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Morningside Translations, Inc. v Tsaidi
2014 NY Slip Op 51710(U)
Decided on December 8, 2014
Supreme Court, New York County
Ramos, J.
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Decided on December 8, 2014

Supreme Court, New York County

**Morningside Translations, Inc. f/k/a TEKADEMIC, INC. AND
MORNINGSIDE ISRAEL, LTD., Plaintiffs,**

against

**Yaniv Tsaidi a/k/a DAVE CONE, DAVID DRUCKMAN, AND
PERFORMANCE LANGUAGE SOLUTIONS, Defendants,**

153216/14

For plaintiff: Daniel Wallen, Esq. of Otterbourg P.C.

For defendants: Dov Kesselman, Esq. of Seyfarth Shaw LLP

Charles E. Ramos, J.

In motion sequence 003, Yaniv Tsaidi a/k/a David Cone ("Tsaidi"), David Druckman ("Druckman" and together with Tsaidi, the "Individual Defendants") and Performance Language Solutions ("PLS") move by order to show cause for injunctive relief and for sanctions against Morningside Translations, Inc., f/k/a Tekademic, Inc. ("Morningside"), and Morningside Israel, Ltd. ("Morningside Israel"), and Joshua Eisen ("Eisen").

Factual Background

The facts herein are taken from the parties' pleadings and submissions. Morningside is a company that provides translating services worldwide. Eisen is the majority shareholder and a director of Morningside and an indirect owner of Morningside Israel. Tsaidi and Druckman were employees of Morningside for six and ten years, respectively (Eisen Aff., ¶¶ 2-3).

Plaintiffs commenced this action alleging exploitation of Morningside's confidential and proprietary information, improper use of resources to develop Defendants' own competitive venture, and breach of duties of loyalty to the Plaintiffs and the express terms of employment agreements.

Unfortunately, since commencement of this action, Eisen frequently sent the Individual Defendants and their counsel, Dov [*2]Kesselman, Esq. ("Kesselman"), inappropriate emails regarding this action.

On April 9, 2014, Eisen sent an unsolicited email to Kesselman, in which he referred to him as an "evil kappa collaborating with nazi ideas about humiliating Jews" (Kesselman Aff., Exhibit A). On the same date, Kesselman contacted Eisen's counsel and requested that Eisen cease communications (*Id.*). Counsel for Eisen represented to Kesselman that he did warn his client about said communications (*Id.*).

On April 17, 2014, Eisen sent two unsolicited emails to Kesselman making references to Kesselman's alleged lack of faith if his client does not agree to resolve the dispute in a

rabbinical court (*Id.*, Exhibit B and C). On the same date Kesselman twice contacted Eisen's counsel and requested that Eisen cease communication with counsel for defendants (*Id.*).

On April 18, 2014, Eisen sent an unsolicited email to Kesselman and Kesselman requested from Eisen's counsel that Eisen cease these communications (*Id.*, Exhibit D).

On April 29, 2014, Eisen sent defendant Druckman a text message in response to statements in Druckman's affidavit about his mother's serious illness, that "Lying about a mother having Parkinson's is just pathetic" (Druckman Aff., Exhibit C).

On July 2, 2014, Eisen sent Tsaidi an email in which Eisen called Tsaidi a "pussy" and threatened that Tsaidi "will be airing dirty laundry" if Individual Defendants would not agree to take this case to a Jewish rabbinical court (Tsaidi Aff., Exhibit E).

On July 2, 2014 Eisen sent Druckman an email in which Eisen claimed that Druckman had allegedly plagiarized papers when Druckman was a student in Columbia University and threatened that Eisen "will be looking into this and sending the information I have to the university" (Druckman Aff., Exhibit E). On the same day Eisen sent in an email to Kesselman making references to his wife and faith ((Kesselman Aff., Exhibit E).

Eisen continued contacting the Individual Defendants and Kesselman although Eisen's attorneys were asked on multiple occasions by Kesselman to direct Eisen to cease these communications and to communicate only through counsel. Eisen's counsel represented that he did speak with Eisen regarding ceasing from said communications (Kesselman, Aff., Exhibit A-D, F).

On September 11, 2014, Eisen sent Tsaidi's wife an email and warned her to "Think long and hard. I was in your home" (Tsaidi Aff., Exhibit F).

On September 12, 2014, Eisen sent Tsaidi an email in which he implied that he will be calling or visiting Tsaidi's wife (Tsaidi Aff., Exhibit G).

On September 14, 2014, Eisen sent further emails to Tsaidi's [*3]brother and his wife's first cousin (Tsaidi Aff., ¶ 14).

On September 12, 2014, Eisen also sent an email to Druckman in which Eisen mentioned Druckman's father's address that he would contact "the Druckmans in Hazlet, NJ" and see if his "dad really need a kidney? Is he still alive? Maybe I'll call and ask him both questions I'll be reaching out hoping to convince then to impress upon you the need to come clean " (Druckman Aff., Exhibit F).

On the morning of September 15, 2014, Eisen called Kesselman's home. Eisen identified himself to Kesselman's wife and told her that her husband was doing things that were wrong (Kesselman Aff., § 14).

Discussion

This Court has broad inherent equitable powers to fashion an appropriate remedy when equity so requires. Once equity is invoked, the court's power is as broad as equity and justice require (*Ripley v International Rys.*, 8 AD2d 310, 328 [1st Dept 1959] *affd* 8 NY2d 430 [1960]; *Norstar Bank v Morabito*, 201 AD2d 545 [2d Dept 1994]).

The nature of Eisen's communications is disturbing and threatening. Eisen frequently contacted the Individual Defendants and Defendants' counsel with inappropriate emails during the litigation despite the defendants' counsel asking Eisen's attorney to direct Eisen to cease his inappropriate communication. The communications became more frequent in the middle of September 2014. Eisen contacted not only the Individual Defendants and Defendants' counsel but also the Individual Defendants' family members directly. Moreover, Eisen called Defendants' counsel's home and spoke with his wife.

All the facts indicate that Eisen kept inappropriate communications with the Individual Defendants, the Individual Defendants' family members and Defendants' counsel even when Eisen was asked to cease the communications. It is foreseeable that Eisen would keep contacting the Individual Defendants, the Individual Defendants' family members and Defendants' counsel without an injunction by the Court under the Court's broad equitable powers.

This Court may exercise discretion to impose costs and sanctions on an errant party under certain circumstances (22 NYCRR 130-1.1). The relief may include, inter alia,

sanctions against the offending party or an amount to be determined by this Court, which would be payable to the Client Security Fund (22 NYCRR 130-1.3; *Levy v Carol Mgt. Corp.*, 260 AD2d 27, 33-34 [1st Dept 1999]). Whether the court exercises discretion depends on whether Eisen's conduct was "frivolous" which is defined to include conduct "undertaken primarily to harass or maliciously [*4]injure another" (*Id.*).

Eisen's campaign of emails, telephone calls, and texts against the Individual Defendants, their family members and counsel was undertaken to "harass" since they were numerous in number, sent frequently, inappropriate, unsolicited, and sent after consistent warnings from defense counsel not to do so. Eisen should be compelled to pay the costs and attorney's fees incurred by Defendants to make the instant motion (22 NYCRR § 130-1.1[a]; *Jalor Color Graphics, Inc. v Universal Advertising Sys., Inc.*, 2 AD3d 165, 166 [1st Dept 2003] (affirming sanction under 22 NYCRR § 130-1.1 where defendants' counsel made baseless threats because such conduct "constituted frivolous conduct undertaken primarily to harass and intimidate and adversary, and to frustrate resolution of his commercial litigation"))

Accordingly, it is

ORDERED that Joshua Eisen and all persons and/or entities acting on his behalf, for his benefit or in active concert or participation with him, are hereby enjoined and restrained from communicating by mechanical or electronic means, anonymously or otherwise, other than through his counsel, with the Individual Defendants or their immediate family members, significant others, in-laws, cousins, or counsel, from appearing at the homes or business of the Individual Defendants or their immediate family members, significant others, ,in-laws, cousins, or counsel, absent Defendants' consent.

ORDERED that Defendants' motion for costs and sanctions against Joshua Eisen and Plaintiffs for reasonable expenses and attorney's fees incurred by Defendants to make the instant motion is granted.

Settle order which will include a provision setting this matter down for a hearing before a Special Referee to report and recommend on the issues of fees and expenses.

Dated: December 8, 2014

Enter:

_____ J.S.C.

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