third declining to endorse either view in light of the statute's ambiguity."). Here, however, Magistrate Judge Levy denied the motion for sanctions, which is certainly different than imposing sanctions. Regardless, the Court construes his denial of plaintiffs' motion for sanctions as part of the Report and Recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B).

action be dismissed without prejudice and without fees or costs. On October 26, 2009, plaintiffs filed an objection to the denial of sanctions. On the same day, defendant also filed an objection, on the ground that the recommendation to dismiss without prejudice and without fees or costs was incorrect. However, the Court has reviewed Magistrate Judge Levy's Report and Recommendation and adopts in full the recommendation contained in it. As such, plaintiffs' motion for sanctions is denied, and this case is dismissed without prejudice and without fees or costs.

In reviewing the record in this case, it is clear that plaintiffs' motion for sanctions against defendant and defendant's counsel, Ray Beckerman ("Beckerman"), could have been avoided if defendant had disclosed certain information sooner. Specifically, defendant failed to disclose that her older daughter, Yanick Raymond-Wright ("Yanick"), visited defendant's home for an extended period in August 2004, approximately the same time the alleged copyright infringement occurred. Indeed, in her deposition, defendant stated that no one lived with her in 2004 besides her younger daughter Kathleen Raymond ("Kathleen"). Lindor Dep. at 15:15-25, 16:10-15. Defendant also stated that her son Woody Raymond and Kathleen were the only ones with access to her house. Id. at 16:16-21. However, quite the contrary, Yanick testified that she visited defendant on "multiple

occasions" during the summer of 2004. Yanick Dep. at 80:5-6. In fact, during this time, Yanick brought both her laptop and a desktop computer to defendant's home and regularly connected her laptop to defendant's internet account using a wireless router. Id. at 80:16-24.

Because defendant failed to disclose this information at the outset of this litigation, plaintiffs did not seek to depose Yanick until May 2008. Plaintiffs were therefore unaware of the existence of Yanick's computers and her use of defendant's internet service. As a result, plaintiffs missed their opportunity to inspect Yanick's computers because she sold them at a yard sale in approximately March 2008.² Id. at 83:7-8. As noted by the plaintiffs, the loss of these computers, which possibly contained critical evidence, severely hampered their ability to pursue this case. If defendant had disclosed the relevant information sooner and preserved the necessary evidence, this contentious and drawn-out litigation could have been avoided, or at the very least, taken less time. Still, although the Court feels that Magistrate Judge Levy was overly generous to defendant and defendant's counsel on the issue of sanctions, plaintiffs' motion for sanctions is, nonetheless, denied.

² It is unclear from the record whether Yanick sold both computers or just the desktop. Additionally, Yanick was unsure exactly when she sold the computers because she had multiple garage sales from 2005-2008. Yanick Dep. at 84:4-6, 18-21.

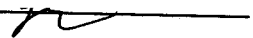
In addition to defendant's delayed disclosures, Beckerman, defendant's counsel, adopted an unduly contentious approach throughout this litigation (albeit the same can be said of plaintiffs' counsel). For that reason alone, his request for attorney's fees and costs is not only denied but is also inappropriate. Ironically, although it was Beckerman who initially requested that Magistrate Judge Levy grant attorney's fees to defendant, he now objects that Magistrate Judge Levy did not have jurisdiction to make such a determination, arguing that "no 17 U.S.C. § 505 motion [was] made." Given that Beckerman raised the issue of attorney's fees in the first place, his argument is unreasonable.

Therefore, for the reasons stated by Magistrate Judge Levy, plaintiffs' motion for sanctions is denied and this case is dismissed without prejudice and without fees or costs to any party. The Clerk of the Court is directed to enter judgment accordingly and to close the case.

Dated: Brooklyn, New York
February 2, 2010

SO ORDERED:

s/ DGT


David G. Trager
United States District Judge