UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:16-cv-00371-SVW-MRW	Date	May 10, 2019
Title	*Cap Export, LLC v. Zinus, Inc. et al.*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: IN CHAMBERS ORDER GRANTING ZINUS' MOTION FOR DEFAULT JUDGMENT AND DENYING ZINUS' MOTION FOR ATTORNEYS' FEES [206]

Having considered Zinus' motion for default judgment of 4Moda Corp., the Court GRANTS the motion. Zinus is awarded judgment against 4Moda Corp. in the amount of $2,707. However, for the reasons discussed below, and because the alleged conduct appears to be more appropriately resolved in a motion for Rule 11 sanctions, the Court DENIES Zinus' motion for attorneys' fees under 35 U.S.C. § 285 against the Adli Law Group, P.C. and Beitchman & Zekian, P.C.

Section 285 provides that "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party." 35 U.S.C. § 285.

First, it appears that seeking attorneys' fees only from a party's *attorneys* is not supported by the (admittedly sparse) relevant authority. The cases cited in *Iris Connex, LLC v. Dell, Inc.*, 235 F. Supp. 3d 826, 843-44 (E.D. Tex. 2017) permitted awards under Section 285 against a non-party where the non-party *substantively* affected the parties' litigating positions in the patent context by, for example, serving as the "co-inventor of the patent-in-suit" and having been "intimately involved in the prosecution of the patent-in-suit." The court in *Iris Connex* characterized the cases as "all recogniz[ing] a more general and uncontroversial principle: that the corporate form cannot be used as a shield to insulate officers and parent corporations against liability for their own tortious conduct or tortious conduct they control." *Id.* at 844. The court stated that it saw "no compelling reason to deviate from these cases and generally established legal principles." *Id.* Presumably, then, the court did not intend to create new law.

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Furthermore, in considering the legislative intent behind Section 285, the Court focused on the fact that "Congress enacted Section 285 to provide incentives to defend against frivolous infringement claims because doing so benefits the public," and that, "if recourse can only be had against a judgment-proof shell company, no such incentive exists." *Id.* at 846. Thus, taken in context, the case—based on prior case law and the intent behind Section 285—supports the notion that Section 285 liability may attach to non-parties who would otherwise be shielded from liability due to corporate forms and entity structures. This reasoning does not extend to attorneys who may have acted unreasonably in litigating on behalf of their clients. Indeed, in *Iris Connex* itself, attorney conduct was analyzed—and sanctions were imposed—under Rule 11, not Section 285. *Id.* at 855-63.

Second, even if Section 285 could apply to the conduct alleged here, it is not clear that this case is exceptional. Zinus' argument—which is essentially that attorneys conspired with their true client (Amouyal) to file pleadings on behalf of a company they did not represent (4Moda Corp.)—is based on the deposition testimony of Bruce Juliani, 4Moda Corp.'s alleged sole decisionmaker. However, whether Moris Neman had the right to act on behalf of 4Moda Corp. is a disputed factual question that is not properly before the Court and cannot be resolved in a motion for attorneys' fees.

IT IS SO ORDERED.

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