

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ARNOLD H. LICHTENSTEIN,

Plaintiff

v.

CONSOLIDATED SERVICES GROUP,
INC., *et al.*

Defendants

Civil No. 95-34-P-C

GENE CARTER, District Judge

MEMORANDUM OF DECISION AND ORDER

Now before the Court is Plaintiff's Objection to Magistrate Judge Cohen's Memorandum of Decision imposing sanctions on Plaintiff's attorney, Ralph Dyer (Docket No. 163). Also pending is Defendant Fryer's Motion for Attorney's Fees and Costs (Docket No. 151). This case has a lengthy history leading up to consideration of the pending motions.

Defendant Fryer filed a Motion for Summary Judgment (Docket No. 62) and a Motion for Sanctions under Rule 11 against Mr. Dyer (Docket No. 57). Fed. R. Civ. P. 11. The Court subsequently referred both matters to Magistrate Judge David Cohen.¹ Judge Cohen recommended on July 19, 1997, that Fryer's Motion for Summary Judgment be granted (Docket

¹ The Court's referral did not specify the applicable provision of the Federal Magistrates Act, 28 U.S.C. §§ 631 *et seq.*

No. 110), and the Court subsequently affirmed the decision (Docket No. 116). The Magistrate Judge then addressed the Motion for Sanctions under Fed. R. Civ. P. 11. He presented his findings to the Court on March 11, 1997, in the form of a decision granting the motion and ordering Dyer to pay attorney fees (Docket No. 131). Dyer moved to vacate the Magistrate Judge's decision on the grounds that the Magistrate Judge lacked the jurisdiction both to enter the decision and to impose the monetary sanctions (Docket No. 134). The Court, after briefing and full review, concluded that it was appropriate to treat the Magistrate Judge's decision as a recommendation on a dispositive motion under 28 U.S.C. § 636(b)(3) and to proceed with a *de novo* review (Docket No. 158).

Despite defense counsel's argumentation to the contrary, the Court finds it appropriate to consider all the facts included in the now fully developed record of this case. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. *The judge may also receive further evidence* or remit the matter to the magistrate with instructions."); Fed. R. Civ. P. 72 (b) ("The district judge to whom the case is assigned shall *make a de novo determination upon the record, or after additional evidence*, of any portion of the Magistrate Judge's disposition to which specific written objection has been made in accordance with this rule.").

The Court has reviewed the recommended decision of Magistrate Judge Cohen and the written submissions and oral argumentation of the parties on this motion. At a trial of the issues between the other parties, it has heard all of the testimony, and it has written a fifty-six-page opinion making detailed findings of facts and formulating legal conclusions on the basis of those facts. *Lichtenstein v. Consolidated Services Group, Inc.*, 978 F. Supp. 1 (D. Me. 1997).

The scenario giving rise to the case is a factually complex and, in many ways, puzzling one. Viewing the record in the light most charitable to the parties, the actions of the participants in the business activities out of which the claims here at issue arose are either feckless and uninformed or motivated by devious design and selfish purpose. At various times, one or more of these parties are shown to have acted in a selfish, unscrupulous, and sometimes overtly dishonest manner. The result of their competing machinations, often concealed from the knowledge of the other parties to these activities, is a confusingly complex factual situation, extending over several years, that is replete with contradiction and questionable motivation. The role, at various points in this activity, of Defendant Fryer could have been reasonably understood, in the beginning, as one of complicity with the activities of Defendants Salterio and Butera in what appears to the Court to be an effort to purloin the corporate opportunity from the Plaintiff and others.

While Dyer may have been resolutely unintimidated by the apparent weaknesses of his legal assault upon Fryer for his role in the course of business dealings, there was, the Court is now convinced, a plausible basis for him to hope for a better day after discovery, and perhaps trial, in sustaining his assault upon Fryer's legal position. He could have well believed, in the beginning, that he should pursue the hunt against Fryer and be reluctant to call off his dogs *in medias race*. Attorney Dyer, by an aggressive and insensitive adversarial technique, frustrated, no doubt, Judge Cohen in his efforts to bring order and meaning out of the chaos and uncertainty created by the tangled machinations of these alternately naive and unscrupulous businessmen.

Indeed, it was not easy for this Court to arrive, after trial, at a credible explication of the factual predicate on which to resolve the very complex legal claims. Now that the Court has a

full and complete understanding of the difficulty of this task (which Judge Cohen could not have had at the time he acted) and of the unbending resistance of Dyer's adversaries, it cannot properly fault him for not withdrawing from his confrontation with Defendant Fryer in the exercise of a professionally patrician judgment. It can appreciate that to an attorney in the position of Attorney Dyer, immersed in the heat of the chase and many times thwarted by the adamant denials of the opposition, may well have perceived himself confronted by a wall of deceit, trickery, and stubborn resolve on the part of the Defendants to conceal the truth of the actual situation.

The Court is now satisfied that there was a reasonable basis for Mr. Dyer, in the full flight of an advocate's mission, to have been, in the beginning, suspicious of the claimed disinterestedness of Fryer in his role on behalf of Salterio in the business melee. There is even more reason for one to do so once the facts are fully displayed as in the trial record. The Court concludes, therefore, that the imposition of the sanctions previously ordered against Attorney Dyer is unwarranted in all the circumstances now known.

It is to be especially noted that, in reaching this conclusion, the Court has the benefit of a much more detailed understanding of the actions of all of the participants and of their real motivations and interactions in the events which gave rise to this lawsuit than Judge Cohen had when he imposed sanctions. Certainly, at the time that the sanctions issue was considered by Judge Cohen, the record was significantly narrower. There is no fault to be found with the decision he made in respect to sanctions on that record. It is simply a fact that the predicate for his action has been overtaken by the results of proceedings occurring subsequent thereto.

Accordingly, the Court declines to accept the Recommended Decision of Magistrate Judge Cohen (Docket No. 131). It is **ORDERED** that Defendant Fryer's Motion for Sanctions

be, and it is hereby, **DENIED**. The pending motion for attorney fees (Docket No. 152) is thereby rendered **MOOT** and is **DISMISSED**.

GENE CARTER
District Judge

Dated at Portland, Maine this 20th day of February, 1998.

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