

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LINDA BOYEA,

Plaintiff,

v.

PAROC, INC., d/b/a
FANTASTIC SAMS,

Defendant.

ORDER

04-C-0403-C

On January 31, 2005, plaintiff Linda Boyea filed a motion pursuant to Fed. R. Civ. P. 37, dkt. #58, seeking sanctions against defendant Paroc, Inc. for allegedly falsifying its responses to discovery requests and deliberately misleading the court. Defendant Paroc, Inc. opposes the motion and has filed a motion to strike it, dkt. #55, arguing that it is frivolous, harassing and unrelated to any unresolved discovery disputes. (It seems anomalous that the motion to strike was docketed before the motion it challenged. Apparently, defendant's counsel received a copy of plaintiff's Rule 37 motion before the court did and then filed an immediate response electronically.)

In an opinion and order entered on February 25, 2005, I granted defendant's motion

for summary judgment on all of plaintiff's claims. The present motions are the only matters remaining unresolved now that plaintiff's motion for telephone records, dkt. #53, is rendered moot by the entry of summary judgment.

Plaintiff's motion for sanctions focuses on two matters: defendant's false statements in its motion to strike portions of plaintiff's "evidence and item reference list," dkt. #49, and its incomplete response to her request for a list of employees working for defendant at the Chippewa Falls salon from 2001-2004. Defendant objected to certain items in plaintiff's evidence and item reference list, dkt. #49, saying that plaintiff had not sent it copies of those items so it could not tell what they included. (In many instances, defendant added the objection that the contents were probably inadmissible hearsay or irrelevant from what defendant could tell of plaintiff's description of them.) E.g., id. at 2, ¶ 7:

Objection [to Item E]. Our office did not receive a copy of Item E which apparently was sent to the court as a CD-ROM. The defendant does not know what this information consists of or what it says but it is undoubtedly inadmissible hearsay.

In her motion for sanctions, dkt. #58, at 8, plaintiff says that this objection is a falsification because the

DEFENDANT and it's ATTORNEYS received ITEM E on August 30, 2004. This information was signed and sent on August 27, 2004, U.S. Postal Service CERTIFIED MAIL and included with my (PLAINTIFF's RULE 26(a)(1) Initial Disclosures).

Plaintiff adds that defendant's attorney has shown on the itemization of attorney fees

attached to his affidavit in support of defendant's motion for Rule 11 sanctions, dkt. #51, that he spent time reviewing CD-ROMs, so he must have been lying in his motion to strike. It appears that plaintiff is referring to the billing for work performed on August 31, 2004, described by counsel as reviewing "electronically stored data sent from Ms. Boyea as part of her Rule 26 disclosures - including video tape and mini CD-ROMs." Dkt. #51, Exh. aa, at 2, line 8. Apparently, plaintiff believes that defendant's counsel should have known that the CD-ROM cited as support for item 7 in her January 14, 2005 "evidence & item reference list" was one of those that had been sent to him five months earlier.

Plaintiff's motion for sanctions seems to rest on an assumption that the court and opposing counsel understand her case as well as she does and that they know the evidence without her having to identify it or submit it in a form that counsel and the court can refer to. (There is no evidence in the record that plaintiff ever supplied a CD-ROM to the court.) Plaintiff should understand that neither the court nor opposing counsel has the same familiarity with the case that she does.

In light of all the materials that plaintiff has filed and the confusing manner in which she has filed most of them, it is not surprising that defendant did not understand what CD-ROM plaintiff was referring to in Item E of the "evidence & items reference list." Instead of accusing defendant of deliberately misleading the court when it said that plaintiff had not sent it certain items of evidence on which plaintiff was relying, the better response would

have been for plaintiff to explain to defendant which items she had sent previously and identify which particular CD-ROM contained the information categorized as Item E.

Plaintiff objected to the lists of employees working for defendant at the Chippewa Falls salon during the years 2001-2004 that defendant provided her in response to her request. She points out that defendant omitted the name of one Andrea Parker, n/k/a Andrea Berg; defendant included Rose Ann Martinez in the group of stylists who threatened to quit in December 2002 but on the list of employees, defendant showed her as having left defendant's employ in April 2002; defendant said "reason unknown" for Deb Proulx's resignation when "Gigi Rauckman was fully aware of the salon situation and why Deb Proulx-Gerleman voluntarily quit which can be found in DEFENDANT'S Deposition of Gigi Rauckman," Plt.'s Mot. for Sanctions, dkt. #58, at p. 14; and defendant did not list plaintiff in the employee list or say why plaintiff had been terminated. The discrepant information about Martinez and Proulx-Gerleman would have been grist for cross-examination of defendant's owners had the case gone to trial, but it does show that defendant falsified its responses to plaintiff's request. For the sake of completeness, defendant should have included plaintiff on the list but its omission could not have prejudiced plaintiff. She knows when she worked for defendant. This leaves only the omission of Andrea Parker, a minor matter that plaintiff could have cured with a motion to compel or a telephone call to defendant's counsel.

Plaintiff has not shown defendant and its counsel to be the "blatant liars that has

fabricated this litigation in this Federal Court.” Id. at 15. Therefore, I will deny her motion for an award of sanctions against defendant for discovery-related infractions.

ORDER

IT IS ORDERED that plaintiff Linda Boyea’s motion for Rule 37 sanctions against defendant Paroc, Inc. and its attorneys is DENIED; defendant’s motion to strike the Rule 37 motion is DENIED as unnecessary; and plaintiff’s motion for telephone records is DENIED as moot.

Entered this 7th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge