Published on *The National Law Review* https://natlawreview.com

TESTING THE COURT'S PATIENCE: Anton Ewing and Freedom Forever Are Locked in Mortal Combat–Except They're Not

Article By:

Eric J. Troutman

Some folks litigate TCPA suits professionally and calmly.

Then there's Anton Ewing.

He's a tough fella to litigate against–which I suppose he'd tell you is the point. He doesn't want to be called and he wants to make people pay when they call him. Again, I suspect that's what he'd say.

What the courts have recently said is a bit less flattering:

Regardless, he has found another party that is apparently also dedicated to fighting with needless aggressionand the court is not at all impressed.

In *Ewing v. Freedom Forever,* 2024 WL 3894044 (S.D. Cal Aug. 21, 2024) the court weighed several motions, including a motion to dismiss a counterclaim for breach of settlement agreement, aa motion to strike and a motion for sanctions.

At issue was the validity of a counterclaim against Ewing for breach of a settlement agreement arising from an earlier suit. Defendant claimed Ewing violated the agreement's nondisparagement clause but the court eventually dismissed the countersuit for failure to allege the defendant's own performance with the agreement.

But Ewing filed a declaration of some kind (ruling was vague) that lead to a motion to strike by Defendant and also an additional motion for sanctions was filed by Ewing related to the purported frivolousness of the complaint leading to a very carefully-worded admonition to both parties surely delivered through clinched teeth:

The Parties may test the Court's patience, but their respective actions have not risen to such a level as to justify sanctions. Plaintiff's Sanctions Motion fails because it essentially relitigates a debate Plaintiff already partially lost regarding the merits of Defendant's counterclaims. Though Plaintiff may have secured the dismissal of two of Defendant's counterclaims, the Court concluded that said

counterclaims might be saved by amendment. And a claim that has "some plausible basis, [even] a weak one," is sufficient to avoid sanctions under Rule 11. United Nat. Ins. Co. v. R & D Latex Corp., 242 F.3d 1102, 1117 (9th Cir. 2001).

Meanwhile, the Court will decline Defendant's request for attorney's fees because only in the "rare and exceptional case" are sanctions appropriate, and to offer a carrot here would only serve to encourage similar requests in the future. Operating Eng'rs Pension Tr., 859 F.2d at 1344. Rather than reward either side's behavior, the Court urges the Parties once again, and in the strongest possible terms, to avoid seeking judicial intervention for conduct that does not reach the high standard meriting the imposition of sanctions. See ECF No. 24 at 10 (denying Defendant's earlier request for terminating sanctions and reminding the Parties to "seek sanctions sparingly, and not to obtain a tactical advantage or for any other improper purpose" in accordance with Civil Local Rule 2.1).

Ewing also asked the Court to refer the defendant's lawyer to the state bar for some reason prompting this response from the court:

It goes without saying that to accuse Defense Counsel of ethical misconduct without any substantiation whatsoever is a serious charge. The Court admonishes Plaintiff to be wary of these choppy waters

Goes out without saying. But the court had to say it.

Readers of this blog know the Czar is always committed to civil and professional litigation tactics. There ought be no lawyers but gentle lawyers– we are in the business of truth, after all, and truth requires no antics– and non-attorney litigators in federal court (especially those who frequent the courthouse) ought govern themselves by the same standards.

Let' stay classy and fight clean TCPAWorld.

National Law Review, Volume XIV, Number 236