

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

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CATHERINE CONRAD and RODNEY RIGSBY,

Plaintiffs,

v.

JAMES BENDEWALD, MARIA VEDRAL  
and SILVER EDGE SYSTEMS SOFTWARE, INC.,

Defendants.  
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ORDER

11-cv-305-bbc

What should be a relatively simple case involving one claim for copyright infringement has become mired in peripheral issues regarding discovery and plaintiffs' continued attempts to expand the scope of the case. Four motions are before the court: (1) plaintiff Rodney Rigsby's motion for leave to depose defendants Maria Vedral and James Bendewald, dkt. #65; (2) plaintiff Rigsby's motion for leave to depose lawyers for defendants, dkt. #64; (3) plaintiffs' motion for "reconsideration," dkt. #66; and (4) defendants Silver Edge Software, Inc.'s and Vedral's motion for sanctions. Dkt. #84. I am denying all of the motions.

With respect to plaintiff Rigsby's motion for leave to depose defendants Vedral and Bendewald, Rigsby acknowledges that plaintiff Catherine Conrad has deposed them once. Under Fed. R. Civ. P. 30(a)(2)(A)(ii), a party cannot be deposed twice without leave of court. Although Rigsby says that *he* has not yet deposed these defendants, it is not their fault

that Rigsby waited until he did to join the lawsuit. Particularly because Rigsby fails to identify any information he needs from defendants that Conrad did not obtain during her deposition, I see no reason to require Vedral and Bendewald to be deposed again.

With respect to Rigsby's motion to depose defendants' lawyers, Rigsby says that he wants information regarding the mediation that was held before he joined the lawsuit. However, "[t]he practice of forcing trial counsel to testify as a witness . . . has long been discouraged" because it "not only disrupts the adversarial system and lowers the standards of the profession, but it also adds to the already burdensome time and costs of litigation." Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986). Thus, depositions of counsel generally are permitted only when (1) no other means exist to obtain the information; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the party's case. Id. Accord Boughton v. Cotter Corp., 65 F.3d 823, 830 (10th Cir.1995); Sparton Corp. v. United States, 44 Fed. Cl. 557, 560 (Fed. Cl.1999); Dunkin' Donuts, Inc. v. Mandorico, Inc., 181 F.R.D. 208, 210 (D. Puerto Rico 1998); American Casualty Co. of Reading, Pennsylvania v. Krieger, 160 F.R.D. 582, 589-90 (S.D. Cal.1995); West Peninsular Title Co. v. Palm Beach County, 132 F.R.D. 301, 302-03 (S.D. Fla.1990); N.F.A. Corp. v. Riverview Narrow Fabrics, Inc., 117 F.R.D. 83, 85-86 (M.D.N.C.1987).

In this case, plaintiff Rigsby fails on all three requirements. He fails to explain why he believes that any information disclosed during mediation is important to proving his claim or, even if it is, why he cannot obtain that information from plaintiff Conrad.

In their motion for reconsideration, plaintiffs seek to reinstate several claims and defendants that I dismissed when screening the complaint. Plaintiffs do not challenge the court's conclusion that the allegations in their complaint with respect to those claims are insufficient, but they say that new evidence exists that supports the claims now. I agree with defendants that none of the evidence cited by plaintiffs shows that they have a viable claim with respect to any of the dismissed defendants or legal theories. In any event, plaintiffs did not file an amended complaint or even seek leave to do so. With the deadline for summary judgment less than one month away, it is too late to file an amended complaint.

Finally, defendants seek sanctions against plaintiffs on the ground that plaintiffs' motion includes false allegations. However, the problem with plaintiffs' motion for reconsideration is not that it is fabricated, but that the evidence plaintiffs cite does not support their claims. At this point, I decline to sanction plaintiffs. I advise both sides to focus on resolving the remaining claim rather than on distracting side issues.

## ORDER

IT IS ORDERED that

1. Plaintiff Rodney Rigsby's motion for leave to depose defendants Maria Vedral and James Bendewald, dkt. #65, is DENIED.
2. Plaintiff Rigsby's motion for leave to depose lawyers for defendants, dkt. #64, is DENIED.
3. Plaintiffs' motion for "reconsideration," dkt. #66, is DENIED.

4. defendants Silver Edge Software, Inc.'s and Vedral's motion for sanctions. Dkt. #84, is DENIED.

Entered this 26th day of March, 2012.

BY THE COURT:

/s/  
BARBARA B. CRABB  
District Judge