UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ELIZABETH LAUBER, et al.,

Plaintiffs,

vs.

BELFORD HIGH SCHOOL, et al.,

Defendants.
_____/

Civil Action No.
09-CV-14345

HON. MARK A. GOLDSMITH

OPINION AND ORDER REGARDING SANCTIONS

On July 8, 2011, the Court issued an order pursuant to Federal Rule of Civil Procedure 11(c)(3) requiring both Belford and its counsel to show cause in writing why they did not violate Rule 11(b)(3) by denying certain factual allegations contained at paragraphs 86-88 of Plaintiffs' amended complaint (Dkt. 143).[1] In those paragraphs, Plaintiffs alleged:

> 86. Belford's website . . . depicts a building with the name "Belford High School" on the side, representing that an actual building exists housing Belford and its campus. On information and belief, this representation is false because no such school building or campus exists.
>
> 87. Defendants falsely represent that Belford High School has an actual campus and offers jobs. "Belford offers exciting and prestigious job prospects to its students. The university has a variety of on campus and off campus jobs and internship opportunities that students can explore."
>
> 88. On information and belief, neither Belford High School nor Belford University has a campus, and neither offers internships or jobs.

Am. Compl. ¶¶ 86-88 (Dkt. 9). Other than noting that its website "speaks for itself," Belford specifically denied all three of these factual allegations in its amended answer. Am. Answer

[1] Federal Rule of Civil Procedure 11(b)(3) requires that all factual contentions contained in pleadings submitted to the Court "have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery."

¶¶ 86-88 (Dkt. 45). During the course of discovery, it has come to light that Belford does not have – and did not have at the time the amended answer was filed (and may never have had) – a school building or a campus. Indeed, Belford now expressly admits that it does not have a school building or a campus. Third Am. Compl. ¶¶ 89-91 (Dkt. 144); Third Am. Answer ¶¶ 89-91 (Dkt. 163).

Belford and its counsel submitted a joint written response to the Court's show cause order, urging the Court not to impose Rule 11 sanctions at all, either against Belford or its counsel (Dkt. 149). Plaintiffs filed a responsive memorandum (Dkt. 150), in which they urge the Court to impose Rule 11 sanctions against Belford, but not against Belford's counsel.

After the parties and counsel filed their written papers in response to the Court's show cause order, Belford and its counsel requested – and the Court granted – oral argument on the issue of Rule 11 sanctions (Dkts. 157, 164). At oral argument, held on September 8, 2011, Belford's counsel appeared with their own independent counsel, David H. Fink, retained for the sole purpose of representing Belford's counsel during these Rule 11 proceedings. In addition, Belford appeared with other counsel, Jeffery S. Matis, who was retained for the sole purpose of representing Belford during these Rule 11 proceedings.

The Court has thoroughly reviewed this matter, including the written papers submitted in response to the Court's show cause order, the authorities cited therein, the arguments made on the record during oral argument, and post-hearing supplemental briefing submitted at the Court's request.[2] For the reasons that follow, the Court finds that a Rule 11 violation has occurred, and that Belford – but not its counsel – is responsible for it. Accordingly, the Court imposes sanctions against Belford pursuant to Rule 11 and the Court's inherent authority, and dismisses the show cause order as to Belford's counsel.

[2] The Court ordered Plaintiffs, Belford, and Belford's counsel to submit supplemental briefing on three discrete issues enumerated by the Court at the conclusion of the hearing held on September 8, 2011. See 9/8/11 Hr'g Tr. at 73-75. Briefs were submitted by all three parties (Dkts. 172, 174, 176).

The Court begins the discussion by emphasizing that a Rule 11 violation has unquestionably occurred in this case. This conclusion is obvious, and the arguments presented to the contrary by Belford and its counsel, discussed in detail below, are without merit. In concluding that a Rule 11 violation has occurred, the Court need not – and does not – look beyond paragraph 88 of the amended complaint and Belford's response thereto. In that paragraph, Plaintiffs alleged: "On information and belief, neither Belford High School nor Belford University has a campus . . ." Belford responded in its amended answer: "The Belford Defendants deny this allegation."

Notwithstanding Belford and its counsel's arguments to the contrary, there is simply nothing ambiguous about the allegation in paragraph 88 or Belford's response thereto. Belford either has a campus, or it does not. And by denying paragraph 88, it represented to Plaintiffs and to this tribunal that it does have a campus. It now admits what it has always known – that it does not have a campus: "The Belford Defendants admit that no . . . building exists housing Belford or a physical campus." Third Am. Answer ¶ 89 (Dkt. 163). Thus, Belford's amended answer contains a factual misrepresentation – one for which Belford itself is responsible. Because Belford maintained until recently that it does not have a campus, Plaintiffs were forced to expend time, energy, and resources in order to disapprove Belford's factual misrepresentation.[3] The "wild goose chase" on which Belford sent Plaintiffs could have been – and should have been – avoided before it began. Belford's misrepresentations have wasted Plaintiffs' time, and now this Court's time.

Obviously, Belford has always known that it did not have a campus, and whether or not it has a campus is a fact that it is, of course, in the best position to know. See Bus.

[3] To be clear, Belford did not admit that it did not have a campus until the Court issued its show cause order under Rule 11 on July 8, 2011. Despite the fact that Belford has always known that it did not have a campus, it took the threat of Rule 11 sanctions for Belford to "come clean."

Guides, Inc. v. Chromatic Comm'ns Enters., Inc., 498 U.S. 533, 549 (1991) ("Quite often it is the client, not the attorney, who is better positioned to investigate the facts supporting a paper or pleading"). For this reason, Belford has violated Rule 11(b)(3), which requires that all factual representations contained in a pleading have evidentiary support. See Elliott v. M/V LOIS B., 980 F.2d 1001, 1007 (5th Cir. 1993) (imposing Rule 11 sanctions on client for factual misrepresentation in pleadings).

Belford argues that a Rule 11 violation has not occurred, and that it had a "proper basis" to deny the allegation that it does not have a campus, because it has an "electronic campus," or an "e-campus," which, according to Belford, is a kind of "campus." This argument is disingenuous, as well as frivolous. The amended complaint, of course, does not allege that Belford has an "e-campus." It alleges that Belford has a "campus." A "campus" is defined as "the grounds of a school, college, or university." Webster's II New Riverside University Dictionary (1984). "Grounds," in that context, is defined in the same dictionary as "an area of land designated for a given purpose" Id. (emphasis added). If Belford meant to ascribe some highly unconventional or specialized definition to an ordinary, unambiguous, and exceedingly easy-to-understand word like "campus," Rule 11 – which imposes a requirement to proceed in good faith – obviously required Belford to explain itself. The Court flatly rejects Belford's argument against the imposition of Rule 11 sanctions.

Determining that a Rule 11 violation has occurred here is easy, as is the determination that Belford is responsible for the violation. A closer issue is whether Belford's counsel should be held responsible for the Rule 11 violation, in addition to Belford.

The Court may impose Rule 11 sanctions on the client, the attorney, or both. See 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1336.2, at 658-661 (3d ed. 2004) ("[T]he district court's discretion under Federal Rule 11 includes the power to impose sanctions on the client alone, solely on the counsel . . . or on both of them . . ."

(footnotes omitted)). Sanctions should be imposed on counsel "when the offending conduct concerns the scope or quality of the counsel's competence—especially when the material is beyond the understanding of the client or when the client is unaware of the attorney's wrongful conduct." Id. at 663. On the other hand, "sanctions should fall on the client rather than on counsel when the attorney has relied reasonably on the client's misrepresentations or the client failed to disclose relevant facts"; provided, however, that "the reliance by the attorney on the client [is] reasonable under the circumstances." Id. 663-664 (footnote omitted).

In the present case, the Court finds that sanctions against Belford, but not its counsel, are appropriate. The Court does not impose Rule 11 sanctions against Belford's counsel because it appears that Belford either lied, or purposely failed to disclose relevant facts, to its counsel about having a campus. At the show cause hearing held on September 8, 2011, Mr. Fink, on behalf of Belford's counsel, explained that, while Belford "presumably from the beginning knew everything," its counsel was kept "in the dark" and was "directly misled" about certain details, including the extent of Belford's presence in Panama. 9/8/11 Hr'g Tr. at 60, 65. The same argument was also made in the written submissions of Belford's counsel. See Supp. Br. at 6 (Dkt. 176) ("[Counsel] believed in good faith that the facts supporting Belford's denials of paragraphs 86-88 [of the amended complaint] were accurate at the time that this pleading was signed. Counsel's denials were not unreasonable . . . based on [counsel's] good faith belief that its client had a real, meaningful and substantial presence in Panama . . . ."). Shortly after Mr. Fink accused Belford in open court of "directly misle[ading]" its counsel and keeping them "in the dark," Belford's attorney, Mr. Matis, had an opportunity to address the Court, at which time he did not dispute Mr. Fink's accusations. The accusations were also not disputed by Mr. Matis in the written materials filed after the hearing on behalf of Belford (Dkt. 174). Thus, the Court has no reason to doubt the accuracy

of Mr. Fink's contention that Belford's counsel were "victims," who were kept "in the dark" and "directly misled" by their own client. 9/8/11 Hr'g Tr. at 60, 65, 69. For this reason, and this reason alone, the Court does not believe that the imposition of sanctions against Belford's counsel would be proper. See 5A Wright & Miller, at 663-664.

Belford's counsel advance several other arguments in support of their position that sanctions against them are not warranted. The Court rejects each of those additional arguments as unpersuasive. First, Belford's counsel state that they had very little time to file the amended answer on behalf of Belford through no fault of their own, as counsel was retained only one day before the amended answer was due. According to Belford's counsel, they worked "exceptionally hard over that 24-hour period" to confer with the potential client, gather the facts, and prepare a tailored answer. Belford Resp. to Show Cause Order at 1 (Dkt. 149). According to counsel, they requested from Plaintiffs – but were denied – additional time to file an amended answer.

This argument lacks merit for two reasons. First, the record reflects that Plaintiffs simply did not "deny" Belford's request for an extension of time to file an amended answer, as Belford and its counsel have represented. Instead, Plaintiffs responded to Belford's request for an extension by email dated July 14, 2010, in which Plaintiffs explained their position and offered to consider the request if Belford would agree to three conditions. Pl. Resp. to Show Cause Order at Ex. 5 (Dkt. 150). This is hardly a denial, as Belford's counsel claim. Second, counsel could have – but did not – request an extension of time from the Court to file its pleading, even if Plaintiffs did outright refuse to concur in the relief sought (which they did not, contrary to counsel's assertion otherwise).[4] Counsel's failure to request

[4] The Court notes that on July 14, 2010, Belford, proceeding pro se, requested a stay of 90-days in order to give it time to retain counsel before filing any formal pleadings. This does not change the fact that Belford's counsel, once retained, did not file a motion for an extension of time to file its answer. Also, Belford did not wait for the Court's ruling on the pro se request; it instead filed its answer the next day.

an extension with the Court undercuts the premise underlying their argument: that they had no choice but to file the amended answer under extreme time restraints.

Belford's counsel also urge the Court not to impose sanctions because they have been candid regarding other adverse facts, illustrating "good faith and respect for this tribunal." Belford Resp. to Show Cause Or. at 3 (Dkt. 149). Belford's counsel apparently want credit for those times they did comply with Rule 11 and/or the Court's discovery rules, on the unstated theory that instances of compliance can compensate for instances of noncompliance. This argument lacks merit. Suffice it to say, Belford's representations regarding factual assertions other than those made in paragraphs 86-88 of its amended answer are not currently at issue.

Rule 11 gives courts discretion to fashion sanctions to fit the circumstances of specific cases, taking into account the three justifications for invoking Rule 11 sanctions: punishment, compensation, and deterrence. 5A Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 1336.3, at 677-681 (3d ed. 2004). Taking these three justifications into account, the Court imposes sanctions against Belford as follows:

- Belford is fined $1,000, payable to the Court within ten days of today's date. This heavy monetary sanction – which is imposed pursuant to Rule 11 – is necessary to punish Belford and, more importantly, to deter others from engaging in similar conduct. See Fed. R. Civ. P. 11(c)(4); Rose v. Franchetti, 979 F.2d 81, 86 (7th Cir. 1992). The amount also reflects a mere fraction of the reasonable costs incurred by the judicial system as a result of Belford's offending conduct.

- Belford shall reimburse Plaintiffs for all reasonable costs and attorney fees in any way connected to Plaintiffs' efforts to disprove the allegations contained at paragraphs 86-88 of the amended complaint. This sanction is imposed pursuant to the Court's inherent authority, see Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991) (authorizing courts to assess attorney fees pursuant to inherent authority when a party has acted in bad faith), and not pursuant to Rule 11, since Rule 11 does not allow an award payable to the violator's opponent when Rule 11 proceedings are initiated on the court's own motion pursuant to Rule 11(c)(3), as they were here. See Fed. R. Civ. P. 11(c)(4).[5] This sanction is meant to be liberally construed and all-encompassing.

[5] The Court's inherent power to sanction is not so limited. See Stalley v. Methodist Healthcare, 517 F.3d 911, 920 (6th Cir. 2008) ("Our inherent power is not limited to sanctioning attorneys only; we can sanction a party as well.").

It includes, but is not limited to, attorney fees in bringing any motions, researching issues, and any travel expenses resulting from building inspections. Plaintiffs may also recover from Belford any reasonable attorney fees and costs incurred as a result of litigating these Rule 11 proceedings. Within ten days of today's date, the parties shall confer in an attempt to reach a mutually agreeable dollar amount pursuant to this order. If a mutually agreeable amount cannot be reached, Plaintiffs shall file an affidavit detailing those costs and fees to which they believe they are entitled under this order. Any response by Belford is due ten days later.

- In the event Belford does not fully comply with this order within ten days of today's date, the Court will immediately entertain a motion to hold Belford and Salem Kureshi, its "managing coordinator," in civil contempt.

For the reasons explained, the Court imposes sanctions on Belford pursuant to Federal Rule of Civil Procedure 11(c)(3), as described above, for violating Rule 11(b)(3), and pursuant to the Court's inherent authority. See Chambers, 501 U.S. at 45-46. As for Belford's counsel, the Court finds no sanctionable conduct.

SO ORDERED.

Dated: October 27, 2011
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on October 27, 2011.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager