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Kyoei v. M/V MARITIME ANTALYA United States District Court for the Southern District of New York 248 F.R.D. 126 (Decided October 4, 2007)

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DISTRICT COURT GRANTED IN PART AND DENIED IN PART THE PLAINTIFFS' MOTION FOR DISCOVERY SANCTIONS

The United States District Court for the Southern District of New York granted in part and denied in part the Plaintiffs' motion for discovery sanctions. As a result, the court imposed non-monetary sanctions along with holding the Defendants and Vandeventer Black LLP jointly and severely liable for reasonable expenses, including attorney's fees.

Kyoei v. M/V MARITIME ANTALYA
United States District Court for the Southern District of New York
248 F.R.D. 126
(Decided October 4, 2007)

The plaintiffs, Kyoei Fire and Marine Insurance Co., Ltd. ("Kyoei Fire") and National Federation of Agricultural Cooperative Associations ("Zen-Noh"), motioned for discovery sanctions in an action arising from a cargo dispute. Cargo, consisting of corn and other grain, was shipped and delivered in good order and condition to the defendants at Convent, Louisiana. The shipment was later transported to Japan; however, when the cargo arrived in Japan it was not in the same quantity, good order and condition as when shipped because sea water entered the cargo holds while en route.

The court's opinion here, however, only concerns the defendants' non-compliance with plaintiffs' discovery requests, including the failure to produce requested documentation, and the court's prior discovery rulings. In fact, the court issued at least thirteen different orders regarding discovery disputes. This is alarming because discovery in the United States is predominately handled by attorneys. The district court granted in part and denied in part the plaintiffs' motion for discovery sanctions.

The United States Court of Appeals for the Second Circuit has granted the district courts broad authority to impose sanctions for discovery misconduct.¹ The power of the district courts includes the ability to make "an explicit finding of bad faith."² In order to impose these discovery sanctions, the district court must consider four factors, set forth in Federal Rule of Civil Procedure 37, which include: "(1) the willfulness of the non-compliant party or the reason for the noncompliance; (2) the efficacy of lesser sanctions; (3) the duration of the period of noncompliance; and (4) whether the non-compliant party had been warned of the consequences of his non-compliance."³

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation."⁴ In attempting to determine if sanctions were appropriate, the court found that three of the aforementioned factors were present. First, the court found that it was reasonably foreseeable that litigation would result from spoiled cargo and, therefore, documents relating to incident should have been preserved. Second, the court found that defendants' possessed a culpable state of mind. Lastly, the court found that the burden of proof was on the defendants to prove that vessel was properly manned and navigated. This led to the adverse inference that the defendants failed to provide a seaworthy crew, resulting in the destruction of

¹ See *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 106-07 (2d Cir. 2002); *citing Chambers v. NASCO, Inc.*, 501 U.S. 32, 46, 111 S.Ct. 2123 (1991) (the district court has "inherent authority to manage its own affairs"); *see also* Rule 37 of the Federal Rules of Civil Procedure.

² *United States v. Seltzer*, 227 F.3d 36, 41 (2d Cir. 2000); *quoting Hall v. Cole*, 412 U.S. 1, 15, 93 S.Ct. 1943 (1973); *see also Chambers*, 501 U.S. at 50.

³ *Nieves v. City of New York*, 208 F.R.D. 531, 535 (S.D.N.Y. 2002); *citing Bambu Sales, Inc. v. Ozak Trading Inc.*, 58 F.3d 849, 852-54 (2d Cir. 1995).

⁴ *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999).

the cargo. The court awarded plaintiffs a non-monetary sanction under Rule 37(b)(2) of the Federal Rules of Civil Procedure due to defendants spoliation of evidence.

Furthermore, under Rule 30(b)(6) of the Federal Rules of Civil Procedure the defendants need to produce “someone familiar” with the subject matter of a party’s proposed deposition.⁵ The court ruled that the deposition testimony of Captain Suzuki regarding vessel audits and Captain Fujimoto, the vessel’s then-master, amounted to a non-appearance. Consequently, the court imposed an additional non-monetary sanction on the defendants for lacking proper audits.

The court inflicted yet another non-monetary sanction on the defendants under Rule 37(b)(2) of the Federal Rules of Civil Procedure. The court found that defendants failed to comply with contention interrogatories as per Rule 33(c) of the Federal Rules of Civil Procedure. Therefore, the court issued a preclusion order that prohibited the defendants from calling two crew members to testify and introducing the M/V GULL ARROW’s log book into evidence.

In addition to imposing numerous non-monetary sanctions on the defendants, the court also held that the defendants and their attorneys were jointly and severely liable to the plaintiff’s for reasonable expenses and attorney’s fees that resulted from the violation of the January 18, 2007 Discovery Order. These sanctions were imposed pursuant to Rules 33 and Rules 34 of the Federal Rules of Civil Procedure. Rule 33(c) “authorizes a party to propound interrogatories seeking the contentions of the responding party.” The court decided that the defendants violated Rule 33(c) by failing to comply with January 18, 2007 Discovery Order regarding their Rule 33 contention interrogatory responses. Rule 34 governs the production of documents. Again, the court decided that since the defendants failed to produce the requested documents under the court order, monetary sanctions were proper.⁶

Therefore, the court granted and denied in part the plaintiffs’ motion for discovery sanctions.

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⁵ Reilly v. Natwest Markets Group Inc., 181 F.3d 253, 269 (2d Cir. 1999).

⁶ See Federal Rule of Civil Procedure 37(d).